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Rules and Regulations

Federal Register

Vol. 82, No. 154

Friday, August 11, 2017

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2017–0008]

RIN 3150–AJ89

List of Approved Spent Fuel Storage Casks: NAC International MAGNASTOR® Cask System; Certificate of Compliance No. 1031, Amendment No. 7

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of August 21, 2017, for the direct final rule that was published in the **Federal Register** on June 6, 2017. The direct final rule amended the NRC's spent fuel storage regulations by revising the ''List of approved spent fuel storage casks'' to include Amendment No. 7 to Certificate of Compliance (CoC) No. 1031 for the NAC International, MAGNASTOR® Cask System.

DATES: *Effective Date:* The effective date of August 21, 2017, for the direct final rule published June 6, 2017 (82 FR 25931), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2017–0008 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0008. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Keith McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5252; email: *Keith.McDaniel@nrc.gov.*

SUPPLEMENTARY INFORMATION: On June 6, 2017 (82 FR 25931), the NRC published a direct final rule amending § 72.214 of title 10 of the *Code of Federal Regulations* by revising the ''List of approved spent fuel storage casks'' to include Amendment No. 7 to CoC No. 1031 for the NAC International, MAGNASTOR® Cask System. Amendment No. 7 provides a new Passive MAGNASTOR® Transfer Cask and associated Technical Specification (TS) changes in Appendices A and B (ADAMS Accession Nos. ML16295A248 and ML16295A252), and updates Section 4.3.1(i) in Appendix A of the TSs to include revised seismic requirements. Clarifying (non-technical) changes were also made to Appendices A and B.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on August 21, 2017. As described more fully in the direct final rule, a significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

One comment on the direct final rule was submitted to *Regulations.gov*, however, the comment did not raise information related to this CoC and therefore was not posted. Because no significant adverse comments were received, the direct final rule will become effective as scheduled.

During the comment period for the direct final rule, the NRC identified missing change bars and formatting inconsistencies. Additionally, the NRC identified errors and omissions of text in the draft CoC and TSs associated with Amendment No. 7. In Appendix A, a number was accidently changed from 7 to 0 hours, in the table ''PWR [Pressurized Water Reactor] TSC [Transportable Storage Canister] Transfer Using MTC [MAGNASTOR® Transfer Cask] Reduced Helium Backfill Time.'' In Appendix B, footnote 3 omitted text; the footnote should read ''0.4 years for RCC [Reactor Control Components] in the PMTC [Passive MAGNASTOR® Transfer Cask] (reduced storage location heat load). For all other cask types, 0.2 years for RCC with 10-year minimum cool time.'' Additionally, the description of the PMTC was inadvertently omitted from the CoC. The NRC evaluated the figures and information provided in NAC's applications and presented its findings in Safety Evaluation Reports (SERs) (see Table 1, section 4.0 of the SER for Amendment 4 (ADAMS Accession No. ML15107A472) and sections 5.7 and 5.13 of the current SER (ADAMS Accession No. ML16295A258)), but the published draft CoC and TSs were in error. The administrative errors have been corrected in the final CoC and TSs. The final CoC, TSs, and SER for Amendment No. 7 for the MAGNASTOR® storage system can be viewed in ADAMS under Accession No. ML17013A466.

Dated at Rockville, Maryland, this 7th day of August 2017.

For the Nuclear Regulatory Commission.

Helen Chang,

Acting Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2017–16946 Filed 8–10–17; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 835

[AU–RM–16–ORP]

RIN 1992–AA51

Occupational Radiation Protection

AGENCY: Office of Environment, Health, Safety and Security, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is publishing a final rule to amend values listed in two appendices to its current occupational radiation protection regulation. The amendment to appendix C corrects the air immersion derived air concentration value for any single radionuclide not listed in the appendix C table with a decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than two hours, adjusted for an 8-hr work day. The amendments to appendix E correct the activity information of two radionuclides, Rh-102 and Rh-102m.

DATES: This rule is effective September 11, 2017.

FOR FURTHER INFORMATION CONTACT: James Dillard, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop AU–11, 1000 Independence Ave. SW., Washington, DC 20585. Telephone: 301–903–1165. Email: *james.dillard@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The requirements in title 10, Code of Federal Regulations, part 835 (10 CFR part 835), *Occupational Radiation Protection,* are designed to protect the health and safety of individuals from ionizing radiation resulting from the conduct of U.S. Department of Energy (DOE) activities. One situation that DOE's regulations address is the exposure of workers to radioactive material dispersed in the air. Based on calculations involving doses to the organs of the body, levels of contamination in the air that will not cause the dose limits for workers to be exceeded are established for specified radionuclides. These values are provided in appendix C of part 835. On April 13, 2011, the Department published updated Derived Air Concentration (DAC) values in appendix C for determining radiation dose from inhaled radioactive material (76 FR 20489). The updated dose conversion factors were determined using International Commission on Radiological Protection (ICRP) Publication 68 (ref. 1) effective dose rates for an 8-hour exposure period, instead of the previously assumed 24-hour calendar day exposure, which is consistent with other occupational scenarios, such as those used in developing appendix A DACs. The values were then rounded down to the nearest power of 10. In that update, the DAC values for radionuclides not listed in the appendix C table with a decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than two hours were inadvertently not revised for the 8 hour work day exposure time. The amendment to appendix C provides the correct DAC values for this group of radioactive materials.

Title 10 CFR part 835 appendix E values were developed to ensure the proper accountability of sealed radioactive sources, as well as radioactive material posting and labeling requirements (63 FR 59662, November 4, 1998). DOE most recently amended the values of appendix E to part 835 on June 8, 2007 (72 FR 31904), using the ICRP Publication 60 methodology (ref. 1) and the same exposure scenarios discussed in a 1998 amendment to 10 CFR part 835 (63 FR 59662, November 4, 1998). The values were based on the more limiting of the quantity of radioactive material which results in either an external or internal whole body dose, from either inhalation or ingestion, of 100 millirems. However, the final rule incorrectly listed values for two radionuclides. This amendment to appendix E provides the correct activity values for these two radionuclides (Rh-102 and Rh-102m), calculated from internal exposure scenario derived from ICRP Publication 119 (ref. 2).

II. Discussion of Amendments

This section of the **SUPPLEMENTARY INFORMATION** responds to significant comments on the proposed amendments. All substantive changes from the notice of proposed rulemaking (NOPR) are explained in this section.

DOE has determined that the requirements set forth in this final rule are those which, based on currently available data, are necessary to protect the health and safety of individuals from ionizing radiation resulting from the conduct of activities at DOE sites.

A. Appendix C—Derived Air Concentration (DAC) for Workers From External Exposure During Immersion in a Cloud of Airborne Radioactive Material. The amendment provides a correction to the derived air concentration value for any single radionuclide not listed in the Appendix C table with a decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than two hours to 1E-06 μCi/mL (7E+04 Bq/m^3). DOE did not receive any comments on the proposed amendment to this appendix, which remains unchanged in the final rule.

B. Appendix E—Values for Establishing Sealed Radioactive Source Accountability and Radioactive Material Posting and Labeling Requirements. The amendment corrects the activity for Rh-102 to 6.4E+05 μCi and the activity from Rh-102m to 3.0E+05 μCi. DOE did not receive any comments on the proposed amendment to this appendix, which remains unchanged in the final rule.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined to be ''not significant'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that a Federal agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

This rule updates DOE requirements for nuclear safety and occupational radiation protection at DOE sites. The requirements of part 835 are primarily implemented by contractors who conduct work at DOE facilities. DOE considered whether these contractors are ''small businesses'' as the term is defined in the Regulatory Flexibility Act (5 U.S.C. 601(3)). The Regulatory Flexibility Act's definition incorporates the definition of small business concerns in the Small Business Act, which the Small Business Administration (SBA) has developed through size standards in 13 CFR part 121. DOE expects that any potential economic impact of this rule would be negligible because DOE activities are conducted by contractors who are reimbursed through their contracts with DOE for the costs of complying with DOE nuclear safety and radiation protection requirements, including the costs of complying with the rule. For these reasons, DOE certifies that this rule, will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel of Advocacy of the SBA pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rule does not impose a collection of information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions that will not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule amends existing regulations without changing the potential environmental effect of the regulations being amended, and, therefore, is covered under the Categorical Exclusion in paragraph A5 of appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b)(2) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, to be given to the regulation; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any, to be given to the regulation; (5) defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of the standards. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it will not preempt State law and will not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has ''tribal'' implications and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that the proposed rule will not have such effects and concluded that Executive Order 13175 does not apply to this final rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), 2 U.S.C. 1531 *et seq.,* requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the final rule published does not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action will not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this notice. The report will state it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Appendix—References

1. International Commission on Radiological Protection (ICRP), 1994. *Dose Coefficients for Intakes of Radionuclides by Workers.* ICRP Publication 68. Ann. ICRP 24 (4).
2. ICRP, 2012. Corrigenda to ICRP *Publication* 119: Compendium of Dose Coefficients based on ICRP *Publication 60.* Ann. ICRP 41(suppl.).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 835

Federal buildings and facilities, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Nuclear safety, Occupational safety and health, Radiation protection, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on July 31, 2017.

Andrew C. Lawrence,

Acting Associate Under Secretary for Environment, Health, Safety and Security.

For the reasons set forth in the preamble, the Department of Energy amends part 835 of chapter III of title 10 of the Code of Federal Regulations as set forth below:

PART 835—OCCUPATIONAL RADIATION PROTECTION

■ 1. The authority citation for part 835 continues to read as follows:

Authority: 42 U.S.C. 2201, 7191, 50 U.S.C. 2410.

Appendix C to Part 835—[Amended]

■ 2. In appendix C, the sentence following the table is amended by removing ''6 E-06 μCi/mL (2 E+04 Bq/m^3)'' and adding in its place ''1 E-06 μCi/mL (7 E+04 Bq/m^3)''.

Appendix E to Part 835—[Amended]

■ 3. In appendix E, the activity value is amended in the second column of the table for the following nuclides:

■ a. For Rh-102, remove the value of ''3.0E+05'' and add in its place ''6.4E+05''; and

■ b. For Rh-102m, remove the value of ''6.4E+05'' and add in its place ''3.0E+05''.

[FR Doc. 2017–16983 Filed 8–10–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0297; Airspace Docket No. 16–AWP–4]

Establishment of Class E Airspace, Hawthorne, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Hawthorne Industrial Airport, Hawthorne, NV, to support the development of instrument flight rules (IFR) operations under standard instrument approach and departure procedures at the airport, for the safety of aircraft and management of airspace within the National Airspace System.

DATES: Effective 0901 UTC, October 12, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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 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 establishes Class E airspace extending upward from

700 feet above the earth at Hawthorne Industrial Airport, Hawthorne, NV, for the safety of aircraft and management of airspace within the National Airspace System.

History

On May 1, 2017, the FAA published a notice of proposed rulemaking in the **Federal Register** (82 FR 20290) Docket No. FAA–2017–0297 to establish Class E airspace extending upward from 700 feet above the surface at Hawthorne Industrial Airport, Hawthorne, NV. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the ADDRESSES section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 3.6-mile radius of Hawthorne Industrial Airport, Hawthorne, NV, and within 2 miles either side of a curved line extending southeast to approximately 15 miles east of the airport. This airspace is necessary to support IFR operations in standard instrument approach and departure procedures at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this 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.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, 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(f), 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AWP NV E5 Hawthorne, NV [New]

Hawthorne Industrial Airport, NV
(Lat. 38°32′42″ N., long. 118°37′57″ W.)

That airspace extending upward from 700 feet above the surface within 3.6 miles of the Hawthorne Industrial Airport and within 2 miles each side of a line extending from lat. 38°32′25″ N., long. 118°37′26″ W.; to lat. 38°28′43″ N., long. 118°27′48″ W.; to lat. 38°28′49″ N., long. 118°24′19″ W.; to lat. 38°32′06″ N., long. 118°18′07″ W.

Issued in Seattle, Washington, on August 2, 2017.

Byron Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–16896 Filed 8–10–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0348]

RIN 1625–AA–00

Safety Zone; Demolition of SC–41 Bridge, Wando River, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Wando River within a 500-yard radius of SC–41 Bridge, vessels and machinery in Charleston, South Carolina. The safety zone is needed to ensure the safety of persons, vessels, and the marine environment from potential hazards created by demolition work on the SC–41 Bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective without actual notice from August 11, 2017 until August 30, 2017. For purposes of enforcement, actual notice will be used from August 4, 2017 until August 11, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0348 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule call or email Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Justin.C.Heck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
OMB Office of Management and Budget

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because insufficient time remains to publish an NPRM and to receive public comments, as the bridge demolition will occur before the rulemaking process would be completed. The safety zone is necessary to provide for the safety of personnel, vessels, and the marine environment from potential hazards created by demolition work on the bridge. For those reasons, it would be impracticable and contrary to the public interest to publish an NPRM.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with the demolition work on the SC–41 Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Charleston has determined that potential hazards associated with the bridge demolition starting August 4, 2017 will be a safety concern for anyone within a 500-yard radius of the bridge, vessels, and machinery. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the demolition is in progress.

IV. Discussion of the Rule

This rule establishes a safety zone on the waters of the Wando River in Charleston, South Carolina during the SC–41 bridge demolition. The demolition will have two separate demolitions between August 4, 2017 and August 30, 2017 which will be enforced for approximately six hours each. The safety zone will cover all navigable waters within 500 yards of the bridge, vessels, and machinery being used for the demolition of the SC–41 Bridge. No vessel or person will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the Captain of the Port Charleston or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for a total of twelve hours; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area surrounding the SC–41 Bridge on the waters of the Wando River for two six hour periods. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Record of Environmental Consideration are available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; and Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T07–0348 to read as follows:

§ 165.T07–0348 Safety Zone; Demolition of SC–41 Bridge, Wando River, Charleston, SC.

(a) *Location.* All waters of the Wando River encompassed within a 500-yard radius of SC–41 Bridge, vessels and machinery.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced from August 4, 2017 through August 30, 2017, during demolition activity.

Dated: August 3, 2017.

G.G. Stump,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2017–16993 Filed 8–10–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0084]

RIN 1625–AA00, AA11

Great Lakes—Regulated Navigation Areas and Safety Zones

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Great Lakes Regulated Navigation Areas to include one additional regulated navigation area in Green Bay, WI and safety zones in the Lake Erie Islands, OH and Saginaw Bay, MI. These zones will apply during the winter months and are necessary to protect waterway users, vessels, and mariners from hazards associated with winter conditions and navigation.

DATES: This rule is effective September 11, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–0084 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Matthew Stroebel, Ninth District Coast Guard Prevention, U.S. Coast Guard; telephone 216–902–6060, email *matthew.k.stroebel@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
LCA Lake Carrier's Association
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On May 22, 2015, the Coast Guard proposed a rule to establish three regulated navigation areas (RNA) and two safety zones in its Great Lakes area. These zones were intended to improve the safety of both recreational users and commercial shipping in high use areas. During the comment period that ended July 6, 2015, we received a total of 6 comments. We received one comment from the Lake Carriers' Association stating that it found the rule unnecessary and expressed concern that the rule will impede vessels' ability to respond quickly and creatively to winter conditions. The comment suggested that COTP Orders specifically tailored to existing and forecasted conditions is a better way to respond to hazardous ice conditions. We agree that in Maumee Bay and the Straits of Mackinac, COTP orders can be used instead of an RNA since safety issues occur less frequently in these areas. Our determination is that in Green Bay an RNA is necessary due to the high concentration of recreational users and expected increased commercial vessel traffic in the zone.

Based on the comments received regarding the May 22, 2015 NPRM, we amended the proposed rule and issued a supplemental notice of proposed rulemaking (SNPRM) on April 21, 2017. This supplemental notice of proposed rulemaking retracts the Coast Guard's proposals to create new regulated navigation areas in Maumee Bay and the Straits of Mackinac in accordance with the feedback received from the Lake Carriers Association. We also retracted our proposal to re-designate three existing regulated navigation areas as safety zones. Instead, this rulemaking proposed to add two safety zones in the Lake Erie Islands and Saginaw Bay to protect recreational ice users. We also proposed to add one regulated navigation area in Green Bay to manage increased commercial traffic in an area that typically experiences high volumes of recreational use.

We received one comment from the Lake Carriers Association (LCA). As a result of the LCA's comment to the original NPRM we modified the rule to not include zones in Maumee Bay or the Straits of Mackinac. LCA commented that zones in those locations would be detrimental to industry. In response to the SNPRM, LCA engaged with their member corporations and did not receive any feedback opposing the addition of a regulated navigation area in Green Bay.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The District Commander has determined that there are potential hazards associated with commercial shipping traffic in close vicinity to recreational ice use. These areas attract recreational ice users during the winter months. Vessel traffic would disrupt ice integrity in these areas and pose risks to these recreational waterway users, which may include people and vehicles falling through the ice. To mitigate these risks, the Coast Guard is establishing safety zones and a regulated navigation area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our SNPRM published April 21, 2017. This comment was not in opposition to the rule. There are no changes in the regulatory text of this rule from the proposed rule in the SNPRM.

This rule establishes two safety zones, one in Saginaw Bay, MI, and the other in the Lake Erie Islands, OH. The safety zones will be activated when ice conditions warrant and will be deactivated when the ice dissipates in the spring. During the time the safety zones are active, vessels will not be permitted to transit through the zones which will protect recreational ice users from the dangers associated with icebreaking.

This rule also establishes a regulated navigation area in southern Green Bay, WI. This RNA will allow the Coast Guard to regulate when commercial traffic is permitted in southern Green Bay and will give the public a minimum of 72 hours notice before a vessel is permitted to transit the area. This will best manage the risks associated with recreational ice users and vessels operating in Southern Green Bay.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The proposed amendments involve closure areas and a vessel management area, designed to be implemented only during winter months, as ice conditions dictate. As to the impact of the closure area on Lake Erie near the South Channel and the Lake Erie Islands, OH, the Coast Guard notes that industry vessels have taken alternative routes bypassing the Lake Erie Islands when recreational ice users are present. The Coast Guard anticipates the same practice when this area is closed. Further, regarding the closure area on the waters of Lake Huron in Saginaw Bay, Michigan, the Coast Guard anticipates closing Saginaw Bay after giving due consideration to industry's need to traverse the area. Moreover, under certain circumstances, the Coast Guard may permit vessel traffic to transit the closure areas. Regarding the regulated navigation area in Green Bay, it is designed to regulate the conditions of vessel transit for safety. Overall, we expect the economic impact of this proposed rule to be minimal and that a full Regulatory Evaluation is unnecessary.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves amendments to navigation regulations and establishment of a safety zones. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.901 to read as follows:

§ 165.901 Great Lakes—regulated navigation areas and safety zones.

(a) The following are regulated navigation areas:

(1) *Lake Huron.* (i) The waters of Lake Huron known as South Channel between Bois Blanc Island and Cheboygan, Michigan; bounded by a line north from Cheboygan Crib Light (LL–1340) at 45°39′48″ N., 84°27′36″ W.; to Bois Blanc Island at 45°43′42″ N., 84°27′36″ W.; and a line north from the mainland at 45°43′00″ N., 84°35′30″ W; to the western tangent of Bois Blanc Island at 45°48′42″ N., 84°35′30″ W.

(ii) The waters of Lake Huron between Mackinac Island and St. Ignace, Michigan, bounded by a line east from position 45°52′12″ N., 84°43′00″ W.; to Mackinac Island at 45°52′12″ N., 84°39′00″ W.; and a line east from the mainland at 45°53′12″ N., 84°43′30″ W.; to the northern tangent of Mackinac Island at 45°53′12″ N., 84°38′48″ W.

(2) *Lake Michigan.* (i) The waters of Lake Michigan known as Gray's Reef Passage bounded by a line from Gray's Reef Light (LL–2006) at 45°46′00″ N., 85°09′12″ W.; to White Shoals Light (LL–2003) at 45°50′30″ N., 85°08′06″ W.; to a point at 45°49′12″ N., 85°04′48″ W.; then to a point at 45°45′42″ N., 85°08′42″ W.; then to the point of beginning.

(ii) The waters of Lake Michigan known as Green Bay from Rock Island Passage or Porte Des Morts Passage north to Escanaba Light at 45°44′48″ N., 087°02′14″ W.; south to the Fox River Entrance at 44°32′22″ N., 088°00′19″ W., to the Sturgeon Bay Ship Canal from Sherwood Point Light at 44°53′34″ N., 087°26′00″ W.; to Sturgeon Bay Ship Canal Light at 44°47′42″ N., 087°18′48″ W.; and then to the point of beginning.

(b) Regulations:

(1) In the RNAs under paragraph (a) of this section, the District Commander or respective COTP may issue orders to control vessel traffic for reasons which include but are not limited to: Channel obstructions, winter navigation, unusual weather conditions, or unusual water levels. Prior to issuing these orders, the District Commander or respective COTP will provide advance notice as reasonably practicable under the circumstances. The respective COTP may close and open these regulated navigation areas as ice conditions dictate.

(2) Prior to the closing or opening of the regulated navigation areas, the COTP will give interested parties, including both shipping interests and island residents, not less than 72 hours notice of the action. This notice will be given through Broadcast Notice to Mariners, Local Notice to Mariners, and press releases to the media (radio, print and television), local COTP will ensure widest dissemination. No vessel may navigate in a regulated navigation area which has been closed by the COTP. The general regulations in 33 CFR 165.13 apply. The District Commander or respective COTP retains the discretion to authorize vessels to operate outside of issued orders.

(c) The following are safety zones:

(1) *Lake Erie.* The area known as the Lake Erie Islands which is defined as the U.S. waters of Lake Erie at the intersection of the International Border at 082°55′00″ W., following the International Border eastward to the intersection of the International Border at 082°35′00″ W., moving straight south to position 41°25′00″ N., 082°35′00″ W., continuing west to position 41°25′00″ N., 082°55′00″ W., and ending north at the International Border and 082°55′00″ W.

(2) *Lake Huron.* The waters of Lake Huron known as Saginaw Bay, Michigan; bounded by a line from Port Austin Reef Light (LL–10275) at 44°04′55″ N., 082°58′57″ W.; to Tawas Light (LL–11240) at 44°15′13″ N., 083°26′58″ W.; to Saginaw Bay Range Front Light (LL–10550) at 43°38′54″ N., 083°51′06″ W.; then to the point of beginning.

(d) Enforcement:

(1) The District Commander or respective Captain of the Port (COTP) will enforce these safety zones as ice conditions dictate. Under normal seasonal conditions, only one closing each winter and one opening each spring are anticipated.

(2) Prior to closing or opening these safety zones, the District Commander or respective COTP will give the public advance notice, not less than 72 hours prior to the closure. This notice will be given through Broadcast Notice to Mariners, Local Notice to Mariners, and press releases to the media (radio, print and television), and the local COTP will ensure widest dissemination. The general regulations in 33 CFR 165.23 apply. The District Commander or respective COTP retains the discretion to permit vessels to enter/transit a closed safety zone under certain circumstances.

Dated: June 12, 2017.

J.E. Ryan,

Commander, RADM, U.S. Coast Guard, Ninth Coast Guard District.

[FR Doc. 2017–16997 Filed 8–10–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0259]

Safety Zone; Cleveland National Air Show, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Cleveland National Air Show, Lake Erie and the Cleveland Harbor, Cleveland, OH from 8:00 a.m. until 6:00 p.m. each day from August 31, 2017 through September 4, 2017. This action is necessary to provide for the safety of life and property on navigable waters during this event. During the enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulation in 33 CFR 165.939(a)(35) will be enforced from 8:00 a.m. through 6:00 p.m., each day from August 31, 2017, through September 4, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard; telephone 216–937–0124, email *ryan.s.junod@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zones; Annual Events in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939(a)(35) for the Cleveland National Air Show, Cleveland, OH from 8:00 a.m. to 6:00 p.m. each day from August 31, 2017 through September 4, 2017. This action is being taken to provide for the safety of life and property on navigable waters during this event. Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Those seeking permission to enter one of these safety zones may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter this safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners and Local Notice to Mariners. If the Captain of the Port Buffalo determines that this safety zone need not be enforced for the full duration stated in this notice; he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: August 7, 2017.

Joseph S. Dufresne,

Captain, U. S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2017–16973 Filed 8–10–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA–HQ–OPPT–2016–0426; FRL–9964–22]

RIN 2070–AK24

TSCA Inventory Notification (Active-Inactive) Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The 2016 amendments to the Toxic Substances Control Act (TSCA) require EPA to designate chemical substances on the TSCA Chemical Substance Inventory as either ‘‘active’’ or ‘‘inactive’’ in U.S. commerce. To accomplish that, EPA is establishing a retrospective electronic notification of chemical substances on the TSCA Inventory that were manufactured

(including imported) for nonexempt commercial purposes during the 10-year time period ending on June 21, 2016, with provision to also allow notification by processors. EPA will use these notifications to distinguish active substances from inactive substances. EPA will include the active and inactive designations on the TSCA Inventory and as part of its regular publications of the Inventory. EPA is also establishing procedures for forward-looking electronic notification of chemical substances on the TSCA Inventory that are designated as inactive, if and when the manufacturing or processing of such chemical substances for nonexempt commercial purposes is expected to resume. On receiving forward-looking notification, EPA will change the designation of the pertinent chemical substance on the TSCA Inventory from inactive to active. EPA is establishing the procedures regarding the manner in which such retrospective and forward-looking activity notifications must be submitted, the details of the notification requirements, exemptions from such requirements, and procedures for handling claims of confidentiality.

DATES: This final rule is effective on August 11, 2017.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0426, is available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Myrta R. Christian, Chemistry, Economics, and Sustainable Strategies Division (Mailcode 7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8498; email address: *christian.myrta@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Who does this action apply to?

You may be affected by this action if you domestically manufactured, imported, or processed a chemical substance listed on the TSCA Chemical Substance Inventory for nonexempt commercial purpose during the 10-year time period ending on June 21, 2016. You may also be affected by this action if you intend to domestically manufacture, import, or process in the future a chemical substance listed on the TSCA Chemical Substance Inventory.

The following North American Industrial Classification System (NAICS) codes are not intended to be exhaustive, but rather provides a guide to help readers determine whether this action may apply to them:

- Chemical manufacturing or processing (NAICS code 325).
- Petroleum and Coal Products Manufacturing (NAICS code 324).

In addition, the discussion in Unit II.A. describes in more detail which chemical substances will and will not be subject to reporting under this action. You may also consult the regulatory text in this document for further information on the applicability of exemptions to this rule.

Note that TSCA's statutory definition of ''manufacture'' includes importing. Accordingly, the regulatory definition of ''manufacture'' for this rule includes importation. Since ''manufacture'' is itself defined (in this rule and in TSCA) to include ''import,'' it is clear that importers are a subset of manufacturers. All references to manufacturing in this notice should be understood to also encompass importing. Where EPA's intent is to specifically refer to domestic manufacturing or importing (both activities constitute ''manufacture''), this rule will do so expressly.

B. What action is the Agency taking?

On January 13, 2017 (82 FR 4255, FRL–9956–28) (Ref. 1), EPA proposed procedural reporting requirements for persons who manufactured (including imported) in the past or intend to manufacture in the future chemical substances on the TSCA Inventory (hereafter referred to as the ''Inventory''). EPA received numerous public comments on the proposed rule. This final rule is based on that proposal and the consideration of the public comments received.

This TSCA section 8(b) rule requires electronic reporting of chemical identity from persons who manufactured a chemical substance for nonexempt commercial purpose during the 10-year time period ending on June 21, 2016. EPA will accept notices for substances that were processed during the same ten-year time period. EPA will use the chemical identity information obtained from this retrospective reporting to designate as active those substances on the Inventory for which notices were received. If no notice is received during this retrospective reporting for a substance subject to designation on the Inventory, then that substance will be designated as inactive.

This rule also requires electronic reporting of certain information from persons who in the future intend to manufacture or process an inactive substance on the Inventory for nonexempt commercial purpose. The information to be reported includes chemical identity and the date when manufacturing or processing is anticipated to resume. Upon receipt of such notices, EPA will change the designation on the Inventory from inactive to active.

This rule includes procedures for persons who co-manufacture or co-process a reportable chemical substance. These procedures will allow the submission of a single commercial activity notice where there has been co-manufacturing or co-processing of a particular volume of a substance. These procedures are similar to TSCA Chemical Data Reporting (CDR) rule requirements (40 CFR 711.22) when two or more persons are involved in a particular manufacture or import transaction.

This rule also includes a simplified procedure for filing a submission, including when specific chemical identity information is claimed to be confidential business information (CBI) by a supplier, and finalizes the proposed procedure for filing a joint submission. See response to Comment 14 in Unit III. EPA expanded its electronic reporting system to include a pick list from which persons can select chemicals for reporting. The pick list will include only reportable chemical substances and will not include CBI. Substances that are on the confidential portion of the Inventory will be listed on the pick list by EPA accession numbers and generic names, as they appear on public versions of the Inventory. In cases where specific chemical identity is claimed CBI by a supplier, a submitter can provide a single notice to EPA for a CBI substance if it has in its possession the corresponding non-CBI chemical identifiers (EPA accession number and generic name).

If a manufacturer or processor cannot provide the specific chemical identity of a reportable chemical substance to EPA because the information is claimed CBI by a supplier, and therefore is unknown to the importer, the submitter will be required to ask the supplier to provide the CBI chemical identity information directly to the Agency in a joint submission. EPA will only accept joint submissions that are submitted electronically using CDX. This requirement is similar to CDR rule requirements (40 CFR 711.15) and will allow EPA to obtain the information necessary to identify the specific chemical identity of a reportable substance and designate it as active on the Inventory.

This rule also finalizes proposed changes to 40 CFR 710.3 definitions. These changes were proposed to conform the definitions applicable to these reporting requirements with those that apply to CDR rule requirements (definitions found at 40 CFR 704.3 and 711.3) and the submission of Premanufacture Notices (PMNs) (definitions found at 40 CFR 720.3). Finally, this rule finalizes recordkeeping requirements as required by TSCA section 8(b)(9)(B). Records relevant to retrospective notification must be retained for a period of 5 years beginning on the last day of the submission period. Records relevant to forward-looking notification must be retained for a period of 5 years beginning on the day that the notice was submitted.

C. Why is the Agency taking this action?

TSCA section 8(b)(4)(A) requires EPA to issue a final rule for retrospective reporting by June 22, 2017. This rule will enable EPA to fulfill a statutory obligation to designate chemical substances on the Inventory as active or inactive in U.S. commerce. TSCA section 8(b)(5)(B) further establishes a forward-looking reporting requirement that goes into effect as soon as EPA designates inactive substances. This rule also establishes the procedural framework whereby manufacturers and processors will discharge their notice obligations under this section of TSCA.

This rule and designations under the rule are not intended to indicate conclusions about the risks of chemical substances on the Inventory. Nonetheless, the designation of a substance as active or inactive will be relevant to the Agency's prioritization of substances in U.S. commerce under TSCA section 6(b).

D. What is the Agency's authority for taking this action?

EPA is issuing this rule under TSCA section 8(b), 15 U.S.C. 2607(b). TSCA was amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Public Law 114–182. The Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504, provides that, when practicable, Federal organizations use electronic forms, electronic filings, and electronic signatures to conduct official business with the public.

Under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Agency may make a rule immediately effective ''for good cause found and published with the rule.'' EPA finds that there is ''good cause'' to make this rule effective upon publication in the **Federal Register** because the deadline for manufacturers to submit retrospective reports under this rule is fixed by statute at ''180 days after the date on which the final rule is published in the **Federal Register**.'' TSCA section 8(b)(4)(A)(i). Because the submission deadline is tied by statute to the date of the rule's publication, rather than the effective date of the rule, delaying the effective date of this rule would not afford any additional time for manufacturers to comply with reporting requirements. Rather, delaying the effective date of the rule would push back the *start* of the submission period for retrospective reporting, but not the *end* of the submission period (which remains fixed by statute), leaving manufacturers with a shorter period (less than 180 days) during which notices may be submitted. Thus, any impact on the regulated community of making the rule immediately effective is expected to be beneficial, given that an immediate effective date provides manufacturers with the greatest possible timing discretion regarding when to submit retrospective reports.

E. What are the estimated incremental impacts of this action?

EPA has reevaluated the potential costs of establishing the reporting requirements for manufacturers and processors in response to comments received. This analysis, which is available in the docket, is discussed in Unit V. and briefly summarized here (Ref. 2).

During the retrospective (or ''start-up'') period, between approximately June 2017 and June 2018, typical costs per firm are estimated at $1,188 per submission (with an estimated eighteen chemicals per submission), with possible additional costs at $41.55 per CDX registration in the event that the submitter is not currently registered in CDX. Among manufacturers, an estimated 5,322 firms will undertake rule familiarization with 1,585 completing compliance determination, form completion, and recordkeeping. For manufacturers, the total burden during start-up is estimated at 38,613 hours with an associated total cost of $3.09 million. For processors, an estimated 283,993 firms will undertake rule familiarization, with 100 completing compliance determination, form completion, and recordkeeping.

For processors completing rule familiarization only, the cost entails 3.30 hours on average per firm (under $300 per firm). For processors who complete a submission, typically involving one chemical, the burden for rule familiarization, compliance determination, form completion and recordkeeping during the start-up year is estimated at 500 hours with an associated cost of $0.04 million. Lastly, for 169 new CDX registrations (for individuals lacking previous experience with electronic reporting to EPA), burden during start-up is estimated at 90 hours with an associated cost of $0.007 million.

The rule has minimal burden and cost implications related to ongoing reporting with the typical cost per firm estimated at $889 per submission after the start-up year. The forward-looking (or ''ongoing'') reporting after June 2018 involves compliance determination, form completion, and recordkeeping for twenty manufacturers and/or processors per year. Burden and cost are estimated to total 225 burden hours per year with an associated cost of $17,779 per year.

Agency activities due to the rule include CDX and Chemical Information Submission System (CISS) capacity expansions, time to manage commercial activity notices, and increased costs incurred when making revisions to the Inventory. Associated costs are estimated at $3.62 million during start-up, and $0.22 million annually thereafter.

Combining Industry and Agency cost estimates, and annualizing over a 10-year period, the total cost of the rule is estimated at $9.7 million per year using a 3% discount rate, and at $11.8 million per year using a 7% discount rate.

II. Summary of the Final Rule

EPA is describing in this unit the reporting requirements for manufacturers and processors of chemical substances pursuant to TSCA section 8(b). EPA developed two versions of a Notice of Activity (NOA) reporting form for submitting the information described in this rule for the two reporting scenarios, retrospective and forward-looking (Ref. 3). The Notice of Activity Form A (EPA Form No. TBD–1) will be used for retrospective reporting, and the Notice of Activity Form B (EPA Form No. TBD–2) will be used for forward-looking reporting.

EPA intends that the provisions of this rule be severable. In the event that any individual provision or part of the rule is invalidated, EPA intends that this would not render the entire rule invalid, and that any individual provisions that can continue to operate will be left in place.

A. What chemical substances and activities are reportable under this rule?

1. Reportable chemical substances. The retrospective reporting requirements of this rule apply to chemical substances listed on the Inventory that were manufactured for nonexempt commercial purposes during the 10-year period ending on June 21, 2016. This 10-year period, referred to here as the ''lookback period,'' is set by statute. The forward-looking reporting requirements apply to substances listed as inactive on the Inventory that are to be reintroduced into U.S. commerce for nonexempt purposes. The Inventory is available at *https://www.epa.gov/tsca-inventory.*

2. Exemptions from reporting. i. Excluded chemical substances. The scope of chemical substances covered under this rule is reflected in the definitions of ''chemical substance subject to commercial activity designation,'' and ''reportable chemical substance,'' at 40 CFR 710.23, which exclude substances that are not chemical substances and substances that are not listed on the Inventory. For example, a substance that is not considered a ''chemical substance'' (as provided in subsection 3(2)(B) of TSCA and in the definition of ''chemical substance'' in 40 CFR 710.3(d)) is not a ''chemical substance subject to commercial activity designation'' or a ''reportable chemical substance'' and it thus cannot become an ''active substance'' or an ''inactive substance.'' A similar analysis applies with respect to a mixture (as defined in 40 CFR 710.3(d)), although individual Inventory-listed substances present in the mixture may be subject to reporting. Additionally, a substance that has not been added to the Inventory because it is manufactured solely under a TSCA section 5(h) exemption (*e.g.,* low releases and low exposures exemption, low volume exemption, polymer exemption, research and development exemption, test marketing exemption) is not a ''chemical substance subject to commercial activity designation'' or a ''reportable chemical substance'' and it cannot become an ''active substance'' or an ''inactive substance.'' See response to Comment 1 in Unit III.

Naturally occurring chemical substances also are excluded from reporting under this rule, as long as the manufacturing and processing of such substances meet the criteria set forth in 40 CFR 710.27(b). Naturally occurring substances are considered to be automatically included on the Inventory as the category ''Naturally Occurring Chemical Substances'' (42 FR 64578). EPA is designating the whole category of Naturally Occurring Chemical Substances as active substances by this rule, thereby excluding them from reporting under this rule.

ii. Manufacturing or processing for an exempt commercial purpose. Manufacturing or processing a chemical substance listed on the Inventory solely for an exempt commercial purpose is not subject to reporting requirements under TSCA section 8(b)(4) or 8(b)(5). The statute limits these notification obligations to manufacturing and processing for ''nonexempt commercial purpose.'' The scope of manufacturing or processing for an exempt commercial purpose is set forth in 40 CFR 710.27(a). While EPA expects that many chemical substances manufactured or processed for exempt commercial purposes will not be listed on the Inventory (due to similar exemptions under PMN regulations), and therefore are already excluded from reporting under this rule, the activity exemptions listed at 40 CFR 710.27(a) clarify circumstances under which a person is exempt from reporting requirements for the manufacturing or processing of a chemical substance that has been listed on the Inventory (*e.g.,* due to another manufacturer's actions). For example, the manufacturing or processing of impurities or byproducts that have no subsequent commercial purpose will not trigger reporting obligations under this rule. See 40 CFR 710.27(a)(3). Additionally, manufacturing or processing in small quantities solely for research and development is exempt as described in 40 CFR 710.3(d) and 40 CFR 710.27(a)(1). Furthermore, the import or processing of substances solely as part of articles is not subject to reporting under this rule. See 40 CFR 710.27(a)(2) and response to Comment 2 in Unit III. In response to comments, EPA revised the rule to clarify that manufacturing or processing a chemical substance solely for export from the United States or for test marketing purposes are also exempt commercial purposes not subject to reporting requirements under this rule. See 40 CFR 710.27(a)(4) and (5) and response to Comment 1 in Unit III.

iii. Chemical substances for which EPA already has an equivalent notice. EPA is establishing an exemption from the retrospective reporting requirement for three different circumstances in which EPA has already received equivalent notice that a chemical substance was manufactured during the lookback period, and further requirement to submit a notice would therefore be inconsistent with TSCA section 8(a)(5)(B).

First, chemical substances that are on the interim list of active substances described in TSCA section 8(b)(6) will be designated as active substances, by operation of this rule, and they are exempted from retrospective notification requirements under this rule. The interim list will be available on the TSCA Inventory Web page (see *https://www.epa.gov/tsca-inventory*), and is comprised of all chemical substances reported in 2012 or 2016 under the CDR rule, 40 CFR part 711. See 82 FR 4259. A CDR notice from 2012 or 2016 provides equivalent notice to EPA that the substance was manufactured during the lookback period. In response to comments, this exemption now applies irrespective of whether the substance is on the confidential portion of the Inventory. See 40 CFR 710.23 for revised definition of ''interim active substance'' and response to Comment 3 in Unit III.

Second, chemical substances that were added to the Inventory during the ten-year time period ending on June 21, 2016, pursuant to a Notice of Commencement (NOC) under 40 CFR 720.102 received by the Agency between June 21, 2006 and June 21, 2016, will be designated as active substances, by operation of this rule, and they are exempted from retrospective notification requirements under this rule. An NOC is required to be submitted on or no later than 30 calendar days after the first day of manufacture for commercial purpose. Additionally, an NOC substance is considered to be added to the Inventory on the date the NOC is received by EPA, provided that the EPA determines the NOC to be valid during its review. Therefore, a processed NOC provides equivalent notice that the substance was manufactured or processed during the lookback period. This exemption applies irrespective of whether the substance is on the confidential portion of the Inventory. See 40 CFR 710.23 for revised definitions of ''active substance,'' ''chemical substance subject to commercial activity designation,'' and response to Comment 4 in Unit III.

Third, a manufacturer is exempt from the retrospective notification requirements under this rule, for a particular chemical substance, if the manufacturer has evidence in the form of a CDX receipt, documenting EPA's receipt of an NOA Form A from another manufacturer. See 40 CFR 710.25(a) and response to Comment 6 in Unit III. Manufacturers should keep in mind, however, that they bear the risk of failing to submit a required forward-looking notification (NOA Form B) notice if they rely on this Form A exemption, and the Form A notice (for which they have a CDX receipt) is later withdrawn, leading to the substance being designated as inactive. Furthermore, one manufacturer's expectation that another manufacturer will *later* submit an NOA Form A is not an acceptable basis for relying on this exemption. Since it is only submitters who will be notified of errors, manufacturers relying on the exemption are responsible for assuring their substance is designated as commercially active.

iv. Inapplicability of exemptions to persons seeking to maintain an existing CBI claim for specific chemical identity. Persons who manufactured or processed a chemical substance on the confidential portion of the Inventory, that was added to the Inventory prior to June 22, 2016, should recognize that they must submit an NOA Form A to EPA if they wish to indicate that they ''seek to maintain an existing claim for protection against disclosure of the specific chemical identity of the substance as confidential.'' See TSCA 8(b)(4)(B)(ii) and response to Comment 3 in Unit III. This includes persons that, during the lookback period, manufactured or processed a confidential substance on the Inventory for which EPA already has an equivalent notice (as described in paragraph A.2.iii. of this Unit). It may also potentially include persons that, during the lookback period, manufactured or processed a confidential substance on the Inventory for an exempt commercial purpose (as described in paragraph A.2.ii. of this Unit), if such substance is designated active due, for instance, to EPA's receipt of an equivalent notice (such as an NOC or CDR report). In connection with extending manufacturers' reporting exemptions to cover substances on the confidential portion of the Inventory, EPA has revised 40 CFR 710.25(b) to clarify manufacturers' and processors' discretion to report. If manufacturers elect not to submit a notice because they are availing themselves of one of the exemptions described previously, then they are foregoing their opportunity to maintain an existing claim for protection against disclosure of the specific chemical identity of the substance as confidential. EPA is required, by statute, to move from the confidential to the public portion of the Inventory any active chemical substance for which no request is received to maintain an existing CBI claim for chemical identity. See TSCA section 8(b)(4)(B)(iv) and 40 CFR 710.37(a).

3. Chemical substances added to the Inventory on or after June 22, 2016. Chemical substances added to the Inventory on or after June 22, 2016 will be designated as active, by operation of this rule. Such substances are not subject to reporting under this rule. Furthermore, such substances are beyond the scope of the CBI claim maintenance provision under TSCA section 8(b)(4)(B)(ii). This CBI maintenance provision is intended to address ''existing claim[s] for protection against disclosure of the specific chemical identity.'' EPA interprets this to be a reference to CBI claims asserted prior to June 22, 2016. See 40 CFR 710.23 for revised definition of ''active substance.''

B. When will reporting be required?

1. Retrospective reporting period for manufacturers. Manufacturers must report to EPA not later than 180 days after the final rule is published in the **Federal Register**. The 180-day time period for this retrospective reporting for manufacturers is the maximum time allowed under TSCA section 8(b)(4)(A). Following this retrospective reporting for manufacturers, EPA will include the active designations, determined by the notices received, on a draft of the Inventory. EPA will publish this draft Inventory with the active designations as soon as is practicable following the close of the 180-day submission period for manufacturers. This draft Inventory with active designations will not have the legal effect of actually designating any chemical substance as inactive. EPA, therefore, does not construe this draft Inventory as the list with ''designations of active substances and inactive substances'' (TSCA section 8(b)(5)(A)) from which forward-looking reporting commences (TSCA section 8(b)(5)(B)). EPA concludes that the statute is referring in both sections to the completed product of the initial cycle of sorting between active and inactive substances, not the preliminary product of the initial cycle of such sorting (*i.e.,* a draft Inventory released between manufacturer and processor reporting).

2. Retrospective reporting period for processors. Processors may report to EPA not later than 420 days after the final rule is published in the **Federal Register**. EPA originally proposed that processors may report not later than 360 days after the final rule is published in the **Federal Register**. EPA's rationale was that the additional 180-day time period for processors would allow processors to search EPA's publication of the draft Inventory with active designations, based on the retrospective reporting by manufacturers, and to report only those chemical substances not already reported. In response to comments received that the additional 180-day submission period for processors should begin on the date on which the draft Inventory is published, which EPA anticipates will likely occur approximately 60 days after the 180-day submission period for manufacturers closes, and to a comment that the rule should specify a fixed date on which the processor submission period will end, EPA is finalizing the rule such that processors may report not later than 420 days, rather than 360 days, after the final rule is published in the **Federal Register**. See 40 CFR 710.30(a)(2) and response to Comment 7 in Unit III.

Processors have the option to simply not report under TSCA section 8(b)(4) and continue processing until the effective date of EPA's designation of a chemical substance as inactive on the Inventory. At such time, any further processing of the substance for a nonexempt commercial purpose, without prior notification to EPA, will be prohibited by TSCA section 8(b)(5). Earlier notification under TSCA section 8(b)(4) will allow EPA to add the substance to the Inventory as an active substance, so that processing can continue without the need for a later notification under TSCA section 8(b)(5).

3. Forward-looking reporting. The forward-looking reporting period begins on the effective date of EPA's final active/inactive substance designations. Manufacturers and processors intending to reintroduce into U.S. commerce for a nonexempt commercial purpose a chemical substance designated as inactive on the Inventory must report to EPA not more than 90 days before the anticipated date of manufacturing or processing. EPA originally proposed that forward-looking notices would be required to be submitted not more than 30 days before the date of manufacturing or processing. EPA agrees with commenters that notices should be submitted based on the anticipated (not actual) date of manufacturing or processing. EPA also finds that extending such submission period from 30 to 90 days prior to resuming manufacturing or processing will afford manufacturers and processors additional time to adjust to information and schedule changes and will not significantly impact the accuracy of notices submitted. See 40 CFR 710.29(c)(2), 40 CFR 710.30(b)(1), and response to Comment 8 in Unit III.

4. Transitional period reporting and effective date for inactive substance designations. The structure of the reporting requirements under TSCA sections 8(b)(4)(A) and 8(b)(5)(B) results in a transitional period beginning on June 22, 2016 (the day after the lookback period for retrospective reporting ends) and ending on the date that EPA designates chemical substances on the Inventory as active or inactive (the day that forward-looking reporting begins). It is possible that substances that were not manufactured or processed during the lookback period—and therefore cannot be designated as active through retrospective reporting—may be reintroduced into U.S. commerce during this transitional period. In response to comments expressing concern that persons who began manufacturing or processing such substances during the transitional period might be obliged to curtail manufacturing or processing on the date that EPA publishes an inactive substance designation, or else find themselves in violation of the forward-looking notice requirement, EPA is establishing an effective date provision for the designation of a chemical substance as an inactive substance. As ''inactive substance'' is now defined, a substance is not designated as an ''inactive substance'' until 90 days after EPA has identified the substance for inactive designation. EPA will identify chemical substances for inactive designation in a signed action accompanying the first version of the Inventory with all finalized active-inactive listings. EPA expects to publish this first version of the Inventory with all listings identified as active or inactive as soon as practicable after compilation, in a posting on EPA's TSCA Inventory Web page (see *https://www.epa.gov/tsca-inventory*). See 40 CFR 710.23 for revised definition of ''inactive substance'' and response to Comment 9 in Unit III.

Accordingly, the rule clarifies that the obligation to submit an NOA Form B does not arise until 90 days after EPA has identified chemical substances for the inactive designation. The rule also clarifies that manufacturers and processors will be permitted to submit an NOA Form B for a substance that EPA has identified for inactive designation, even before the effective date of such designation has arrived, and thus before the substance has the legal status of being inactive. Thus, persons manufacturing or processing a substance for nonexempt commercial purpose during the transitional period are afforded time to react to an inactive substance identification and are permitted to file an NOA Form B prior to the effective date of the substance being designated as inactive. Similarly, persons that anticipate reintroducing a substance into U.S. commerce for nonexempt commercial purpose shortly after EPA identifies such substance as inactive are afforded time to react to an inactive substance identification and are permitted to file an NOA Form B prior to the effective date of the inactive designation, so long as such form is filed no more than 90 days before the anticipated date of manufacturing or processing. See 40 CFR 710.30(b)(2) and response to Comment 10 in Unit III.

C. What information will be reported?

1. Information reported by manufacturers during retrospective reporting. This rule will require that manufacturers reporting for the retrospective reporting period provide chemical identity information and indicate whether they seek to maintain an existing claim for protection against disclosure of a CBI chemical identity, if applicable. In response to comments stating concern with burden associated with information required to be reported, EPA removed the proposed requirements to report commercial activity type and date range, as EPA determined these requirements are unnecessary to achieve the objective of designating substances as active or inactive on the Inventory. See 40 CFR 710.29(b) and response to Comment 11 in Unit III. In response to comments stating concern for availability of information required to be reported, EPA clarified that persons required to report under this rule will provide information to the extent it is known to or reasonably ascertainable by them. See 40 CFR 710.29(a) and response to Comment 12 in Unit III. In response to comments requesting that a manufacturer be able to correct or withdraw an NOA Form A in the event that it discovers errors in the notice, EPA is not establishing a formal corrections provision in the regulation, but will allow a manufacturer or processor to withdraw an NOA Form A, provided that the withdrawn notice is submitted prior to the end of the submission period for processors, *i.e.,* not later than 420 days after the final rule is published in the **Federal Register**. See response to Comment 13 in Unit III. The manufacturer may effect a correction by filing a new NOA Form A following withdrawal, so long as the new Form A is filed within the time provided in the rule for the initial filing (*i.e.,* no later than 180 days after the final rule is published in the **Federal Register**).

2. Information reported by processors during retrospective reporting. Processors that choose to report for the retrospective reporting period will be required to provide chemical identity information and whether they seek to maintain an existing claim for protection against disclosure of a CBI chemical identity, if applicable. In response to comments received, EPA removed the proposed requirements to report commercial activity type and date range as these requirements were deemed unnecessary to achieve the objective of designating substances as active or inactive on the Inventory. See 40 CFR 710.29(b) and response to Comment 11 in Unit III. EPA is not establishing a formal corrections provision in the regulation for an NOA Form A, but will allow a processer to withdraw an NOA Form A, provided that the withdrawn notice is submitted not later than 420 days after the final rule is published in the **Federal Register**. See 40 CFR 710.30(a)(3) and response to Comment 13 in Unit III. As with manufacturers, processors can effectuate a correction by filing a new Form A within the time provided in the rule for the initial filing (*i.e.,* no later than 420 days after the final rule is published in the **Federal Register**).

3. Information reported during forward-looking reporting. This rule will require that persons that intend to manufacture or process an inactive substance for nonexempt commercial purpose provide chemical identity information, the anticipated date of manufacturing or processing for nonexempt commercial purpose, and whether they seek to maintain an existing claim for protection against disclosure of a CBI chemical identity, if applicable. In response to comments, EPA removed the proposed requirement to report commercial activity type as this requirement was deemed unnecessary to achieve the objective of re-designating inactive substances as active, and revised the date of manufacturing or processing for nonexempt commercial purpose from actual to anticipated date. See 40 CFR 710.29(c) and response to Comment 11 in Unit III. Persons that have already commenced manufacturing or processing for nonexempt commercial purpose (*e.g.,* during the transitional period prior to the effective date of a substance's inactive designation) may provide the most recent date of manufacturing or processing in lieu of an anticipated future date, if the forward-looking notice is submitted prior to the effective date of the substance's inactive designation. See 40 CFR 710.29(c).

EPA's proposed rule related the timing of the reporting to a future ''actual date of manufacturing and processing.'' See 82 FR 4267. In response to comments about the need for greater flexibility regarding the timing of a forward-looking notice, under the rule the validity of the notice does not depend on whether the intended manufacturing or processing actually occurs by the anticipated date. Therefore, manufacturers or processors need not supplement a forward-looking notice with confirmation of whether the intended manufacturing or processing of the chemical substance actually occurred by the anticipated date. By the same token, EPA will designate such substances as active, irrespective of subsequent changes in the intentions of the submitter of the forward-looking notice. Consistent with the regulatory definition of ''active substance,'' an inactive substance becomes an active substance ''based on the receipt of a notice under this subpart,'' 40 CFR 710.23, and the factual basis for the notice is the *submitter's intent,* expressed at time of notification, to manufacture or process an inactive substance for a nonexempt commercial purpose within 90 days of notification. See 40 CFR 710.25(c) and 40 CFR 710.30(b)(2). This simplified approach reduces burdens for both submitters and EPA, is consistent with the statute, and furthers the orderly and efficient implementation of the Inventory. See TSCA section 8(b)(5)(B)(iii) (requiring EPA to take certain definite actions ''on receiving'' the notice). With respect to substances re-designated as active for which the intended manufacturing or processing has not been actualized after an extended period of time and not corrected, EPA may later adjust the status of such substances, through procedures that would be established by future rulemaking, to further implement TSCA section 8(b)(5)(A).

Finally, in response to comment requesting that submitters be able to withdraw an NOA Form B if their intent to re-commence manufacture or process a chemical substance later changes, EPA is allowing a submitter to request to withdraw its NOA Form B, and EPA may do so, if EPA has not yet altered the Inventory status of the substance in response to the original submission (*i.e.,* EPA has neither re-designated the substance from inactive to active nor moved the substance from the confidential portion of the Inventory to the public portion Inventory as a result of a request in the original submission for a CBI claim to be withdrawn). Because another person may have commenced manufacturing or processing for non-exempt commercial purpose in reliance of a substance being re-designated as active, the rule does not allow for EPA to revert a substance re-designated as active back to inactive status based on a request to withdraw an NOA Form B, or for EPA to revert a non-CBI substance back to a CBI substance based on a request to withdraw a Form B. It would be burdensome and potentially impossible to implement such an approach. See 40 CFR 710.30(b)(3) and response to Comment 13 in Unit III.

4. Reporting forms. The NOA Form A will be used by manufacturers for the retrospective reporting period. It will also be used by processors who choose to report for the retrospective reporting period. The NOA Form B will be used by manufacturers and processors for forward-looking reporting, which includes reporting chemical substances reintroduced into U.S. commerce during the transitional period. For the sake of clarity, the final rule now defines the terms 'Notice of Activity Form A' and 'Notice of Activity Form B', consistent with the use of these terms in the proposal. The new NOA forms are based on EPA's NOC form (Ref. 4), since the information required in an NOA form is the same or similar to the information in the NOC form.

D. How will information be submitted to EPA?

The rule requires electronic reporting similar to the requirements established in 2013 for submitting other information under TSCA (see 40 CFR 704.20(e)) and in accordance with section 3.2000 of 40 CFR part 3 (CROMERR) (Ref. 5). Submitters will use EPA's CDX, the Agency's electronic reporting portal, and EPA's Chemical Information Submission System (CISS), a web-based reporting tool, for all reporting under this rule. EPA expects that electronic reporting will minimize time requirements, support improved data quality, and provide efficiencies for both the submitters and the Agency.

In 2013, EPA finalized a rule to require electronic reporting of certain information submitted to the Agency under TSCA sections 4, 5, 8(a) and 8(d). (Ref. 6) The rule follows two previous rules requiring similar electronic reporting of information submitted to EPA for CDR and PMNs.

This rule will require persons submitting notices of activity to EPA under TSCA section 8(b) to follow the same electronic reporting procedures used for other TSCA submissions, *i.e.,* to register with EPA's CDX (if not already registered) and use CISS to prepare a data file for submission. Registration enables CDX to authenticate identity and verify authorization. To register, the CDX registrant (also referred to as ''Electronic Signature Holder'' or ''Public/Private Key Holder'') agrees to the Terms and Conditions, provides information about the submitter and organization, and selects a user name and password. Users who have previously registered with CDX for other TSCA submissions will be able to add the ''Submission for Chemical Safety and Pesticide Program'' (CSPP) service to their current registration in CDX and use the CISS web-based reporting tool.

EPA developed the CISS for use in submitting data under TSCA sections 4, 5, 8(a), and 8(d) to the Agency electronically. The web reporting tool is available for use with Windows, iOS, Linux, and UNIX based computers and uses ''Extensible Markup Language'' (XML) specifications for the efficient transfer of data across the Internet when notices are submitted to EPA. CISS works with CDX to secure online communication, provides user-friendly navigation, creates a completed document in Portable Document Format (PDF) for review prior to submission, and enables information to be submitted easily in XML format or as PDF attachments.

The NOA forms described in this rule are included in an e-NOA software module in CISS. Once a user completes entry of the relevant data fields and metadata information in the appropriate NOA form, the CISS reporting tool validates the submission by performing a basic error check. CISS also allows the user to choose ''Preview,'' ''Save,'' or ''Submit.'' When ''Submit'' is selected, the user is asked to provide the user name and password that was created during the CDX registration process. CISS then submits the data via CDX. Upon successful receipt of the submission by EPA, the status of the submissions will be flagged as ''Submitted.'' The user can also login to the application and download their Copy of Record.

Any person submitting a reporting form can claim any part or all of the form as confidential. Except as otherwise provided in this rule, any information that is claimed as CBI will be disclosed by EPA only to the extent and by the means of the procedures set forth in 40 CFR part 2.

E. How will CBI claims and requests be handled?

Notices pursuant to this rule may contain two different types of CBI assertions: claims for protection of information other than specific chemical identity, and requests to maintain existing claims for protection of specific chemical identity. In response to comments received, EPA has extensively re-written the substantiation questions from the proposed rule in a manner intended to more succinctly secure responses for CBI assertions of discrete data elements as well as CBI concerns on the linkage of data elements. See 40 CFR 710.31 and response to Comment 17.

1. *Information other than specific chemical identity.* For all new claims for protection (*i.e.,* for all CBI assertions under this rule other than requests to maintain existing claims for protection of specific chemical identity), TSCA section 14(c)(1)(B) and 14(c)(5) require that persons claiming CBI must provide a specific certification statement regarding the basis for the CBI claims. In addition, TSCA section 14(c)(3) and this rule require that all such claims be substantiated at the time of submission. EPA will review a representative subset of these claims as specified by TSCA section14(g)(1).

2. *Requests to maintain existing CBI claims for chemical identity.* Any manufacturer or processor submitting an NOA under TSCA section 8(b)(4)(A) may seek to maintain an existing CBI claim for specific chemical identity, regardless of whether that person asserted the original claim that caused the specific chemical identity to be listed on the confidential portion of the Inventory. EPA believes this is the correct interpretation of ''a manufacturer or processor . . . that seeks to maintain an existing claim for protection against disclosure'' of specific chemical identity in TSCA section 8(b)(4)(B)(ii). A number of manufacturers and processors may legitimately benefit from the confidential status of a specific chemical identity, even when such persons did not originally report that chemical identity to EPA and therefore were not in a position to assert a CBI claim for that chemical identity. Congress could not have intended that such companies would be forced to rely on another company to request to maintain the claim. For example, the initial claimant may no longer exist or may no longer manufacture or process the chemical substance, or may simply fail to file the required NOA. EPA does not believe that Congress intended for specific confidential chemical identities to be disclosed without providing the opportunity for manufacturers and processors to make a request that the identities should remain confidential simply because the original claimants did not file under TSCA section 8(b)(4)(B)(ii).

Pursuant to TSCA section 8(b)(4)(B)(iv), EPA will move an active substance from the confidential portion of the Inventory to the non-confidential portion if no manufacturer or processor submitting an NOA under TSCA section 8(b)(4)(A) requests to maintain the existing CBI claim for the specific chemical identity of that chemical substance. See 40 CFR 710.37(a). As a courtesy, EPA practice is to notify original claimants and/or the public when it has moved substances from the confidential portion of the Inventory to the public portion of the Inventory, *e.g.,* through direct contact with the original claimant or publication of a **Federal Register** notice. A chemical substance for which EPA has received a request to maintain an existing CBI claim for specific chemical identity will remain on the confidential portion of the Inventory pending EPA's review of the claim pursuant to a review plan to be promulgated at a later date in accordance with TSCA section 8(b)(4)(C)–(D).

While this rule requires submitters to indicate whether they seek to maintain an existing CBI claim for specific chemical identity, this rule does not include mandatory substantiation requirements for CBI requests for specific chemical identity on an NOA Form A. TSCA section 8(b)(4)(B)(iii) stipulates that EPA shall ''require the substantiation of those claims pursuant to section 14 and in accordance with the review plan described in subparagraph C.'' EPA will be conducting a separate rulemaking to establish this review plan. The review plan will include mandatory requirements for substantiating a CBI request for specific chemical identity reported in an NOA Form A and specify when such substantiation is to be provided. If EPA receives an NOA Form A in which the submitter requests to maintain an existing CBI claim for specific chemical identity but chooses not to substantiate such at the time of filing, EPA will continue to list the chemical substance on the confidential portion of the Inventory pending the submission of any substantiation required under the review plan and EPA's review of the claim pursuant to the review plan.

However, in this rule the Agency is allowing companies to submit substantiation for the CBI claims for specific chemical identity at the same time that the NOA Form A is filed, if they so choose. As long as the period between the date these earlier substantiations are received and the due date to be established in the review plan (yet to be proposed) is not more than five years, these substantiations will exempt the company from the requirement to submit additional substantiation under the terms of the review plan. See TSCA section 8(b)(4)(D). EPA will review requests to maintain CBI claims for specific chemical identity in accordance with the TSCA section 8(b)(4)(D) review plan in the timeframe mandated by TSCA section 8(b)(4)(E).

With respect to requests to maintain existing CBI claims that are submitted on an NOA Form B, TSCA section 8(b)(5)(B) stipulates that such requests must be substantiated not later than 30 days after submitting Form B. See TSCA section 8(b)(5)(B)(ii)(II). Substantiation requirements for NOA Form B CBI claims for specific chemical identity are found in 40 CFR 710.37(a)(2).

The Agency will allow companies to submit substantiation at the same time that their NOA Form B is filed, if they so choose. Persons submitting an NOA Form B may find it more efficient to provide the substantiation for a CBI claim for specific chemical identity at the time of filing.

III. Summary of Response to Comments Including Changes and Clarifications From the Proposed Rule

This unit summarizes EPA's responses to comments for several general areas from multiple stakeholders. EPA also discusses any changes to and clarifications from the proposed rule, and where responses are particularly relevant to the requirements of the final rule. A separate document that summarizes the comments relevant to the proposal and EPA's responses to those comments has been prepared and is available in the docket for this rulemaking (Ref. 7).

Comment 1: Several commenters indicated that EPA should clarify the activities for which notification is not required under the rule, and should confirm that all substances and activities that are exempt from premanufacture notification requirements are also exempt from reporting requirements under this rule. The commenters make reference to the following PMN exemptions: export-only exemption, low volume exemption, low releases/low exposures exemption, test marketing exemption, and polymer exemption. One commenter elaborated that substances exempted from listing on the TSCA Inventory and other substances exempt from premanufacture notification are exempt from this rule but are ambiguously stated as such. Two commenters elaborated that substances listed on the Inventory but manufactured under a low volume exemption should be exempt from reporting under this rule by a person manufacturing the substance under the exemption. One commenter recommended that all categories of substances for which no reporting is required pursuant to the CDR rule should be exempt from reporting under this rule.

Several commenters indicated that EPA should clarify or confirm that polymers are exempt from reporting under this action. One commenter requested that EPA clarify whether polymers manufactured under the pre-1995 polymer exemption rule need to be reported, as technically such polymers are listed on the Inventory. A few commenters stated that polymers listed on the Inventory, including polymers with a ''Y'' designation, should be included on the interim list of active substances. One commenter elaborated that polymers on the Inventory are not subject to CDR, that many were placed on the Inventory before EPA promulgated the TSCA section 5 polymer exemption rule and would likely meet the current standard for the polymer exemption, and that such low risk polymers should be on the interim active Inventory.

One commenter expressed concern that, without an explicit reporting exemption in the rule, a company manufacturing a chemical substance under a polymer, low volume, or test marketing exemption could inadvertently violate the reporting requirements if (without the company's knowledge) another company manufacturing the same substance added that substance to the confidential portion of the Inventory, then ceased manufacturing, causing the substance to be designated inactive. Another commenter expressed concern that, in the absence of an explicit reporting exemption in the rule for all companies manufacturing chemical substances under a PMN exemption, the rule would appear to require such companies to submit an inquiry to EPA to ascertain whether the chemical substances in question had been added to the confidential portion of the Inventory by another manufacturer.

Response: In response to the comment to clarify the reporting status under this rule of a substance manufactured under a TSCA section 5 exemption and not listed on the Inventory, EPA confirms that such substance is not subject to reporting under this action. The scope of chemical substances covered under this rule excludes substances that are not listed on the Inventory. See definition of ''reportable chemical substance'' at 40 CFR 710.23. A substance that has not been added to the Inventory because it is manufactured solely under a PMN exemption is not a ''reportable chemical substance'' and, therefore, cannot become an ''active substance'' or an ''inactive substance.''

EPA recognizes that in certain cases, chemical substances manufactured by a company under a PMN exemption may nevertheless be added to the Inventory voluntarily, or may subsequently be added to the Inventory by another company. Accordingly, in the proposed rule, EPA listed reporting exemptions for the following activities, which EPA construed as exempt commercial purposes: The manufacture or processing of a substance as described in 720.30(g) or (h), the manufacture or processing of a substance solely in small quantities for research and development, and the import of a substance as part of an article. EPA finalized the rule to include these exemptions and, based on comments, revised the rule to include additional exemptions: the manufacture or processing of a substance solely for test marketing purposes, and the manufacture or processing of a substance solely for export from the United States, except where the Administrator has made a finding described in TSCA section 12(a)(2). See 40 CFR 710.27(a)(4) and (5). EPA believes that these two additional activities also qualify as exempt commercial purposes based on the limited nature of these commercial activities and the exemptions from PMN reporting under TSCA sections 5(h)(1) and 12(a)(1) for substances manufactured solely for these purposes. While TSCA section 12(a)(1) authorizes EPA to include substances manufactured or processed solely for export in TSCA section 8 reporting, EPA construes manufacturing or processing solely for export to be an exempt commercial purpose, given that section 12(a)(1) broadly exempts such activities from other TSCA provisions, including PMN requirements under section 5.

EPA declined to add additional reporting exemptions in the final rule for activities that are exempt from PMN reporting based on rules promulgated under TSCA section 5(h)(4) (*i.e.,* low volume, low releases/low exposures, and polymer exemptions). EPA disagrees with comments that a substance manufactured under a TSCA section 5(h)(4) exemption but nevertheless listed on the Inventory should be exempt from reporting under this rule. EPA does not believe that manufacturing or processing under a low volume, low releases/low exposures, or polymer exemption (1984 or 1995 polymer exemption) qualify as exempt commercial purposes under TSCA section 8(b), despite the exemptions from reporting under TSCA section 5(h)(4) for such substances. This is because exemptions promulgated under section 5(h)(4) are predicated upon a risk determination, rather than the particular commercial purpose for which manufacturing is undertaken. Unlike the other activities that EPA has exempted from reporting requirements under this rule (*e.g.,* research and development, test marketing, export-only), the activities exempt from PMN reporting pursuant to rules promulgated under section 5(h)(4) need not be undertaken for any specific and limited commercial purpose. Because the commercial purpose for which a substance is manufactured is not integral to an exemption under section 5(h)(4), and in consideration of the statutory objective of TSCA section 8(b)(4)–(5) to enable EPA to determine which chemical substances on the Inventory are active in U.S. commerce, EPA does not construe activities undertaken pursuant to a section 5(h)(4) exemption to be exempt ''commercial purposes'' within the meaning of section 8(b)(4)(A)(i) and 8(b)(5)(B)(i). EPA emphasizes, however, that substances which (based on such PMN exemptions) have never been added to the Inventory are excluded from any reporting requirements under this rule.

EPA also disagrees with comments that this rule should provide reporting exemptions for polymers and other categories of Inventory-listed substances that are exempt from CDR for reasons unrelated to the specific commercial purpose for which they are manufactured or processed. A statutory objective supported by reporting under this rule is to enable EPA to determine which chemical substances on the Inventory are active in U.S. commerce. This statutory objective under TSCA section 8(b) is distinct from the statutory objective for CDR under TSCA section 8(a). Whereas polymers and certain other categories of substances listed on the Inventory are exempt from reporting under CDR, these substances nevertheless require designation as active or inactive under TSCA section

8(b), and are therefore subject to reporting under this rule if they were or are anticipated to be manufactured for nonexempt commercial purpose. Exempting polymers and other categories of substances under this TSCA section 8(b) rule for no other reason than that they are exempt from CDR under TSCA section 8(a) would not accomplish the statutory objective of designating substances on the Inventory manufactured for non-exempt commercial purposes as active or inactive. EPA does not believe Congress intended for an entire category of substances (such as polymers), that were listed on the Inventory as of June 22, 2016, to be designated inactive despite the fact that such substances were manufactured or processed for wide-ranging commercial purposes during the 10-year lookback period.

EPA furthermore disagrees with comments that polymers should be included on the interim list of active substances. The interim list is defined by TSCA section 8(b)(6) to include only substances reported under CDR during the reporting period that most closely preceded the date of enactment of the TSCA amendments. Substances such as polymers that are exempt from reporting under CDR, therefore, are not eligible to be included on the interim list. Moreover, unless these substances were the subject of an NOC received during the lookback period, EPA has no equivalent notice that such substances were manufactured during the lookback period, and therefore no justification for designating the substances as active in this rule.

Finally, in response to comments expressing concern that a person manufacturing under a PMN exemption may be unaware that another person subsequently added the same substance to the confidential portion of the Inventory, EPA notes that it revised 40 CFR 710.25(a) and (c) to clarify that reporting is not required where it is not ''known to or reasonably ascertainable by'' a company that it manufactured a chemical substance subject to commercial activity designation during the lookback period, or that it intends to manufacture or process an inactive substance on the confidential portion of the Inventory. EPA anticipates that the presence of a substance on the confidential portion of the Inventory may be information that is not ''known to or reasonably ascertainable by'' a person who is operating under a PMN exemption and who did not submit the confidentiality claim for the specific chemical identity of that substance.

Changes to Activities that are Exempt from Reporting in the Final Rule: EPA revised the rule to exempt additional commercial activities from reporting requirements: The manufacture or processing of a substance solely for test marketing purposes, and the manufacture or processing of a substance solely for export from the United States, except where the Administrator has made a finding described in TSCA section 12(a)(2). See 40 CFR 710.27(a)(4) and (5).

Comment 2: One commenter stated that substances processed as part of an article should be exempt from reporting. One commenter indicated that substances contained within imported articles should be subject to reporting if and when they are released from the article during use and perform a separate end-use function.

Response: The proposed rule included an exemption from reporting requirements for persons importing a chemical substance as part of an article. EPA agrees with commenter that the processing of a chemical substance as part of an article should likewise be exempt from reporting under this rule on the grounds that it is processing for an exempt commercial purpose, following the logic of the exemption for manufacture of a chemical as part of an article through import. Under TSCA, the import of a chemical substance as part of an article does not require new chemical reporting. Consequently, the Inventory does not list all chemical substances that are processed as part of articles since it does not include the processing of chemical substances as part of imported articles. More generally, the processing of a chemical as part of an article is not a basis to add a chemical substance to the Inventory. EPA believes it would be incongruous to identify a chemical substance as active solely based on the fact that it is processed as part of an article, when that would not be a basis to add the chemical substance to the Inventory in the first place if there were no manufacture reportable under TSCA section 5. In addition, EPA is concerned that an approach under which chemical substances are listed as active simply because they are components of articles that are processed in some fashion could undermine the purpose of meaningfully distinguishing active from inactive chemicals. It should be noted that the extraction of a chemical substance from an article would not be considered processing a chemical substance as part of an article and so would not be exempt from reporting under this provision. EPA therefore revised 40 CFR 710.27(a)(2) to exempt persons processing a chemical substance as part of an article from reporting requirements for that substance.

Regarding the comment that substances contained within imported articles should be subject to reporting if and when they are released from the article during use and perform a separate end-use function, no regulatory change is necessary. The final rule at 40 CFR 710.27(a)(2) refers to ''[t]he import or processing of a chemical substance as part of an article.'' EPA's longstanding interpretation of this phrase is that a chemical substance is only considered to be imported ''as part of an article'' if the substance is not intended to be removed from that article and it has no end use or commercial purpose separate from the article of which it is a part. See 42 FR 64583 (1977). Thus, for the kinds of articles from which a contained chemical substance would be released during use and perform a separate end-use function, the chemical substance would not be considered to be part of the article and would not qualify for exemption on that basis. In any event, as stated previously, even in the case where a chemical substance is part of an article, the extraction of a chemical substance from an article would not be considered processing a chemical substance ''as part of an article'' and so would not be exempt from reporting on this basis. See also *TSCA Chemical Data Reporting Fact Sheet: Imported Articles,* available at *https://www.epa.gov/sites/production/files/2015-12/documents/cdr_fact_sheet_imported_articles_-_final_dec2015.pdf.* (Ref. 8)

Changes to Activities that are Exempt from Reporting in the Final Rule: EPA amended the rule to reflect that both importing and processing a chemical substance as part of an article are exempt from reporting requirements under this rule. See 40 CFR 710.27(a)(2).

Comment 3: Numerous commenters stated that CBI substances reported to the 2016 or 2012 CDR should be made active on the interim Inventory and should not be subject to retrospective reporting. Several commenters also stated that CBI substances reported to the 2016 CDR should also not be subject to further substantiation of CBI claims because the claims have already been substantiated.

Response: EPA agrees in part with the comments involving CBI substances. EPA confirms that it had proposed that both CBI and non-CBI substances reported to the 2012 or 2016 CDR would be made active on the interim list. EPA finalized this aspect of the rule. Furthermore, EPA revised the rule to reflect that both CBI and non-CBI substances reported to the 2012 or 2016 CDR will be eligible for exemption from retrospective notification requirements under this rule. See 40 CFR 710.23 and 710.25.

However, a company that seeks to maintain an existing CBI claim for specific chemical identity cannot avail itself of this exemption, and must submit an NOA Form A that includes such request, because TSCA section 8(b)(4)(B)(ii) requires a specific request to maintain the CBI claim. Pursuant to TSCA section 8(b)(4)(B)(iv), EPA must move to the non-confidential portion of the Inventory any active substance for which no request is received to maintain an existing CBI claim for specific chemical identity. EPA recognizes in the final rule that there may be circumstances where a company, which had previously sought a CBI claim for a specific chemical identity, may no longer view the CBI status as necessary or currently defendable. In such circumstance, the company may take advantage of any retrospective reporting exemption for which it is eligible, and decline to submit a retrospective notice to EPA.

Regarding substantiation, pursuant to TSCA section 8(b)(4)(D)(i), a previously submitted substantiation may satisfy the section 8(b)(4)(B)(iii) substantiation requirement if the prior substantiation was submitted to EPA within five years of a deadline to be established in the forthcoming review plan described in section 8(b)(4)(C)–(D). EPA does not expect that a 2012 CDR submission will satisfy the five-year substantiation requirement. Because the deadline for submitting substantiation in the review plan has not yet been set, EPA does not currently know whether substantiation submitted for a 2016 CDR submission will satisfy the TSCA section 8(b)(4)(B)(iii) five-year substantiation requirement. Note that a voluntary substantiation submitted with Form A might also not fall within the five-year period, depending upon the deadline that is set.

Changes to Chemical Substances That Are Exempt from Retrospective Reporting in the Final Rule: EPA changed the exemptions from retrospective reporting requirements to reflect that both CBI and non-CBI chemical substances reported to the 2012 or 2016 CDR will be eligible. See 40 CFR 710.23 for revised definition of ''interim active substance.'' TSCA section 8(b)(4)(B)(ii) requires a notice to be submitted only by those manufacturers or processors that seek to maintain an existing CBI claim for the specific chemical identity of a reportable substance.

Comment 4: Several commenters stated that non-CBI substances added to the Inventory during the ten-year retrospective reporting period via an NOC should be exempt from notification.

Response: EPA agrees with this comment. An NOC is required to be submitted to EPA on or no later than 30 calendar days after the first day of manufacture of a new chemical substance for commercial purpose and an NOC substance is considered to be added to the Inventory on the date the NOC is received by EPA, provided that the EPA determines the NOC to be valid during its review. Requiring retrospective reporting of substances for which an NOC was received during the lookback period would be duplicative because EPA already has an equivalent report (the NOC itself) indicating that the substance was manufactured or processed during the lookback period. EPA furthermore concludes (consistent with its response to comments about the availability of the interim list exemption for CBI substances) that the analogous reasoning applies with respect to CBI substances added to the Inventory during the lookback period. EPA revised the rule to reflect that both CBI and non-CBI substances reported in an NOC during the lookback period will be eligible for exemption from retrospective notification requirements under this rule. EPA was able to compile this list of substances and designate them as active substances by the deadline for publication of the rule. EPA's June 2017 posting of the Inventory will include these NOC substances designated as active (see *https://www.epa.gov/tsca-inventory*). See 40 CFR 710.23 for revised definitions of ''active substance'' and ''chemical substance subject to commercial activity designation.''

However, a company that seeks to maintain an existing CBI claim for specific chemical identity cannot avail itself of this exemption because TSCA section 8(b)(4)(B)(ii) requires a specific request to maintain the CBI claim. See response to Comment 3 for additional discussion on CBI substances.

Additionally, substantiation of a CBI claim for chemical identity submitted with an NOC may or may not satisfy the TSCA section 8(b)(4)(B)(iii) substantiation requirement. Pursuant to TSCA section 8(b)(4)(D)(i), a previously submitted substantiation may satisfy the section 8(b)(4)(B)(iii) substantiation requirement if the prior substantiation was submitted to EPA within 5 years of the deadline to be established in the forthcoming review plan described in section 8(b)(4)(C)–(D). NOCs submitted more recently may satisfy the 5-year substantiation requirement, while NOCs submitted earlier in the 10-year lookback period for retrospective reporting may not satisfy the 5-year substantiation requirement. Note that a voluntary substantiation submitted with an NOA Form A might also not satisfy the 5-year substantiation requirement, depending upon the deadline that is set in the review plan.

Changes to Chemical Substances That Are Exempt from Retrospective Reporting in the Final Rule: EPA added an exemption from retrospective reporting requirements for chemical substances added to the Inventory via an NOC during the ten-year retrospective reporting period. See 40 CFR 710.23 for revised definitions of ''active substance'' and ''chemical substance subject to commercial activity designation.''

Comment 5: Several commenters stated that EPA should update the interim list and/or publish submissions frequently or in real time in order for potential submitters to see what is being submitted and to avoid or reduce duplicative submissions during retrospective reporting.

Response: EPA has determined that publishing submissions frequently or in real time is not feasible. In order to publish notices frequently or in real time, EPA would need to develop, test, and implement an electronic platform that would be able transfer non-CBI notices from the Agency's confidential repository to a public system. EPA has not to date developed nor implemented such an electronic platform for TSCA purposes and does not believe that it could do so by the time it would be needed to support this action in a manner suggested by these comments. Additionally, because non-CBI notices suitable for publication would include those submitted with no CBI claims and those submitted with claims but for which CBI would be redacted, EPA would need to ensure that such an electronic platform would appropriately transfer only non-CBI notices to a public system. Furthermore, in order for published information to be accurate and reliable, EPA believes that notices would necessarily need to be fully processed and reviewed, which would not allow the Agency to publish notices in real time or even frequently, especially since the number of notices submitted may increase, possibly sharply, as the submission deadline approaches.

Comment 6: Several commenters disagreed with the proposal that each manufacturer must report every nonexempt chemical manufactured during the retrospective lookback period. Commenters stated that, for purposes of designating substances as active, EPA need only receive one notice for each reportable substance. Commenters elaborated that EPA should allow a ''one-and-done'' approach for retrospective reporting, i.e., once a notice is received by EPA for a particular substance, and either the notice is published and/or the interim list is updated and published, other manufacturers need not report the same substance. One commenter stated that EPA appropriately proposed to require that each company that has manufactured a chemical substance on the Inventory during the lookback period must notify EPA of such manufacture. The commenter elaborated that ''one-and-done'' reporting is legally impermissible.

Response: EPA disagrees with the statement of one commenter that a ''one-and-done'' reporting exemption is impermissible under TSCA section 8(b)(4)(A)(i). Section 8(b)(4)(A)(i) states that the Administrator ''shall require manufacturers . . . to notify the Administrator'' of each chemical substance that the manufacturer has manufactured during the 10-year lookback period. The statute does not state that the Administrator shall require *all* manufacturers to submit such a notice. Had Congress intended to preclude the Administrator from implementing a ''one-and-done'' reporting process, Congress could have done so by specifying that the Administrator shall require *all* manufacturers to submit a notice for each chemical manufactured during the lookback period. Furthermore, EPA believes the commenter incorrectly discounts the significance of language in TSCA section 8(b)(4)(A)(i) admonishing EPA to issue the rule ''subject to the limitations under subsection (a)(5)(A).'' TSCA section 8(a)(5)(A) provides that ''the Administrator shall, to the extent feasible . . . not require reporting which is unnecessary or duplicative.'' EPA does not agree with the commenter's assertion that subsection (a)(5)(A) is solely concerned with the manner of reporting, such that the scope of reporting would be unaffected. It is difficult to see how one could make a notification requirement less unnecessary or less duplicative except by tailoring the scope of persons who are required to submit the notification.

EPA agrees in part with the other commenters that a ''one-and-done'' approach should be allowed for retrospective reporting. Accordingly, EPA has revised the rule to exempt a manufacturer from the retrospective notification requirements for a particular chemical substance, if the manufacturer has evidence in the form of a CDX receipt, documenting EPA's receipt of an NOA Form A from another manufacturer. As discussed further in Comment 5 in this Unit, it is infeasible for EPA to supply ''real-time'' reports to the public during the manufacturers' submission period for retrospective reporting by listing the particular substances for which it has already received an NOA Form A. However, manufacturers who possess an NOA Form A CDX receipt for a substance (*e.g.,* obtained through a consortium arrangement), documenting that an NOA Form A has already been received by EPA, may avail themselves of this exemption for that substance. Manufacturers should keep in mind, however, that they bear the risk of failing to submit a required forward-looking notification (NOA Form B) notice if they rely on this Form A exemption, and the Form A notice (for which they have a CDX receipt) is later withdrawn, leading to the substance being designated as inactive. Furthermore, one manufacturer's expectation that another manufacturer will later submit an NOA Form A is not an acceptable basis for relying on this exemption. If such an approach were allowed as a basis for exemption, then EPA would risk receiving no notification at all for an active substance, based on each manufacturer expecting that some other manufacturer would later submit an NOA Form A. Since it is only submitters who will be notified of errors, manufacturers relying on the exemption are responsible for assuring their substance is properly designated as commercially active.

However, a company that seeks to maintain an existing CBI claim for specific chemical identity cannot avail itself of this exemption because TSCA section 8(b)(4)(B)(ii) requires a specific request to maintain the CBI claim. See response to Comment 3 for additional discussion on CBI substances.

Changes to Chemical Substances That Are Exempt from Retrospective Reporting in the Final Rule: EPA added an exemption from retrospective reporting requirements in the rule for manufacturers that have evidence in the form of a copy of a CDX receipt documenting EPA's receipt of an NOA Form A from another person for the same chemical substance. See 40 CFR 710.25(a). However, as noted in Unit II and in 40 CFR 710.25(a), any manufacturer relying on another person's notice remains responsible for confirming that their substance becomes designated as active.

Comment 7: Several commenters requested that processors be allowed to report for an additional 180 days that begins when the draft Inventory is published and not when the 180-day submission period for manufacturers closes. One commenter questioned whether EPA had legal authority to extend the submission period for processors beyond 180 days, but accepted EPA's rationale for providing processors with additional reporting time after EPA's publication of the draft Inventory, provided that the extra time for processor reporting remains a short (i.e., no more than 180 days) and fixed period, as proposed.

Response: With respect to EPA's legal authority to establish a voluntary retrospective submission period for processors beyond 180 days, EPA believes this is implicit in its authority to establish a mandatory reporting period for manufacturers during the first 180 days. EPA notes that TSCA does not require that the rule impose any retrospective reporting requirements at all on processors. Nor does TSCA section 8(b)(4) establish a deadline for the publication of the Inventory designating active and inactive substances. Furthermore, allowing processors additional time to report is consistent with the manner in which the original Inventory was assembled, it advances the statutory objective of efficiently dividing active substances from inactive substances, and it advances the statutory objective under TSCA section 8(a)(5) of avoiding (to the extent feasible) unnecessary reporting. Processors may be able to identify certain active substances that manufacturers would not, but requiring them to report during the same time period as manufacturers might lead them to duplicate the reports of manufacturers.

EPA originally proposed that processors may report not later than 360 days after the final rule is published in the **Federal Register**. EPA's rationale was that the additional 180-day submission period for processors, beyond the 180-day submission period for manufacturers, would allow processors to search EPA's publication of the draft Inventory with active designations, based on the retrospective reporting by manufacturers, and to report only those substances not already reported. EPA agrees with comments that the purpose of affording the additional 180 days for processors is best served if that 180-day submission period begins on the date on which processors would actually be able to review the draft Inventory. EPA also agrees with the comment that the rule should specify a fixed date on which the processor submission period will end, as originally proposed, but which would not be the case if the 180-day submission period were to begin on the unknown date of the publication of the draft Inventory. EPA intends to publish the draft Inventory with active designations as soon as is practicable following the close of the 180-day submission period for manufacturers, which is anticipated to be approximately 60 days after the 180-day submission period for manufacturers ends. Based on this anticipated timeframe for publishing the draft Inventory and in consideration of these comments, EPA is finalizing the rule to allow processors to report not later than 420 days after the publication of the rule in the **Federal Register**. See 40 CFR 710.30(a)(2). This revised submission period for processors provides a fixed date on which the processor submission period will end and is anticipated to provide an approximate 180-day period for processor reporting from the date by which EPA expects to publish the draft Inventory.

Changes to Processor Submission Period for Retrospective Reporting: EPA changed the retrospective reporting submission period for processors to end not more than 420 days after the publication of the rule in the **Federal Register**. See 40 CFR 710.30(a)(2).

Comment 8: Two commenters stated that an estimated date of re-commercialization should be able to be provided rather than an actual date. Two commenters stated that there is no need to limit the submission period for forward-looking reporting (NOA Form B) to not more than 30 days prior to manufacturing or processing, as proposed by EPA, citing that the statute only requires notification to take place ''before'' commercialization resumes. One commenter suggests that persons be permitted to submit an NOA Form B up to 90 days before re-commercialization instead of 30 days. Another commenter suggested that the Agency require an NOA Form B to be submitted not less than 90 days prior to manufacturing or processing to allow sufficient time for the Agency to evaluate the chemical and determine whether a Significant New Use Rule (SNUR) is needed. Another commenter was supportive of the proposed 30-day requirement.

Response: EPA agrees that the date that must be provided on an NOA Form B should be the anticipated date of reintroduction of a chemical substance in U.S. commerce, rather than the actual date. EPA recognizes that any reporting required in advance of actual commercialization is based on information and schedules that are subject to change, and providing an actual date of commercialization in advance, therefore, is not always practical. EPA believes that providing an anticipated date of commercialization should lessen concerns expressed by commenters. See 40 CFR 710.29(c)(2).

EPA has also decided to modify the date requirement from originally proposed, extending it to allow notice up to 90 days ahead of time, in addition to basing the date requirement on the anticipated date of manufacturing or processing rather than the actual date of manufacturing or processing. EPA decided to retain some limitation on the submission period because EPA's experience with other reporting under TSCA (*e.g.,* PMNs) is that the earlier a notice is submitted, the higher the likelihood is that the schedule for commercialization will change or that a chemical substance might not be commercialized at all. EPA believes that retaining a limitation on the submission period for future reporting will reduce the number of notices submitted for substances whose schedule for commercial re-introduction changes appreciably. EPA also believes that extending the submission period to begin from 90 days, rather than 30 days, prior to resuming manufacturing or processing will afford manufacturers and processers additional time to adjust to information and schedule changes and will not significantly impact the accuracy of notices submitted. See 40 CFR 710.30(b)(1).

Regarding changing the deadline for submission of an NOA Form B to be at least 90 days prior to resuming manufacturing or processing for the purposes of Agency action (*e.g.,* SNUR), EPA disagrees with the commenter's interpretation that by requiring advance notification, Congress wanted to provide EPA an opportunity to take action to delay the resumption of manufacturing or processing if it had concerns about the subject chemical. To the contrary, the statute clearly reflects that the obligation to submit a section 8(b)(5)(B) notification was not intended as a tool to impede the resumption of manufacturing or processing. Specifically, the statute does not authorize EPA to structure the rule in such a manner that if a manufacturer or processor submits an NOA Form B, the manufacturer or processor could be obliged to wait longer than the next day to commence manufacturing and processing the chemical substance. See TSCA section 8(b)(5)(B)(i). EPA believes the most plausible explanations for why Congress imposed the advance notification requirement were: (1) To ensure that EPA actually receives the notices (by making the lawful resumption of manufacturing or processing contingent on the notification) and; (2) to support EPA's subsequent prioritization efforts under TSCA section 6(b). See TSCA section 8(b)(5)(B)(iii)(IV).

Changes to the Date Requirement for Forward-looking Reporting: EPA changed the limitation on submitting an NOA Form B to be not more than 90 days prior to the anticipated date of manufacturing or processing. See 40 CFR 710.29(c)(2) and 40 CFR 710.30(b)(1).

Comment 9: A few commenters asked EPA to clarify in the rule how it would implement the requirements of TSCA section 8(b)(7). For example, commenters requested that EPA confirm in the final rule when the draft and final lists of active and inactive substances will be published. One commenter indicated that EPA should identify all substances on the Inventory as active or inactive not later than 15 months after promulgation of this final rule. Another commenter indicated that EPA should publish an updated version of the Inventory, with all substances designated as active or inactive, not later than six months after the completion of the retrospective notification process. Commenters also stated that EPA should specify in the rule the date when substances will be designated as inactive. One commenter stated that EPA should publish a **Federal Register** notice every 90 days listing all substances that EPA has designated as active following receipt of an NOA Form B.

Response: TSCA section 8(b)(7) requires EPA to make active and inactive designations available to the public, but it gives EPA discretion as to the manner and timing of doing so. EPA intends to publish a draft Inventory as soon as practicable after the close of the 180-day submission period for manufacturers, which will include only active designations (based on interim list designations, NOCs, and manufacturer reporting); chemicals that have no designation on this draft Inventory should not be assumed to be inactive. EPA intends to publish the first Inventory identifying both active *and* inactive substances as soon as practicable after the close of the retrospective submission period for processors, in a web posting of the Inventory on EPA's Inventory Web page (see *https://www.epa.gov/tsca-inventory*). Given that the statute does not mandate a specific deadline for the publication of the first Inventory identifying both active and inactive substances, and given the challenges of foreseeing precisely how much time will be necessary to review and compile the data it will receive from retrospective reporting, EPA has chosen not to impose a regulatory deadline on the publication of this first Inventory.

The obligation to submit an NOA Form B under TSCA section 8(b)(5)(B)(i) does not arise until a chemical substance has been ''designated as an inactive substance.'' EPA is establishing an effective date provision for the designation of a substance as an inactive substance. EPA revised the rule so that an ''inactive substance'' designation becomes effective 90 days after the date that EPA identifies the substance for inactive designation. See 40 CFR 710.23 for revised definition of ''inactive substance.'' EPA will identify substances for inactive designation in a signed action accompanying the first version of the Inventory with all active-inactive listings following the close of the retrospective submission period for processors. EPA intends to publish this signed action together with the Inventory in a web posting on EPA's Inventory Web page (see *https://www.epa.gov/tsca-inventory*).

With respect to Inventory updates based on forward-looking reporting, the statute does not specifically require that EPA inform the public of the reintroduction of chemical substances by issuing **Federal Register** notices every 90 days, indicating what substances (if any) have been reactivated. EPA intends to include substances submitted in forward-looking notices and re-designated as active on the Inventory in its regular publications of the Inventory, which occur approximately every six months.

Changes to the Final Rule to Establish the Date When a Chemical Substance Will Be Designated as Inactive: EPA revised the rule so that an inactive substance designation is not effective until 90 days after the date that EPA identifies a substance for inactive designation. See 40 CFR 710.23 for revised definition of ''inactive substance.''

Comment 10: A few commenters expressed concerns about the status of substances manufactured or processed in the period between June 22, 2016 and the date the first Inventory with active and inactive designations is finalized and published. These commenters requested that EPA clarify the status of such substances.

Response: EPA clarified the status of these chemical substances in Unit II and the final rule. The structure of the reporting requirements under TSCA sections 8(b)(4)(A) and 8(b)(5)(B) results in a transitional period beginning on June 22, 2016 (the day after the lookback period for retrospective reporting ends) and ending on the date the forward-looking reporting period begins (*i.e.,* the effective date that chemical substances are designated as inactive, which is 90 days after EPA publishes the first Inventory with listings identified as active or inactive). A person who did not manufacture or process a particular chemical substance during the lookback period (June 21, 2006 through June 21, 2016) is not subject to the retrospective reporting provisions of this rule with respect to that substance, and should not submit an NOA Form A for that substance regardless of whether the person manufactured or processed the substance on or after June 22, 2016. If that substance is ultimately designated by EPA as inactive, however, any person who intends to manufacture or process that substance after it is designated as inactive must submit an NOA Form B.

To address concerns about substances reintroduced into U.S. commerce during the transitional period and potential interruptions in commercial activity that could arise upon EPA's designation of such substances as inactive, EPA revised the rule to reflect that an inactive designation only becomes effective 90 days after EPA identifies the substance for such designation. EPA is clarifying that the obligation to submit an NOA Form B does not begin until the effective date of an inactive substance designation. Because EPA revised the rule so that an inactive substance designation is not effective until 90 days after the date that EPA identifies a substance for inactive designation, manufacturers and processors are afforded time to react to an inactive substance identification. Persons who are already manufacturing or processing a substance for nonexempt commercial purpose (*e.g.,* during the transitional period), and wish to continue doing so without interruption after EPA's designation of such substance as inactive, are permitted to submit an NOA Form B for such substance prior to the effective date of the inactive designation, which is the date that the substance attains the legal status of being inactive. Similarly, persons that anticipate reintroducing a substance into U.S. commerce for nonexempt commercial purpose shortly after EPA identifies the substance for inactive designation are also afforded time to react to the inactive substance identification and are permitted to file an NOA Form B prior to the effective date of the substance's inactive designation, as long as such form is filed no more than 90 days before the anticipated date of manufacture or processing. Manufacturers should be aware that the timely filing of an NOA Form B does not remedy an earlier failure to comply with the retrospective reporting requirement; it merely ensures that the manufacturer will not also be in violation of the forward-looking reporting requirement.

Changes to the Final Rule to Clarify the Status of Chemical Substances Manufactured or Processed in between the Retrospective and Forward-Looking Reporting Periods: EPA revised the rule to clarify that manufacturers and processors are permitted to submit an NOA Form B for a chemical substance that EPA has identified for inactive designation, even though the effective date of such designation has not yet arrived, and thus the substance does not yet have the legal status of being inactive. See 40 CFR 710.30(b)(2).

Comment 11: Numerous commenters stated that certain data requirements should be eliminated or reduced. Two commenters stated that EPA should reduce the proposed requirement for a date range from retrospective notification by not requiring exact dates for the date range for retrospective notification, and instead suggested that the first and last dates of the range be reported by month and year. Numerous commenters stated that EPA should eliminate the proposed requirement for a date range from retrospective notification, indicating that such information would be burdensome to retrieve and evaluate and, in certain cases, may not be available due to record retention policies. Commenters further indicated that such information is not required to meet the statutory objective and that the certification statement should be sufficient to support data accuracy. Similarly, several commenters also stated that EPA should eliminate the proposed requirement for type of commercial activity from retrospective notification; one commenter indicated that the proposed requirement should also be eliminated from forward-looking notification. A few commenters suggested reducing the proposed requirement for type of commercial activity from retrospective notification by combining ''Domestically manufactured'' and ''Imported'' into one category for reporting. One commenter was supportive of requiring type of commercial activity.

Response: EPA has decided not to require date range and activity type for retrospective notification. EPA had proposed such information to serve the objective of verifying and validating notices submitted. However, in response to comments received, EPA has been persuaded that the collection of a date range of manufacture, as well as the collection of information to differentiate between domestic manufacture, import, and processing, is unnecessary to serve the underlying objective of reliably differentiating active and inactive substances. EPA is also mindful that TSCA section 8(b)(4)(A)(i) specially admonishes the Agency to avoid, to the extent feasible, the collection of unnecessary information in this rule. As an alternative to requiring date and information, EPA has revised the NOA Form A certification statement to require an affirmation that manufacturing or processing of the chemical substance occurred during the lookback period. If EPA needs to verify the basis for such a certification, it can obtain and evaluate the documentation that submitters are required to maintain under 40 CFR 710.35.

EPA has similarly removed the activity type requirement for forward-looking notification. This is consistent with the evidence of Congressional intent motivating the notification requirement. See S. Rep. 114–67 at 20 (purpose is to categorize the chemical substances on the Inventory as ''active or inactive,'' and ''[m]anufacturers of an inactive substance may return the substance to the active inventory with a simple notification to EPA''). In response to comments received, EPA has been persuaded that information on activity type is not necessary to accomplish the purpose of the rule regarding differentiating inactive substances from active substances. EPA has also revised the NOA Form B certification statement to require an affirmation that persons submitting an NOA Form B have forward-looking intent to manufacture or process for nonexempt commercial purpose. If EPA needs to verify the basis for such a certification, it can obtain and evaluate the documentation that submitters are required to maintain under 40 CFR 710.35.

Changes to Required Reporting Elements in the Final Rule: EPA removed the date range and commercial activity type requirements from retrospective notification, and revised the certification statement on the NOA Form A to clarify that persons submitting the form are certifying that manufacturing or processing of the chemical substance occurred during the lookback period. EPA also removed the commercial activity type requirement from forward-looking notification, and revised the certification statement on the NOA Form B to clarify that persons submitting the form are certifying that they have forward-looking intent to manufacture or process the substance. See 40 CFR 710.29(b) and 40 CFR 710.29(c).

Comment 12: Numerous commenters stated that EPA should clarify the meaning of ''known or reasonably ascertainable,'' particularly in the context of scenarios involving mergers and acquisitions (e.g., corporate predecessors and successors) that occurred during or after the ten-year reporting period, and in such scenarios, who is responsible for reporting under the rule. Some commenters further elaborated that if a company no longer has a legal obligation to retain particular records, or if the records are no longer in the possession of the company (e.g., they are not available due to company document retention policies or are in the possession of an acquiring company), the information should be considered to be not ''Known or Reasonably Available/Ascertainable'' and reporting should not be required. One commenter suggested amending 40 CFR 710.25 to add a new paragraph (b) to address entities formed during the lookback period that may not have historical records in their possession or control. Another commenter stated that EPA's proposal was still silent as to the level of diligence that must be used to determine which substances must be reported under NOA Form A and Form B, and suggested that EPA assign a ''readily obtainable'' standard to that level of diligence for the Form A's.

Response: CFR 40 part 704 defines ''Known to or reasonably ascertainable by'' as all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know. In response to commenters' request for clarification of possession or control as it relates to corporate mergers and acquisitions, EPA has added to 40 CFR 710.23 the definition of ''Possession or Control'' from 40 CFR 704.3. Consistent with its use in Part 704, ''Possession or Control'' is defined as meaning in the possession or control of any person, or of any subsidiary, partnership in which the person is a general partner, parent company, or any company or partnership which the parent company owns or controls, if the subsidiary, parent company, or other company or partnership is associated with the person in the research, development, test marketing, or commercial marketing of the chemical substance in question. Information is in the possession or control of a person if it is: (1) In the person's own files including files maintained by employees of the person in the course of their employment, (2) in commercially available data bases to which the person has purchased access, or (3) maintained in the files in the course of employment by other agents of the person who are associated with research, development, test marketing, or commercial marketing of the chemical substance in question.

EPA believes it is appropriate to construe what ''a reasonable person similarly situated might be expected to possess, control, or know,'' based on the totality of pertinent factors. Prior loss of records consistent with document retention policies and the other individual factors cited by the commenters could be pertinent in construing what information is known or reasonably ascertainable, but they are not replacements for the regulatory standard. In any event, if a person actually knows information, then it is known or reasonably ascertainable.

In the context of the CDR rule, EPA has published extensive guidance on the application of the ''known to or reasonably ascertainable by'' standard and how to address retrospective reporting in the case of corporate succession. See, *e.g., TSCA Chemical Data Reporting Fact Sheet: Reporting After Changes to Company Ownership or Legal Identity,* available at *https://www.epa.gov/sites/production/files/2015-05/documents/cdr_fact_sheet_company_changes.pdf* (Ref. 9). See also *2016 Chemical Data Reporting Frequent Questions,* available at *https://www.epa.gov/sites/production/files/2016-07/documents/cdr_fq_final_july_11_2016.pdf* (Ref. 10). EPA finds that guidance issued on these topics in the context of the CDR rule is also instructive in the context of this rule.

EPA agrees with one commenter that the level of diligence that must be used to determine which chemical substances must be reported using an NOA Form A should be clarified, but disagrees with the suggestion that manufacturers need not report their manufacture of substances during the lookback period if the knowledge that they conducted the prior manufacture is reasonably ascertainable by them but not ''readily obtainable'' by them. EPA revised 40 CFR 710.25(a) to clarify that if it is not ''known to or reasonably ascertainable by'' a manufacturer that the person manufactured a particular substance during the lookback period, then the person is not obligated to report that substance on an NOA Form A. EPA believes that the authority to limit retrospective reporting to information that is known or reasonably ascertainable at the time of the reporting obligation is implicit in the grant of rulemaking authority under TSCA section 8(b)(4), consistent with TSCA section 8(a) and the overall statutory objectives of TSCA section 8(b), and consistent with past practice for retrospective reporting on the CDR rule. The commenter set forth little basis for adopting a ''readily obtainable'' standard and EPA continues to believe (see proposal at 82 FR 4256) that it is appropriate to base this rule on basic reporting concepts that the public is already familiar with from the CDR. It would be confusing to have one standard governing the need to submit an NOA Form A (''readily obtainable'') and another standard (''known to or reasonably ascertainable by'') governing the information elements that need to be reported on the NOA Form A. Finally, EPA has already significantly addressed commenters' broader concern about the potential burden of conducting an information search by eliminating the requirement to report the specific start and end dates of manufacture.

EPA also disagrees with one commenter that 40 CFR 710.25 should be amended to specifically address entities formed during the lookback period that do not have historical records in their possession. The revision to 40 CFR 710.23 to add the definition of ''Possession or Control,'' and the revision to 40 CFR 710.25(a) to clarify application of the ''known to or reasonably ascertainable by'' standard in the context of retrospective reporting, apply to all persons subject to reporting under 40 CFR 710.25(a). It is not necessary to separately address a specific type of entity, *e.g.,* entities formed during the lookback period, in 40 CFR 710.25.

With respect to the standard of diligence for determining whether a chemical substance is subject to forward-looking reporting on an NOA Form B, EPA revised 40 CFR 710.25(c) to clarify that if it is not ''known to or reasonably ascertainable by'' a person that the substance being manufactured or processed is listed on the confidential portion of the Inventory as an inactive substance, then the person is not obligated to report that substance on an NOA Form B. This may be the case, for instance, if one person manufactures a polymer under a PMN exemption, but another manufacturer subsequently adds the same polymer to the confidential portion of the Inventory and then ceases manufacturing before the lookback period, resulting in the confidential substance being designated inactive. EPA anticipates that only persons operating under PMN exemptions will be able to avail themselves of this revision, since other persons will have no basis to manufacture an Inventory chemical without knowing the Inventory identity of the chemical.

With respect to the information that must be reported on an NOA Form B, believes that the question of the information reporting standard and the standard of diligence has become moot, with the elimination of all information submission requirements other than those that EPA can reasonably expect the submitter to know. By direct operation of the statute and consistent with proposed procedural rules at 40 CFR 710.25, any person who intends to manufacture or process an inactive substance, except for a nonexempt commercial purpose, must submit an NOA Form B alerting EPA to ''designate the applicable chemical substance as an active substance.'' TSCA section 8(b)(5)(B). Thus, irrespective of any rulemaking, TSCA itself requires the identity of the substance to be placed on the active Inventory to be specified. The proposed requirement to report the type of intended commercial activity has been eliminated, along with the ''actual date'' by which the inactive substance is to be manufactured or processed. If a person does not know the date by which it *anticipates* that the inactive substance is to be manufactured or processed, then filing NOA Form B would be inconsistent with the timing requirements of 40 CFR 710.30. Finally, EPA can reasonably expect the submitter to know its own identity. Accordingly, EPA has removed, as moot, the proposed specification in 40 CFR 710.29(c) that a person required to submit information on an NOA Form B must report information to the extent that such information is known or reasonably ascertainable by that person.

Changes to the Final Rule to Clarify ''Known or Reasonably Ascertainable'' and to Add a Definition for ''Possession or Control:'' EPA added a definition for ''Possession or Control'' in the rule to clarify the existing definition of ''Known to or reasonably ascertainable by.'' See 40 CFR 710.23. EPA also revised 40 CFR 710.25(a) to clarify that if it is not ''known to or reasonably ascertainable by'' a manufacturer that the person manufactured a particular chemical substance during the lookback period, then the person is not obligated to report that substance on an NOA Form A. EPA revised 40 CFR 710.25(c) to clarify that if it is not ''known to or reasonably ascertainable by'' a person that the substance being manufactured or processed is listed on the confidential portion of the Inventory as an inactive substance, then the person is not obligated to report that substance on an NOA Form B. EPA removed, as moot, the proposed specification in 40 CFR 710.29(c) that a person required to submit information on an NOA Form B must report information to the extent that such information is known to or reasonably ascertainable by that person.

Comment 13: Numerous commenters stated that EPA should provide a reasonable opportunity or a formal process to amend or correct retrospective notices. Several commenters suggested a time frame for corrections, e.g., up until the date that the first Inventory with active and inactive designations is published; for manufacturers, during the additional 180-day submission period for processors; and for processors, 180 days from the date that the first Inventory is published. Two commenters stated that EPA should also allow forward-looking notices to be corrected or rescinded. Several commenters indicated that corrections should be non-punitive.

Response: EPA agrees in part with these comments. The 180-day retrospective submission period for manufacturers is the maximum time provided for by the statute. While EPA is not providing a formal corrections process for retrospective reporting to the regulatory text, EPA will allow retrospective reporting notices submitted by manufacturers during the 180-day submission period for manufacturers to be withdrawn not later than 420 days after the publication of the final rule in the **Federal Register**. EPA will allow retrospective reporting notices submitted by processors during the 420-day submission period for processors to be withdrawn not later than October 5, 2018, should processors discover errors in their original notices. See 40 CFR 710.30(a)(3).

With respect to forward-looking reporting, EPA is not providing a formal corrections process but has revised the regulatory text to allow forward-looking reporting notices submitted by manufacturers or processors to be withdrawn if EPA has not yet altered the Inventory status of the chemical substance in response to the original submission (*i.e.,* EPA has neither re-designated the substance from inactive to active nor moved the substance from the confidential portion of the Inventory to the public portion of the Inventory as a result of a request in the original submission for a CBI claim to be withdrawn). See 40 CFR 710.30(b)(3). Because a forward-looking notice will be processed even if the intended manufacture and processing does not occur as originally anticipated, and because it would be burdensome and potentially impossible to implement such an approach, the rule does not allow for EPA to revert a re-activated substance back to inactive status based on a request to withdraw a Form B, or for EPA to revert a non-CBI substance back to a CBI substance based on a request to withdraw a Form B.

EPA appreciates that retrospective withdrawals should be non-punitive. However, after the period allowed for withdrawal, incorrect information would be considered a prohibited act under Section 15(1) and 15(3). Similarly, incorrect information in forward-looking notices would also be considered a prohibited act under Section 15(1) and 15(3), if not withdrawn prior to EPA altering the Inventory status of the chemical substance in the original notice. Persons making corrections after these retrospective and forward-looking timeframes and seeking future penalty mitigation considerations may disclose within 21 days after they have an objectively reasonable basis for believing that a violation has, or may have, occurred, pursuant to EPA's Self-Disclosure policies. See: *https://www.epa.gov/compliance/epas-edisclosure.*

Changes to the Final Rule to Allow Withdrawal of a Notice of Activity Form A or Form B: EPA revised the rule to allow retrospective notices to be withdrawn if done so not later than October 5, 2018. See 40 CFR 710.30(a)(3). EPA revised the rule to allow forward-looking notices to be withdrawn if EPA has not yet altered the Inventory status of the substance in response to the original submission. See 40 CFR 710.30(b)(3).

Comment 14: A few commenters requested clarification on the proposed procedures for joint submissions. One commenter requested that EPA provide a different reporting option that avoids the need for a joint submission. Two commenters requested clarification on the reporting responsibilities of manufacturers, importers, and processors when a supplier fails to submit its information.

Response: EPA proposed procedures for joint submissions that will enable a company to submit a commercial activity notice for a chemical substance on the confidential portion of the Inventory in situations where the submitter does not know the specific chemical identity of the substance because a portion of the specific chemical identity is held CBI by a supplier. This rule includes such joint submission procedures that allow the submitter to provide information on the specific chemical identity that it has in its possession, and the supplier to separately provide information on the specific chemical identity that it has in its possession, in a manner that protects the supplier's CBI from the submitter of the NOA.

Additionally, since publication of the proposed rule, EPA expanded its electronic reporting system to include a pick list from which persons can select chemicals for reporting. The pick list will include only reportable substances and will not include CBI. Non-CBI substances will be listed by CASRNs and CA index names, as they appear on the Inventory, and CBI substances will be listed by EPA accession numbers and generic names, as they appear on public versions of the Inventory. Submitters can identify substances from the pick list and, therefore, do not have to manually enter chemical identity information. Because the chemical identity information selected from the pick list and transmitted on the NOA form will not be CBI, there is no need for submitters who use this pick list to supply CBI to EPA. In cases involving third party CBI, a submitter can provide a single notice to EPA for a CBI substance, provided they have in their possession the corresponding non-CBI chemical identifiers, EPA accession number and generic name, by selecting the non-CBI identifiers from the pick list, thereby avoiding the need for a joint submission. If a submitting company does not know the EPA accession number and generic name, they can use existing mechanisms (*e.g.,* Inventory Correspondence) to request such information from EPA.

A submitting company that does not know the CBI chemical identity of the substance that it is required to report because of third party CBI, therefore, has two options for reporting. Such submitter can utilize the joint submission functionality in the electronic reporting tool. Alternatively, such submitter can select from the pick list based on the corresponding non-CBI chemical identifiers, EPA accession number and generic name, provided they have this information.

Changes to Reporting Options for Joint Submissions: EPA revised the final rule to add a description of the pick list that will be provided in the electronic reporting system and which can serve as an alternative to a joint submission, should submitters have in their possession non-CBI chemical identifiers (EPA accession number and generic name) for a reportable CBI substance.

Comment 15: A few commenters stated that the estimated reporting burden and costs are too low or unrealistic, citing the following universe estimates as underestimated: Number of chemicals that are not reported under CDR because of exemptions or reporting threshold (including ten percent basis for nonexempt low volume chemicals and polymers) and total burden for processors. One commenter recommended that EPA revise the number of processors or better explain the origins of EPA's estimation of 161,000 affected processors. Additionally, a few commenters stated that unit burden estimates per activity and/or respondent are too low, including: Cost per industry submission, time needed for data gathering, time needed for due diligence, and rule familiarization (for processors).

Response: EPA agrees in part with these comments. After considering these comments, EPA adjusted the universe estimates and certain unit burden estimates. Regarding the number of chemicals and associated firms, EPA adds a group of chemicals termed ''XU Chemicals'' that was not included in estimates for the proposed rule. XU chemicals are defined in 40 CFR 711.6 and largely consist of polymers. This group of chemicals is listed on the Inventory, but is exempt from the reporting requirements of the CDR rule. Given that the CDR database is the primary source from which this rule's economic analysis draws measurements for counts of chemicals and firms, the XU Chemicals needed to be added. Regarding the number of processors, the origin for the proposed rule estimate of 161,550 processors was derived using the total chemical count for the initial reporting period combined with a model for ''processors per chemical.'' The model is based on a previous analysis for a different proposed rule (and cited in this proposed rule's Burden and Cost Report.) For the final rule, the model is updated using the more current CDR 2016 data; detailed methodology is provided in Table 2 footnote (Ref. 2). Due to the increased value of the model coupled with the higher chemical counts (discussed previously), processors are estimated for the final rule at 283,993 firms

Regarding unit burden estimates, EPA developed estimates for typical scenarios during start up and ongoing reporting to use as the representative average and then apply universe estimates to yield total burden estimates. Individual respondents may experience lower or higher levels of burden. The activities of ''time for data gathering,'' and ''time needed for due diligence'' are included in the unit burden estimate for compliance determination. Similarly, unit burden estimate for rule familiarization is based on the activities expected: ''. . . becoming familiar with the full requirements of the rule, which includes reading the rule, understanding the various reporting and administrative requirements, and determining the manner in which reporting requirements will be met for each chemical substance'' (Ref. 2). EPA also developed a range of burden hours estimates for processors' rule familiarization during start up at one to four hours, based on EPA judgment of how processors will familiarize themselves with the rule.

Changes to the Burden and Cost Estimates in the Final Rule: EPA revised the universe estimates to add XU Chemicals, and to incorporate a revised, larger estimate for the number of processor firms. EPA also revised the unit burden for processors' rule familiarization during start up.

Comment 16: One commenter indicated that EPA should justify why certification is required for non-CBI notices. Another commenter suggested the following changes to the proposed regulatory text for certification: 40 CFR 710.37(b)(3) should be corrected to ''[a]n authorized official of a person'' instead of ''person,'' 40 CFR 710.29(d)(5) should be extended to substantiations as well as to claims and notices, and 40 CFR 710.37(b)(3) should be replicated in 40 CFR 710.37(a) so that it also applies to CBI claims for chemical identity in addition to other CBI claims.

Response: Certification statements are required under TSCA section 8(b)(9)(A) and are essential whenever information is submitted to the EPA. Certification statements are routinely required for data submitted to the EPA under TSCA as well as other statutes for both CBI and non-CBI submissions. Such statements ensure that the data the EPA ultimately relies on are valid and accurate. It also puts the submitter on notice of the consequences of submitting false, inaccurate, or incomplete information to the Agency.

EPA agrees in large part with the comment recommending specific corrections to 40 CFR 710.37(b)(3) and 710.29(d)(5), the proposed regulatory provisions for certifications. EPA has revised the certification provisions in the rule, which currently appear at 40 CFR 710.37(e) (applicable to CBI claims and associated substantiations) and 710.29(d)(5) (applicable to all information reported on NOA Forms A and B). The rule clarifies that an ''authorized official'' submitting or substantiating any new or existing CBI claim must provide a certification, consistent with the requirements of TSCA section 14(c)(5).

While EPA does not agree with the commenter's implication that a request to maintain an existing CBI claim for specific chemical identity is subject to all of the same requirements and procedures that would apply to the assertion of a new claim under TSCA section 14(c), EPA finds it appropriate under the circumstances to require a certification statement for such requests that is consistent with TSCA section 14(c)(5), in addition to meeting the certification requirement of TSCA section 8(b)(9)(A). The earlier assertion of the CBI claim for specific chemical identity may have predated current provisions under TSCA subsections 14(c)(5) and (c)(1)(B) pertaining to the certification of a specific statement required for the assertion of a CBI claim. EPA does not believe that Congress intended the Agency to review existing CBI claims for chemical identity under TSCA section 8(b) without having the benefit of this certified statement.

Changes to the Certification Statements in the Final Rule. EPA revised the certification statement applicable to CBI claims to substitute ''authorized official'' for ''person,'' and to address substantiation of claims, consistent with TSCA sections 8(b)(9)(A) and 14(c)(5).

Comment 17: One commenter indicated that the CBI claims process should be better defined, particularly with regard to substantiation. Two commenters stated that the substantiation questions should be reduced in scope.

Response: EPA has extensively re-written the substantiation questions from the proposal in a manner intended to more succinctly secure answers for the basis of the CBI assertions for each data element as well as the CBI concerns on the linkage of data elements.

Changes to Substantiation Questions in the Final Rule: EPA has rewritten the substantiation questions to more succinctly secure answers for the basis of the CBI assertions for each data elements as well as the CBI concerns on the linkage of data elements.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these references and other information considered by EPA. For assistance in locating these other documents, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT.**

1. 2017. EPA. TSCA Inventory Notification (Active-Inactive) Requirements; Proposed Rule. **Federal Register** (82 FR 4255, January 13, 2017) (FRL 9956–28).
2. 2017. EPA. Burden and Cost Report for the Final Rule: TSCA Inventory Notification Requirements (RIN 2070–AK24, June 19, 2017).
3. 2017. EPA. Notice of Activity Form A and Form B; Final.
4. 2009. EPA. Notice of Commencement Form; Final.
5. 2005. EPA. Cross-Media Electronic Reporting Rule (CROMERR); Final Rule. **Federal Register** (70 FR 59848, October 13, 2005) (FRL 7977–1).
6. 2013. EPA. Electronic Reporting Under the Toxic Substances Control Act; Final Rule. **Federal Register** (78 FR 72818, December 4, 2013) (FRL 9394–6).
7. 2017. EPA. Response to Comments to the Proposed Rule, TSCA Inventory Notification (Active-Inactive) Requirements; RIN 2070–AK24. Docket # EPA–HQ–OPPT–2016–0426.
8. 2016. EPA. TSCA Chemical Data Reporting Fact Sheet: Imported Articles. *https://www.epa.gov/sites/production/files/2015-12/documents/cdr_fact_sheet_imported_articles_-_final_dec2015.pdf.*
9. 2016. EPA. TSCA Chemical Data Reporting Fact Sheet: Reporting After Changes to Company Ownership or Legal Identity. *https://www.epa.gov/sites/production/files/2015-05/documents/cdr_fact_sheet_company_changes.pdf.*
10. 2016. EPA. Chemical Data Reporting Frequent Questions. *https://www.epa.gov/sites/production/files/2016-07/documents/cdr_fq_final_july_11_2016.pdf.*
11. 2017. EPA. Information Collection Request for the TSCA section 8(b) Reporting Requirements for TSCA Inventory Notifications (EPA ICR No. 2562.02).
12. 2017. EPA. Small Entity Analysis Report for the Final Rule: TSCA Inventory Notification Requirements (May 30, 2017).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/lawsregulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

The information collection activities associated with this rule have been submitted to OMB for review and approval under the PRA, 44 U.S.C. 3501 *et seq.* Specifically, EPA has prepared an Information Collection Request (ICR) (identified under EPA ICR No. 2565.01 (OMB Control No. 2070–0201), that estimates the potential burden and costs associated with the paperwork requirements contained in this rule (Ref. 11). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

Start-up year burden/cost (Retrospective). Covers respondents/affected entities, *i.e.,* persons who manufacture chemical substances.

Respondents' obligation to respond: Mandatory.

Estimated number of respondents: 1,685.

Manufacturers: 5,322.

Processors: 283,993.

Frequency of response: Once and on occasion.

Estimated burden: The term ''burden'' is defined at 5 CFR 1320.3(b).

Manufacturers: 38,613 hours.

Processors: 937,347 hours.

Estimated cost:

Manufacturers: $3.09 million.

Processors: $75.8 million.

Start-up year CDX Registrations burden/cost.

Respondents' obligation to respond: Mandatory.

Estimated number of respondents: (169 registrations).

Frequency of response: Once and on occasion.

Estimated burden: 90 hours.

Estimated cost: $7,022.

Ongoing annual burden/cost (Forward-looking): Covers respondents/affected entities, *i.e.,* persons who manufacture or process chemical substances.

Respondents' obligation to respond: Mandatory.

Estimated number of respondents: 20.

Frequency of response: On-occasion.

Total estimated burden: 225 hours.

Total estimated cost: $17,779.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and included on any related collection instrument (*e.g.,* the form). When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

EPA certifies under section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule would not have a significant economic impact on a substantial number of small entities if the rule has a very small level of impact on the small entities subject to the rule.

The entities subject to the requirements of this action are manufacturers, and processors of chemical substances, *i.e.,* small businesses in NAICS 325: Chemical Manufacturing, and 324: Petroleum and Coal Products Manufacturing. The most burdensome conditions are incurred during the start-up year, when all manufacturers are expected to report, and all processors are expected to become familiar with the requirements, but only a small number of the processors will likely also report. EPA has prepared a detailed analysis to evaluate the potential impacts quantitatively, a copy of which is available in the docket (Ref. 12).

The quantitative analysis addresses the ''most affected'' subset of entities who are expected to incur the highest potential burden under the rule (18 hours and $1,188 per firm) are the small entities manufacturing (or importing) chemicals that must submit NOAs involving an average of eighteen chemicals per entity in the start-up year. Although all processors are assumed to experience burden from becoming familiar with the requirements, only a small subset are expected to experience the burdens associated with submitting the NOAs.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action is not expected to impose enforceable duty on any state, local or tribal governments, and the requirements imposed on the private sector are not expected to result in annual expenditures of $100 million or more for the private sector. As such, EPA has determined that the requirements of UMRA sections 202, 203, 204, or 205 do not apply to this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it does not have any 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.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it is not expected to have any effect on tribal governments, 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.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

Since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994), because EPA has determined that this action would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This action does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 710

Chemicals, Confidential Business Information, Environmental Protection, Hazardous Substances, Reporting and Recordkeeping Requirements.

Dated: June 22, 2017.

E. Scott Pruitt,

Administrator.

Therefore, 40 CFR Chapter I is amended as follows:

PART 710—[AMENDED]

■ 1. Revise the authority citation for part 710 to read as follows:

Authority: 15 U.S.C. 2607(a) and (b).

■ 2. Designate §§ 710.1 through 710.4 as subpart A, and add a heading for subpart A to read as follows:

Subpart A—General Provisions

* * * * *

■ 3. In § 710.1, revise paragraph (b) to read as follows:

§ 710.1 Scope and compliance.

* * * * *

(b) This part applies to the activities associated with the compilation of the TSCA Chemical Substance Inventory (Inventory) and the designation of chemical substances on the TSCA Inventory as active or inactive in U.S. commerce.

* * * * *

■ 4. In § 710.3, revise paragraph (d) to read as follows:

§ 710.3 Definitions.

* * * * *

(d) The following definitions also apply to this part:

Act means the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*

Administrator means the Administrator of the U.S. Environmental Protection Agency, any employee or authorized representative of the Agency to whom the Administrator may either herein or by order delegate his/her authority to carry out his/her functions, or any other person who will by operation of law be authorized to carry out such functions.

Article means a manufactured item:

(1) Which is formed to a specific shape or design during manufacture,

(2) Which has end use function(s) dependent in whole or in part upon its shape or design during end use, and

(3) Which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 710.4(d)(5); except that fluids and particles are not considered articles regardless of shape or design.

Byproduct means a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s).

CASRN means Chemical Abstracts Service Registry Number.

Chemical substance means any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any chemical element or uncombined radical; except that ''chemical substance'' does *not* include:

(1) Any mixture;

(2) Any pesticide when manufactured, processed, or distributed in commerce for use as a pesticide;

(3) Tobacco or any tobacco product, but not including any derivative products;

(4) Any source material, special nuclear material, or byproduct material;

(5) Any pistol, firearm, revolver, shells, and cartridges; and

(6) Any food, food additive, drug, cosmetic, or device, when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

Commerce means trade, traffic, transportation, or other commerce:

(1) Between a place in a State and any place outside of such State or

(2) Which affects trade, traffic, transportation, or commerce between a place in a State and any place outside of such State.

Customs territory of the United States means the 50 States, Puerto Rico, and the District of Columbia.

Distribute in commerce and *distribution in commerce* means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold after its introduction into commerce.

Domestic means within the geographical boundaries of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

EPA means the U.S. Environmental Protection Agency.

Importer means any person who imports any chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the United States. ''Importer'' includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate,

(1) The consignee,

(2) The importer of record,

(3) the actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20, or

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with subpart C of 19 CFR 144.

Impurity means a chemical substance which is unintentionally present with another chemical substance.

Intermediate means any chemical substance that is consumed, in whole or in part, in chemical reaction(s) used for the intentional manufacture of other chemical substance(s) or mixture(s), or that is intentionally present for the purpose of altering the rate(s) of such chemical reaction(s).

Inventory means the TSCA Chemical Substance Inventory, which is EPA's comprehensive list of confidential and non-confidential chemical substances manufactured or processed in the United States for nonexempt commercial purpose that EPA compiled and keeps current under section 8(b) of the Act.

Manufacture means to manufacture, produce, or import, for commercial purposes. Manufacture includes the extraction, for commercial purposes, of a component chemical substance from a previously existing chemical substance or complex combination of chemical substances. When a chemical substance, manufactured other than by import, is: (1) Produced exclusively for another person who contracts for such production, and (2) that other person specifies the identity of the chemical substance and controls the total amount produced and the basic technology for the plant process, then that chemical substance is co-manufactured by the producing manufacturer and the person contracting for such production.

Manufacture for commercial purposes means: (1) To manufacture, produce, or import with the purpose of obtaining an immediate or eventual commercial advantage, and includes, among other things, the ''manufacture'' of any amount of a chemical substance or mixture (i) for commercial distribution, including for test marketing, or (ii) for use by the manufacturer, including use for product research and development or as an intermediate. (2) The term also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including byproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Byproducts and impurities without separate commercial value are nonetheless produced for the purpose of obtaining a commercial advantage, since they are part of the manufacture of a chemical substance for commercial purposes.

Manufacturer means a person who manufactures a chemical substance.

Mixture means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that ''mixture'' does include (1) any combination which occurs, in whole or in part, as a result of a chemical reaction if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined, and if all of the chemical substances comprising the combination are not new chemical substances, and (2) hydrates of a chemical substance or hydrated ions formed by association of a chemical substance with water, so long as the nonhydrated form is itself not a new chemical substance.

New chemical substance means any chemical substance which is not included on the Inventory.

Person includes any individual, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

Process means to process for commercial purposes. Process includes the preparation of a chemical substance or mixture, after its manufacture, (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or (2) as part of a mixture or article containing the chemical substance or mixture.

Process for commercial purposes means the preparation of a chemical substance or mixture after its manufacture for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included in this definition. If a chemical substance or mixture containing impurities is processed for commercial purposes, then the impurities also are processed for commercial purposes.

Processor means any person who processes a chemical substance or mixture.

Site means a contiguous property unit. Property divided only by a public right-of-way will be considered one site. More than one manufacturing plant may be located on a single site.

(1) For chemical substances manufactured under contract, *i.e.,* by a toll manufacturer, the site is the location where the chemical substance is physically manufactured.

(2) The site for an importer who imports a chemical substance described in § 710.25 is the U.S. site of the operating unit within the person's organization that is directly responsible for importing the chemical substance. The import site, in some cases, may be the organization's headquarters in the United States. If there is no such operating unit or headquarters in the United States, the site address for the importer is the U.S. address of an agent acting on behalf of the importer who is authorized to accept service of process for the importer.

Small quantities solely for research and development (or ''small quantities solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product'') means quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that are not greater than reasonably necessary for such purposes.

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

Technically qualified individual means a person:

(1) Who because of his/her education, training, or experience, or a combination of these factors, is capable of appreciating the health and environmental risks associated with the chemical substance which is used under his/her supervision,

(2) Who is responsible for enforcing appropriate methods of conducting scientific experimentation, analysis, or chemical research in order to minimize such risks, and

(3) Who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting the research and development activity. The responsibilities in this paragraph may be delegated to another individual, or other individuals, as long as each meets the criteria in paragraph (1) of this definition.

Test marketing means the distribution in commerce of no more than a predetermined amount of a chemical substance, mixture, or article containing that chemical substance or mixture, by a manufacturer or processor to no more than a defined number of potential customers to explore market capability in a competitive situation during a predetermined testing period prior to the broader distribution of that chemical substance, mixture, or article in commerce.

United States, when used in the geographic sense, means all of the States, territories, and possessions of the United States.

■ 5. Add a new subpart B to read as follows:

SUBPART B—COMMERCIAL ACTIVITY NOTIFICATION

Sec.

§ 710.23 Definitions.

The following definitions also apply to subpart B of this part.

Active substance means any interim active substance, any naturally occurring chemical substance as defined by § 710.27(b), any chemical substance that was added to the Inventory on or after June 21, 2006 pursuant to a Notice of Commencement under § 720.102 received by the Agency on or after June 21, 2006, and any chemical substance subject to commercial activity designation that the Administrator designates as active based on the receipt of a notice under this subpart.

Central Data Exchange or CDX means EPA's centralized electronic document reporting portal, or its successors.

Chemical substance subject to commercial activity designation means a chemical substance that requires a designation as either an active or an inactive substance. A chemical substance is subject to commercial activity designation if it is not an interim active substance, it was added to the Inventory before June 21, 2006, it is not a naturally occurring chemical substance as defined by § 710.27(b), and it has not yet been designated by the Administrator as either an active or an inactive substance.

Chemical Information Submission System or CISS means EPA's web-based reporting tool for preparing and submitting a Notice of Activity.

e-NOA means EPA's software module within CISS for generating and completing Notice of Activity Forms A and B.

Existing claim for protection of specific chemical identity against disclosure is a claim for protection of the specific chemical identity of a chemical substance that is listed on the confidential portion of the Inventory, asserted prior to June 22, 2016.

Inactive substance means any chemical substance subject to commercial activity designation, that the Administrator designates as inactive based on the lack of receipt of a notice under this subpart, effective 90 days after the Administrator identifies the chemical substance for such designation.

Interim active substance means any chemical substance that was reported, pursuant to 40 CFR part 711, as having been manufactured in and of the calendar years: 2010, 2011, 2012, 2013, 2014, or 2015.

Known to or reasonably ascertainable by means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

Notice of Activity Form A means the form for supplying retrospective notification under TSCA section 8(b)(4), for which the submission obligation is described in § 710.25(a).

Notice of Activity Form B means the form for supplying forward-looking reporting under TSCA section 8(b)(5), for which the submission obligation is described in § 710.25(c).

Lookback period means the period beginning on June 21, 2006 and ending on June 21, 2016.

Possession or Control means in the possession or control of any person, or of any subsidiary, partnership in which the person is a general partner, parent company, or any company or partnership which the parent company owns or controls, if the subsidiary, parent company, or other company or partnership is associated with the person in the research, development, test marketing, or commercial marketing of the chemical substance in question. Information is in the possession or control of a person if it is:

(1) In the person's own files including files maintained by employees of the person in the course of their employment.

(2) In commercially available data bases to which the person has purchased access.

(3) Maintained in the files in the course of employment by other agents of the person who are associated with research, development, test marketing, or commercial marketing of the chemical substance in question.

Reportable chemical substance means a chemical substance that is listed on the Inventory and that is either:

(1) A chemical substance subject to commercial activity designation for which notification is required or allowed under § 710.25(a) and § 710.25(b),

(2) A chemical substance that was added to the confidential portion of the Inventory before June 22, 2016, or (3) an inactive substance for which notification is required under § 710.25(c).

Submission period means the applicable period for submitting a Notice of Activity under § 710.25.

§ 710.25 Persons subject to the notification requirement.

The following persons are subject to the requirements of this subpart.

(a) *Who must submit the Notice of Activity Form A?* Any person who manufactured (including imported) a chemical substance subject to commercial activity designation at any time during the lookback period, except as provided in § 710.27, must submit a Notice of Activity Form A as specified under § 710.29 and § 710.30(a), unless such person has evidence in the form of a CDX receipt, documenting EPA's receipt of a Notice of Activity Form A from another person, for the same chemical substance, or unless the prior manufacturing of such a substance is not known to or reasonably ascertainable by the person. Evidence in the form of a CDX receipt for a Notice of Activity Form A is not a basis for exemption from the requirements of § 710.25(c) if the chemical substance is ultimately designated as inactive due to withdrawal of the Notice of Activity Form A.

(b) *Who else may submit the Notice of Activity Form A?* Any person not required to submit a Notice of Activity Form A under § 710.25(a), who manufactured (including imported) or processed a reportable chemical substance, at any time during the lookback period, may submit a Notice of Activity Form A as specified under § 710.29 and § 710.30(a).

(c) *Who must submit the Notice of Activity Form B?* Any person who intends to manufacture (including import) or process an inactive substance, except as provided in § 710.27, after the effective date of the Administrator's designation of such chemical substance as an inactive substance, must submit a Notice of Activity Form B as specified under § 710.29 and § 710.30(b), unless the presence of the inactive substance on the confidential portion of the Inventory is not known to or reasonably ascertainable by the person.

§ 710.27 Activities for which notification is not required.

(a) *In general.* The following activities do not trigger notification requirements under this subpart:

(1) The manufacturing or processing of a chemical substance in small quantities solely for research and development.

(2) The import or processing of a chemical substance as part of an article.

(3) The manufacturing or processing of a chemical substance as described in § 720.30(g) or (h).

(4) The manufacturing or processing of a chemical substance solely for export from the United States as described in § 720.30(e) or § 721.3, except where the Administrator has made a finding described in TSCA section 12(a)(2).

(5) The manufacturing or processing of a chemical substance solely for test marketing purposes.

(b) *Manufacturing or processing naturally occurring chemical substances.* The following activities do not trigger notification requirements under this subpart:

(1) The manufacture of a naturally occurring chemical substance, as described in § 710.4(b). Some chemical substances can be manufactured both as described in § 710.4(b) and by means other than those described in § 710.4(b). If a person manufactures a chemical substance by means other than those

described in § 710.4(b), this exemption is inapplicable, regardless of whether the chemical substance also could have been produced as described in § 710.4(b). This exemption does not cover the manufacture of a chemical substance from a naturally occurring chemical substance.

(2) The processing of a naturally occurring chemical substance only by manual, mechanical, or gravitational means; by dissolution in water; by flotation; or by heating solely to remove water.

§ 710.29 Information required in the notification.

(a) *Reporting information to EPA.* A person who reports information to EPA under this subpart must do so using the e-NOA software module, the CISS reporting tool, and the CDX electronic reporting portal provided by EPA at the addresses set forth in § 710.39. For notices of activity under § 710.25(a) and § 710.25(b), the submission must include all information described in paragraph (b) of this section. For a Notice of Activity under § 710.25(c), the submission must include all information described in paragraph (c) of this section. A person must submit a separate notice for each chemical substance that the person is required to report. Using e-NOA and CISS and registering in CDX are described in instructions available from EPA at the Web sites set forth in § 710.39.

(b) *Information to be reported on the Notice of Activity Form A.* A person submitting a Notice of Activity Form A under § 710.25(a) or § 710.25(b) must submit the information specified in § 710.29(d) for each reportable chemical substance. A person submitting information under § 710.25(a) or § 710.25(b) must report information to the extent that such information is known to or reasonably ascertainable by that person.

(c) *Information to be reported on a Notice of Activity Form B.* Any person submitting a Notice of Activity Form B under § 710.25(c) must provide the information described in this paragraph for each inactive substance intended to be manufactured or processed.

(1) Information specified in § 710.29(d).

(2) The anticipated date by which the inactive substance is to be manufactured or processed in the United States. If the Notice of Activity Form B is filed prior to the effective date of the chemical substance's inactive designation, the most recent date of manufacturing or processing may be provided in lieu of an anticipated date.

(d) *Information to be reported on either the Notice of Activity Form A or Form B.*

(1) *Company.* The name and address of the submitting company.

(2) *Authorized official.* The name and address of the authorized official for the submitting company.

(3) *Technical contact.* The name and telephone number of a person who will serve as technical contact for the submitting company and who will be able to answer questions about the information submitted by the company to EPA.

(4) *Chemical-specific information.* The system described under § 710.29(a) will provide a list of reportable chemical substances from which a person can select his or her chemical. The list will include the correct CASRN and CA Index name used to list a non-confidential chemical substance on the Inventory. For confidential substances on the Inventory, the list will include the TSCA Accession Number and generic name.

(i) If an importer submitting a notice cannot provide the information specified in § 710.29(d)(4) because it is unknown to the importer and claimed as confidential by the supplier of the chemical substance or mixture, the importer must ask the supplier to provide the specific chemical identity information directly to EPA in a joint submission using the same e-NOA software module used for commercial activity reporting. Such request must refer the supplier to EPA's instructions for submitting chemical identity information electronically, using e-NOA, CISS, and CDX (see § 710.39), and for clearly referencing the importer's submission. Contact information for the supplier, a trade name or other name for the chemical substance or mixture, and a copy of the request to the supplier must be included with the importer's submission.

(ii) If a manufacturer or processor submitting a notice cannot provide the information specified in § 710.29(d)(4) because the reportable chemical substance is manufactured or processed using a reactant having a specific chemical identity that is unknown to the manufacturer or processor and claimed as confidential by its supplier, the manufacturer or processor must ask the supplier of the confidential reactant to provide the specific chemical identity of the confidential reactant directly to EPA in a joint submission using the same e-NOA software module used for commercial activity reporting. Such request must refer the supplier to EPA's instructions for submitting chemical identity information electronically using e-NOA, CISS, and CDX (see § 710.39), and for clearly referencing the manufacturer's or processor's submission. Contact information for the supplier, a trade name or other name for the chemical substance, and a copy of the request to the supplier must be included with the manufacturer's or processor's submission with respect to the chemical substance.

(iii) Joint submissions must be submitted electronically using e-NOA, CISS, and CDX (see § 710.39).

(5) *Certification statements.* The authorized official must certify that the submitted information has been completed in compliance with the requirements of this part as described in this paragraph.

(i) The certification must be signed and dated by the authorized official for the submitting company.

(ii) The following is required certification language for an authorized official submitting a Notice of Activity Form A under § 710.25(a) or § 710.25(b): ''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision and the information contained therein, to the best of my knowledge, is true, accurate, and complete. I also certify that I have manufactured, imported, or processed the above chemical between the dates of June 21, 2006 and June 21, 2016. I am aware it is unlawful to knowingly submit incomplete, false and/or misleading information, and there are significant criminal penalties for such unlawful conduct, including the possibility of fine and imprisonment.''

(iii) The following is required certification language for an authorized official submitting a Notice of Activity Form B under § 710.25(c): ''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision and the information contained therein, to the best of my knowledge, is true, accurate, and complete. I also certify that I have intent to manufacture, import, or process the above chemical within 90 days of submission. I am aware it is unlawful to knowingly submit incomplete, false and/or misleading information, and there are significant criminal penalties for such unlawful conduct, including the possibility of fine and imprisonment.''

§ 710.30 When to submit notifications.

(a) *When must a Notice of Activity Form A be submitted?* The Notice of Activity Form A required to be submitted under § 710.25(a) must be submitted during the applicable submission period.

(1) *Manufacturers.* The submission period for manufacturers under § 710.25(a) and § 710.25(b) begins on August 11, 2017 and ends on February 7, 2018.

(2) *Processors.* The submission period for processors under § 710.25(b) begins on August 11, 2017 and ends on October 5, 2018.

(3) *Withdrawal of a Notice of Activity Form A.* A Notice of Activity Form A submitted under § 710.30(a)(1) or § 710.30(a)(2) may be withdrawn by the submitter no later than October 5, 2018. If EPA receives a timely request to withdraw a previously submitted Notice of Activity Form A for a chemical substance subject to commercial activity designation, and EPA has not received a Notice of Activity Form A from another submitter for the same chemical substance, EPA will not designate the chemical substance as active. A Form A withdrawn under this paragraph will not satisfy the obligation under this rule to submit a Form A.

(b) *When must a Notice of Activity Form B be submitted?* (1) *Manufacturers and processors.* The Notice of Activity Form B required to be submitted under § 710.25(c) must be submitted before a person manufactures or processes the inactive substance, but not more than 90 days prior to the anticipated date of manufacturing or processing.

(2) *When else may a Notice of Activity Form B be submitted?* A Notice of Activity Form B that will later be required to be submitted under § 710.25(c) may be submitted during the 90-day period between EPA's identification of a chemical substance for inactive designation and the effective date for such designation, by a person who is currently manufacturing or processing such chemical substance or who anticipates manufacturing or processing such chemical substance within 90 days following submission.

(3) *When may EPA execute a request to withdraw a Notice of Activity Form B?* If EPA receives a request to withdraw a previously submitted Notice of Activity Form B from the submitter of the Notice of Activity Form B and EPA has neither yet moved the subject chemical substance from the inactive to the active Inventory nor yet moved the subject chemical substance from the confidential portion of the Inventory to the public portion of the Inventory as a result of the original submission, then EPA may execute the request.

§ 710.33 Co-manufacturers and co-processors.

(a) *Notice of Activity submitted by co-manufacturers.* When, in a single instance of manufacturing or importing a particular volume of a chemical substance during the lookback period, two or more persons qualify as the manufacturer or importer of that volume, they may determine among themselves who should make the required submission under § 710.25(a). If no notice is submitted as required under this subpart, EPA will hold each such person liable for failure to submit a notice.

(b) *Notice of Activity by prospective co-manufacturers or co-processors.* If two or more persons intend to manufacture, import, or process a particular volume of an inactive substance, such that multiple persons would qualify as the manufacturer, importer, or processor of that volume, they may determine among themselves who will submit the required notice under § 710.25(c). If no notice is submitted as required under this subpart, all of the persons remain subject to the reporting requirements, and EPA will hold each such person liable for a failure to submit a notice prior to the date of manufacturing, importing, or processing.

§ 710.35 Recordkeeping requirements.

Each person who is subject to the notification requirements of this part must retain records that document any information reported to EPA. Records relevant to a Notice of Activity under § 710.25(a) and § 710.25(b) must be retained for a period of 5 years beginning on the last day of the submission period. Records relevant to a Notice of Activity under § 710.25(c) must be retained for a period of 5 years beginning on the day that the notice was submitted.

§ 710.37 Confidentiality claims.

(a) *Chemical identity.* A person submitting information under this part may request to maintain an existing claim of confidentiality for the specific chemical identity of a reportable chemical substance, but may do so only if the identity of the chemical substance is listed on the confidential portion of the Inventory as of the time the notice is submitted for that chemical substance under this part. A request to maintain an existing claim of confidentiality must be made at the time the information is submitted. If no person submitting the information specified in § 710.29(d)(4) for a particular chemical substance requests that the claim be maintained, EPA will treat the specific chemical identity of that chemical substance as not subject to a confidentiality claim and will move the chemical substance to the public portion of the Inventory. Except as set forth in this subsection, information claimed as confidential in accordance with this section will be treated and disclosed in accordance with the procedures in 40 CFR part 2, subpart B.

(1) *Notice of Activity Form A.* A person requesting to maintain an existing claim of confidentiality for specific chemical identity may submit with the notice answers to the questions in paragraphs (c)(1) and(c)(2) of this section, signed and dated by an authorized official. If these answers are submitted less than five years before the date on which substantiation is due pursuant to TSCA section 8(b)(4)(D)(i), the answers will be deemed to be substantiations made under TSCA section (8)(b)(4)(D)(i) and the person will be exempt from further substantiation requirements under TSCA section (8)(b)(4)(D)(i). Answers that do not include the answers to all applicable questions in paragraph (c) of this section will not be deemed to be substantiations made under the TSCA section (8)(b)(4)(D)(i) requirement.

(2) *Notice of Activity Form B.* A person requesting to maintain an existing claim of confidentiality for specific chemical identity must submit answers to the questions in paragraphs (c)(1) and (c)(2) of this section within 30 days of submitting the notice, signed and dated by an authorized official. If this information is not submitted within 30 days of submitting the notice, EPA will consider the confidentiality claim as deficient, so that the specific chemical identity is not subject to a confidentiality claim, and may make the information public without further notice.

(b) *Information other than specific chemical identity.* A person submitting information under this part may assert a claim of confidentiality for information other than specific chemical identity. Any such confidentiality claim must be made at the time the information is submitted. Except as set forth in this section, information claimed as confidential in accordance with this subsection will be treated and disclosed in accordance with 40 CFR part 2, subpart B. A person asserting a claim of confidentiality under this subsection must submit with the notice answers to the questions in paragraph (c)(1) of this section, signed and dated by an authorized official. If no claim is asserted at the time the information is submitted, or if the answers to the questions in paragraph (c)(1) of this section are not provided, EPA will consider the information as not subject to a confidentiality claim and may make the information public without further notice.

(c) *Substantiation questions.* Persons asserting that information is exempt from substantiation pursuant to TSCA section 14(c)(2) must answer only the question in paragraph (c)(1)(i) of this section.

(1) *Substantiation questions for any confidentiality claim.* For any information with a confidentiality claim that you assert is exempt from substantiation pursuant to TSCA section 14(c)(2), answer only the question in paragraph (c)(1)(i) of this section. For all other information with a confidentiality claim, answer the questions in paragraphs (c)(1)(ii) through (vi) of this section. If more than one data element on Form A or Form B is claimed as confidential, you must answer the applicable questions individually for each data element. If the answer to a question applies for all confidentiality claims on the form, indicate this in your substantiation response.

(i) Do you believe that the information is exempt from substantiation pursuant to TSCA section 14(c)(2)? If you answered yes, you must individually identify the specific information claimed as confidential and specify the applicable exemption(s).

(ii) Will disclosure of the information likely result in substantial harm to your business's competitive position? If you answered yes, describe with specificity the substantial harmful effects that would likely result to your competitive position if the information is made available to the public.

(iii) To the extent your business has disclosed the information to others (both internally and externally), what precautions has your business taken? Identify the measures or internal controls your business has taken to protect the information claimed as confidential: Non-disclosure agreement required prior to access; access is limited to individuals with a need-to-know; information is physically secured; other internal control measure(s). If yes, explain.

(iv) Does the information appear in any public documents, including (but not limited to) safety data sheets, advertising or promotional material, professional or trade publication, or any other media or publications available to the general public? If you answered yes, explain why the information should be treated as confidential.

(v) Is the claim of confidentiality intended to last less than 10 years? If so, indicate the number of years (between 1–10 years) or the specific date/occurrence after which the claim is withdrawn.

(vi) Has EPA, another federal agency, or court made any confidentiality determination regarding information associated with this chemical substance? If you answered yes, explain the outcome of that determination and provide a copy of the previous confidentiality determination or any other information that will assist in identifying the prior determination.

(2) *Substantiation for confidentiality claims for chemical identity.* Is the confidential chemical substance publicly known to have ever been offered for commercial distribution in the United States? If you answered yes, explain why the information should be treated as confidential.

(d) *Confidentiality of substantiation.* If any of the information contained in the answers to the questions listed in paragraph (c)(1) or (c)(2) of this section is claimed as confidential business information, the submitter must clearly indicate such by marking the substantiation as confidential business information as provided in a Notice of Activity Form A or Form B.

(e) *Certification statement for claims.* An authorized official of a person submitting or substantiating a claim of confidentiality or a request to maintain an existing claim of confidentiality for specific chemical identity must certify that the submission complies with the requirements of this part by signing and dating the following certification statement: ''I certify that all claims for confidentiality made or sought to be maintained with this submission are true and correct, and all information submitted herein to substantiate such claims is true and correct. Any knowing and willful misrepresentation is subject to criminal penalty pursuant to 18 U.S.C. 1001.'' I further certify that it is true and correct that:

(1) My company has taken reasonable measures to protect the confidentiality of the information;

(2) I have determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;

(3) I have a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of my company; and

(4) I have a reasonable basis to believe that the information is not readily discoverable through reverse engineering.

§ 710.39 Electronic filing.

(a) EPA will accept information submitted under this subpart only if submitted in accordance with this section. All information must be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, Notices of Activity and any associated information must be generated and completed using the e-NOA software module.

(b) Obtain instructions for registering in CDX as follows:

(1) *Web site.* The CDX Registration User Guide is available at *https://www.epa.gov/sites/production/files/documents/cdx_registration_guide_v0_02.pdf.* To register in CDX, go to *https://cdx.epa.gov* and follow the appropriate links.

(2) *Telephone.* Contact the EPA CDX Help Desk at 1–888–890–1995.

(3) *Email.* Email the EPA CDX Help Desk at *HelpDesk@epacdx.net.*

(c) Obtain instructions for using CISS and the e-NOA software module as follows:

(1) *Web site.* Go to the EPA New Chemicals under the Toxic Substances Control Act Web site at *https://www.epa.gov/reviewing-new-chemicalsunder-toxic-substances-control-act-tsca/how-submit-e-pmn* and follow the appropriate links.

(2) *Telephone.* Contact the EPA TSCA Hotline at 1–202–554–1404.

(3) *Email.* Email the EPA TSCA Hotline at *TSCA-Hotline@epa.gov.*

[FR Doc. 2017–15736 Filed 8–10–17; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 82, No. 154

Friday, August 11, 2017

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.

GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Part 81

Public Availability of Government Accountability Office Records

AGENCY: Government Accountability Office.

ACTION: Proposed rule.

SUMMARY: These proposed revisions would clarify procedures to obtain Government Accountability Office (GAO) records. Specifically, the proposed revisions would add procedures for requesting records of GAO's Office of Inspector General. The proposed revisions would also clarify that documents prepared by GAO or GAO's Office of Inspector General for referral to another agency for law enforcement purposes are not subject to the regulations in this Part. The existing regulatory language on this point is imprecise.

DATES: Comments must be received on or before September 25, 2017.

ADDRESSES: Comments may be submitted by any of the following methods:

Email: bielecj@gao.gov.

Mail: Government Accountability Office, Office of the General Counsel, Attn: Legal Services, Room 7838, 441 G Street NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: John A. Bielec, Assistant General Counsel, 202–512–2846.

SUPPLEMENTARY INFORMATION: GAO is not subject to the Administrative Procedure Act and accordingly is not required by law to seek comments before issuing a final rule. However, GAO has decided to invite interested persons to participate in this rulemaking by submitting written comments regarding the proposed revisions. Application of the Administrative Procedure Act to GAO is not to be inferred from this invitation for comments.

GAO will consider all comments received on or before the closing date for comments. GAO may change the proposed revisions based on the comments received.

GAO proposes to amend section 81.2 by specifically providing that GAO's Office of Inspector General (OIG) will process any requests under this Part for OIG records. The OIG, which was established by statute in 2008, audits and investigates matters related to GAO's operations. The OIG executes its responsibilities independently of and free from interference or control by any other office or body within GAO. In keeping with and to best preserve this independence, the OIG itself should process requests for its records. In doing so, consistent with its independent role and section 81.5(a), when the OIG receives a request for records that originated in GAO, the OIG will refer the requester to GAO. These revisions would provide that with respect to any request for OIG records, throughout this Part the term ''Counsel to the Inspector General'' would be substituted for ''Chief Quality Officer'' and the term ''Inspector General'' would be substituted for ''Comptroller General''.

In addition, paragraph 81.6(g) would be amended to clarify that documents prepared by GAO for referral to another agency for law enforcement purposes are exempt from the procedures in this Part. Paragraph 81.6(g) currently provides that records that GAO has already provided to another agency for law enforcement purposes are exempt. However, paragraph 81.6(g) does not specifically address requests for records that GAO, including the OIG, created for referral to another agency for law enforcement purposes, but has not yet provided to another agency. For instance, during an investigation into possible criminal activity, the GAO OIG creates documents that may be forwarded to another agency for law enforcement purposes at the conclusion of the OIG's investigation. The current regulations are unclear as to whether such records, which have not yet been forwarded to another agency, would be subject to this Part if requested before the conclusion of the investigation. The proposed changes would clarify that records compiled for referral to another agency for law enforcement purposes are exempt from this Part.

List of Subjects in 4 CFR Part 81

Administrative practice and procedure, Archives and records, Freedom of information, Requests for records.

For the reasons stated in the preamble, the Government Accountability Office proposes to amend 4 CFR part 81 as follows:

PART 81—PUBLIC AVAILABILITY OF GOVERNMENT ACCOUNTABILITY OFFICE RECORDS

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 31 U.S.C. 711.

■ 2. Amend § 81.2 as follows:

■ a. redesignate the existing text as paragraph (a);

■ b. add paragraph (b) to read as follows:

§ 81.2 Administration.

* * * * *

(b) Requests for records of GAO's Office of Inspector General (OIG) shall be processed by the Counsel to the Inspector General in accordance with this Part. The Inspector General will decide any administrative appeals of decisions of the Counsel to the Inspector General concerning such requests. Accordingly, with regard to any public request to inspect or copy records of the OIG, in this Part the term ''Counsel to the Inspector General'' is to be substituted for ''Chief Quality Officer'' and the term ''Inspector General'' is to be substituted for ''Comptroller General''. All requests to inspect or obtain a copy of an identifiable record of the OIG must be submitted in writing to the Counsel to the Inspector General, U.S. Government Accountability Office, Suite 1808, 441 G Street NW., Washington, DC 20548 or emailed to *oighotline@.gov.*

■ 3. Amend § 81.6 by revising paragraph (g) to read as follows:

§ 81.6 Records which may be exempt from disclosure.

* * * * *

(g) Records compiled for law enforcement purposes that originate in another agency, or records prepared for referral to and/or provided by GAO or the OIG to another agency for law enforcement purposes.

* * * * *

Dated July 27, 2017.

Susan A. Poling,

General Counsel.

[FR Doc. 2017–16986 Filed 8–10–17; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2013–0061]

RIN 0579–AD96

Restrictions on the Importation of Fresh Pork and Pork Products From a Region in Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have defined a low-risk classical swine fever region in Mexico from which we would have allowed the importation of fresh pork and pork products into the United States under certain conditions. We are taking this action after reopening our risk evaluation of the classical swine fever status of Mexico using updated information.

DATES: As of August 11, 2017, the proposed rule published on July 29, 2014, at 79 FR 43974, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services, National Import Export Services, VS, APHIS, USDA, 4700 River Road Unit 38, Riverdale, MD 20737–1231; *Chip.J.Wells@aphis.usda.gov;* (301) 851–3317.

SUPPLEMENTARY INFORMATION: On July 29, 2014, we published in the **Federal Register** (79 FR 43974–43980, Docket No. APHIS–2013–0061) a proposal[1] to amend the regulations by recognizing a new Animal and Plant Health Inspection Service (APHIS)-defined low-risk classical swine fever (CSF) region that would consist of all Mexican States except the nine States we currently recognize as CSF-free and the State of Chiapas, which we did not propose to recognize as CSF-free or low risk. We proposed to allow imports of pork and pork products from the APHIS-defined Mexican CSF region into the United States under certain conditions. The proposed requirements were intended to ensure that the pork and pork products were derived from swine housed on farms that met strict biosanitary standards and were not subject to contamination by means of commingling with animals or animal products that did not meet our requirements.

We solicited comments concerning our proposal for 60 days ending September 29, 2014. We received 10 comments by that date. They were from producers' associations, the Government of Mexico, and individuals. The commenters addressed a number of issues, including the possible CSF risk posed by allowing such imports, our plans for implementing and enforcing the provisions of the proposed rule, and whether our requirements for imports from the proposed CSF low-risk region in Mexico were equivalent to those in place for the existing CSF low-risk region in the European Union.

In 2015, the World Organization for Animal Health recognized Mexico as CSF-free. The Government of Mexico then requested that APHIS suspend its rulemaking and instead continue evaluating Mexico for CSF status.

In response to that request, APHIS reopened its evaluation of the CSF status of Mexico, conducting a site visit in 2015. Findings from the resulting 2015 site visit report, along with updated surveillance data and information submitted by the Government of Mexico, led APHIS to determine that concerns identified in the earlier risk assessment that supported the July 2014 proposed rule had been addressed and that current conditions would support CSF-free recognition for all of Mexico.

Therefore, we are withdrawing the July 29, 2014, proposed rule referenced above.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, August 7, 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–16980 Filed 8–10–17; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0061.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0766; Product Identifier 2017–NM–046–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that the gore web lap splices of the aft pressure bulkhead are subject to widespread fatigue damage (WFD). This proposed AD would require repetitive inspections of the gore webs, gore web lap splices, and repair webs, as applicable, of the aft pressure bulkhead, and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 25, 2017.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–

1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0766.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0766; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Lu Lu, Aerospace Engineer, Airframe Section, FAA, Seattle Aircraft Certification Office (ACO) Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *lu.lu@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0766; Product Identifier 2017–NM–046–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as WFD. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by ADs through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

We have received reports of cracks in critical fastener rows of the gore web lap splices that are outside of the inspection area specified in AD 2012–18–13 R1, Amendment 39–17429 (78 FR 27020, May 9, 2013) (''AD 2012–18–13 R1''), which extends approximately 7 inches radially outboard from the center of the aft pressure bulkhead.

Cracks in the critical lap splice fastener rows of the hidden forward gore web were found on airplanes with 37,000 to 66,000 total flight cycles. Cracks in the critical lap splice fastener rows of the visible aft gore web were also found on airplanes with 42,000 to 62,000 total flight cycles. Cracking in the gore web lap splices of the aft pressure bulkhead could result in possible rapid decompression and loss of structural integrity of the airplane.

Related AD

AD 2012–18–13 R1 requires repetitive inspections to detect cracking in the web of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the ''Y'' chord, various inspections for discrepancies at the aft pressure bulkhead, and related investigative and corrective actions if necessary. The inspection areas of AD 2012–18–13 R1 and the proposed inspections of this proposed AD are both related to the aft pressure bulkhead. However, this proposed AD would require separate inspections on a subset of the aft pressure bulkhead inspections required by AD 2012–18–13 R1.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1355, dated March 10, 2017. The service information describes procedures for repetitive inspections of the gore web in Zone 1 (*i.e.,* inspections around fastener locations in the gore web lap splices and around fastener locations in the apex area outside the gore web lap splices) and gore web lap splices in Zone 2 (*i.e.,* inspections around fastener locations in the gore web lap splices) of the aft pressure bulkhead, and applicable on-condition actions. The service information also describes, for airplanes with an existing single gore web repair, procedures for repetitive inspections of the gore web (*i.e.,* inspections around fastener locations in the gore web lap splices) and repair webs (*i.e.,* inspections around fastener locations in the gore web lap splices and around fastener locations in the apex area outside the gore web lap splices); and, for airplanes with an existing all gore web repair, procedures for repetitive inspections of the repair webs (*i.e.,* inspections around fastener locations in the repair gore web lap splices and around fastener locations in the apex area outside the repair gore web lap splices); and procedures for applicable on-condition actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of the service information described previously, except for differences between this proposed AD and the service information that are identified in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0766.

Difference Between Proposed AD and Service Bulletin

Boeing Alert Service Bulletin 737–53A1355, dated March 10, 2017, specifies to contact the manufacturer for certain instructions, but this proposed AD would require using repair methods, modification deviations, and alteration deviations in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 281 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	46 work-hours × $85 per hour = $3,910 per inspection cycle.	$0	$3,910 per inspection cycle	$1,098,710 per inspection cycle.

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these on-condition actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection of previous single gore web repair	8 work-hours × $85 per hour = $680	$0	$680
Inspection of previous all gore web repair	10 work-hours × $85 per hour = $850	0	850

We have received no definitive data that would enable us to provide cost estimates for the repairs specified in this proposed AD.

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2017–0766; Product Identifier 2017–NM–046–AD.

(a) Comments Due Date

We must receive comments by September 25, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53; Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the gore web lap splices of the aft pressure bulkhead are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct cracking in the gore webs, gore web lap splices, and repair webs of the aft pressure bulkhead, which could result in possible rapid decompression and loss of structural integrity.

(f) Compliance

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

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–53A1355, dated March 10, 2017: Within 120 days after the effective date of this AD, inspect the airplane, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Actions Required for Compliance

Except as required by paragraph (i) of this AD: For airplanes identified as Group 2 in Boeing Alert Service Bulletin 737–53A1355, dated March 10, 2017, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1355, dated March 10, 2017, do all applicable actions identified as required for compliance (''RC'') in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1355, dated March 10, 2017.

(i) Exceptions to Service Information Specifications

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1355, dated March 10, 2017, uses the phrase ''after the original issue date of this service bulletin,'' for purposes of determining compliance with the requirements of this AD, the phrase ''after the effective date of this AD'' must be used.

(2) Although Boeing Service Bulletin Boeing Alert Service Bulletin 737–53A1355, dated March 10, 2017, specifies to contact Boeing for repair instructions, and specifies that action as ''RC'' (Required for Compliance), this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO) Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-LAACO-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (i)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Lu Lu, Aerospace Engineer, Airframe Section, FAA, Seattle Aircraft Certification Office (ACO) Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *lu.lu@faa.gov.*

(2) For information about AMOCs, contact George Garrido, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email: *george.garrido@faa.gov.*

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 26, 2017.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–16358 Filed 8–10–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9523; Product Identifier 2016–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: We are revising an earlier notice of proposed rulemaking (NPRM) to supersede Airworthiness Directive (AD) 2014–12–13, which applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This action revises the NPRM by expanding the inspection area. This action also revises the NPRM by no longer proposing to supersede AD 2014–12–13. We are proposing this AD to address the unsafe condition on these products. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: The comment period for the NPRM published in the **Federal Register** on January 5, 2017 (82 FR 1254), is reopened.

We must receive comments on this SNPRM by September 5, 2017.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
• *Fax:* 202–493–2251.
• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this SNPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9523.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9523; 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 SNPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles Aircraft Certification Office (ACO) Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the ADDRESSES section. Include ''Docket No. FAA–2016–9523; Product Identifier 2016–NM–134–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this SNPRM. We will consider all comments received by the closing date and may amend this SNPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On June 6, 2014, we issued AD 2014–12–13, Amendment 39–17874 (79 FR 39300, July 10, 2014) (''AD 2014–12–13''). AD 2014–12–13 requires actions to address an unsafe condition on all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. AD 2014–12–13 requires repetitive inspections for cracking of the aft support fitting for the main landing gear (MLG) beam, and the rear spar upper chord and rear spar web; and repair if necessary.

We issued an NPRM to amend 14 CFR part 39 by adding an AD to supersede AD 2014–12–13 that would apply to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on January 5, 2017 (82 FR 1254) (''the NPRM''). The NPRM was prompted by reports of additional cracking in the inspar upper skin at Wing Buttock Line (WBL) 157 and in the skin at two holes common to the rear spar in the same area, and by reports of rear spar web cracks on both wings. Subsequent inspections revealed that the right rear spar upper chord was almost completely severed and the left rear spar upper chord was completely severed. The NPRM proposed to expand the inspection area and add applicable related investigative and corrective actions.

Actions Since NPRM Was Issued

Since we issued the NPRM, we have determined it is necessary to expand the inspection area because the NPRM did not adequately identify the inspection area. We have also determined that it is necessary for operators to do the inspections in this proposed AD (in the SNPRM) before the inspections in AD 2014–12–13 can be terminated. In the NPRM, we proposed to supersede AD 2014–12–13 and referred to the compliance times in Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016, which would have given operators an additional 4,500 flight cycles to do the next inspection. However, operators must do the inspections at the compliance times required by AD 2014–12–13 until the actions required by this proposed AD (in the SNPRM) are done. Therefore, we are no longer superseding AD 2014–12–13. However, we have included paragraph (k)(2) in this proposed AD (in the SNPRM) to specify terminating action for AD 2014–12–13.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016. The service information describes procedures for repetitive high frequency eddy current (HFEC) open hole inspections for any cracking in the forward support fitting, the aft support fitting, the rear spar upper chord, and the rear spar web at the 12 fastener holes (locations 1–12). The service information also describes procedures for optional HFEC open hole inspections for any cracking in the forward support fitting, the aft support fitting, the rear spar upper chord, and the rear spar web, and HFEC surface inspections for any cracking in the rear spar upper chord and rear spar upper web, as applicable. The service information also describes procedures for related investigative and corrective actions.

We also reviewed Boeing Alert Service Bulletin 737–57A1328, dated July 22, 2016. The service information describes procedures for repetitive eddy current inspections of the left and right wing for any cracking in the inspar upper skin and at the repair parts if applicable, and related investigative and corrective actions.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Comments

We gave the public the opportunity to comment on the NPRM. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Include Other Inspection Areas

Boeing requested that the NPRM be revised to include other inspection areas during the HFEC open hole inspection. Boeing stated that, as written, the NPRM implies that in some options the upper chord and web do not need to be inspected during the HFEC open hole inspection.

We agree with the commenter's request for the reasons stated above. We have revised the introductory text to paragraph (h) of this proposed AD (in the SNPRM) to include an HFEC inspection of the forward support fitting, the aft support fitting, the rear spar upper chord, and the rear spar web.

Request To Revise the NPRM or Service Information To Allow Installation of the Same Type and Size of Fasteners

All Nippon Airlines (ANA) requested that paragraph (h) of the NPRM or the service information be revised to allow installation of the same type and size of fasteners previously removed from the airplane after the open hole HFEC inspection. ANA stated that for group 7 airplanes, figures 25 and 26 of Boeing Alert Service Bulletin 737–57A1318, May 15, 2013, specify that oversized fasteners are installed at fastener holes after the open hole HFEC inspection has been accomplished. ANA stated that, however, for the same group 7 airplanes, figures 29 and 30 of Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016, specify that standard size fasteners are installed at fastener holes after the open hole HFEC inspection has been accomplished. ANA stated that as a result, operators will have to request alternative methods of compliance (AMOCs) for all airplanes on which the actions in Boeing Alert Service Bulletin 737–57A1318, May 15, 2013, have already been done because paragraph (h) of the NPRM states to do all applicable related investigative and corrective actions using Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016, which includes the installation of the standard size fasteners. ANA stated that this would be a burden for operators, Boeing, and the FAA.

We agree with the commenter's request to revise this proposed AD. Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016, should have called out the correct fastener size to be installed after the fastener holes have been inspected and oversized as specified in Boeing Alert Service Bulletin 737–57A1318, May 15, 2013. Group 7 has two configurations: Configuration 1 is for airplanes without a repair; Configuration 2 is for airplanes with a repair. We added paragraph (h)(2) to this proposed AD (in the SNPRM) to state, ''For group 7, configuration 1 airplanes identified in Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016: Install the same type and same size fasteners as those previously removed from the airplane after accomplishing the open hole HFEC inspection specified in the introductory text of paragraph (h) of this AD.''

Request for AMOC Approval

ANA requested that the NPRM be revised to allow approved AMOCs for AD 2014–12–13. ANA stated that airplanes have AMOCs for AD 2014–12–23 for certain repairs done using certain Boeing 737–300/–400/–500 structural repair manuals or certain Boeing ODA forms. ANA stated that existing AMOCs should be considered for AMOC approval in the NPRM.

We agree with the commenter's request for the reasons provided above. We have redesignated paragraph (l)(4) of the proposed AD (in the NPRM) as paragraph (l)(5) in this proposed AD (in the SNPRM). We have added paragraph (l)(4) to this proposed AD (in the SNPRM) to allow AMOCs approved previously for AD 2014–12–13, Amendment 39–17874 (79 FR 39300, July 10, 2014), as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the supplemental type certificate (STC) ST01219SE does not affect the actions specified in the NPRM.

We concur. We have redesignated paragraph (c) of the proposed AD (in the NPRM) as paragraph (c)(1) in this proposed AD and added paragraph (c)(2) to this proposed AD to state that ''Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.''

Request To Clarify the NPRM for Historical Accuracy

Boeing requested that the NPRM be revised to clarify the content for historical accuracy. Boeing stated that in the ''Actions Since AD 2014–12–13 and 2015–21–08 Were Issued'' paragraph of the preamble of the NPRM, the first paragraph described that a 2.375-inch long crack in the inspar upper skin was discovered since the issuance of AD 2014–12–13 and AD 2015–21–08. Boeing stated, however, the discovery of the crack led to the issuance of AD 2015–21–08 and not AD 2014–12–13. Boeing stated that the AD will become a reference for prior events, and therefore, historical accuracy is essential.

We agree with the commenter to clarify the historical accuracy of this SNPRM. While the paragraph, ''Actions Since AD 2014–12–13 and 2015–21–08 Were Issued,'' is not carried over in the SNPRM, we acknowledge that the discovery of a 2.375-inch long crack in the inspar upper skin led to the issuance of AD 2015–21–08. We have not changed this SNPRM regarding this issue.

FAA's Determination

We are proposing this SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed Requirements of This SNPRM

This SNPRM would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9523.

The phrase ''related investigative actions'' is used in this SNPRM. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this SNPRM. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This SNPRM and the Service Information

Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016; and Boeing Alert Service Bulletin 737–57A1328, dated July 22, 2016; specify to contact the manufacturer for certain instructions, but this proposed AD would require accomplishment of repair methods, modification deviations, and alteration deviations in one of the following ways:

• In accordance with a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by the Boeing

Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this AD affects 471 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HFEC open hole inspections	82 work-hours × $85 per hour = $6,970 per inspection cycle.	$0	$6,970 per inspection cycle ...	$3,282,870 per inspection cycle.
Eddy current inspection	14 work-hours × $85 per hour = $1,190 per inspection cycle.	$0	$1,190 per inspection cycle ...	$560,490 per inspection cycle.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Inspection	Up to 41 work-hours × $85 per hour = $3,485 per inspection cycle.	$0	Up to $1,641,435 per inspection cycle.

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this SNPRM.

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2016–9523; Product Identifier 2016–NM–134–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by September 5, 2017.

(b) Affected ADs

This AD affects AD 2014–12–13, Amendment 39–17874 (79 FR 39300, July 10, 2014), and AD 2015–21–08, Amendment 39–18301 (80 FR 65921, October 28, 2015).

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of additional cracking in the inspar upper skin at Wing Buttock Line (WBL) 157 and in the skin at two holes common to the rear spar in the same area, and rear spar web cracks were also noted on both wings. Subsequent inspections revealed that the right rear spar upper chord was almost completely severed and the left rear spar upper chord was completely severed. We are issuing this AD to detect and correct cracking of the forward and aft support fittings for the main landing gear (MLG) beam, and the rear spar upper chord and rear spar web in the area of rear spar station (RSS) 224.14, which could grow and result in a fuel leak and possible fire.

(f) Compliance

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

(g) Required Actions for Group 1 Airplanes (MLG Support Fittings and Rear Spar)

For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016: At the applicable time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016, except as required by paragraph (j)(3) of this AD, do applicable inspections and corrective actions using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(h) Required Actions for Groups 2–7 Airplanes (MLG Support Fittings and Rear Spar)

For airplanes identified as Groups 2–7 in Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016: At the applicable time specified in table 2 through table 9 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016, except as required by paragraph (j)(3) of this AD, do high frequency eddy current (HFEC) open hole inspections for any cracking in the forward support fitting, the aft support fitting, the rear spar upper chord, and the rear spar web at the 12 fastener holes (locations 1–12); or HFEC open hole inspections for any cracking in the forward support fitting, the aft support fitting, the rear spar upper chord, and the rear spar web, and an HFEC surface inspection for any cracking in the rear spar upper chord and rear spar upper web; as applicable; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016, except as provided by paragraphs (h)(1) and (h)(2) of this AD, and except as required by paragraph (j)(1) of this AD. Do all applicable related investigative and corrective actions before further flight. Thereafter, repeat the HFEC inspection at the applicable time specified in table 2 through table 9 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016.

(1) Options provided in Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016, for accomplishing the inspection are acceptable for the corresponding requirements in the introductory text of paragraph (h) of this AD, provided that the inspections are done at the applicable times in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016.

(2) For Group 7, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016: Install the same type and same size fasteners as those previously removed from the airplane after accomplishing the open hole HFEC inspection specified in the introductory text of paragraph (h) of this AD.

(i) Eddy Current Inspection (Inspar Upper Skin)

For airplanes identified in Boeing Alert Service Bulletin 737–57A1328, dated July 22, 2016: At the applicable time specified in table 1 and table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1328, dated July 22, 2016, except as required by paragraph (j)(2) of this AD, do an eddy current inspection of the left and right wings for any cracking in the inspar upper skin, and at the repair parts if installed, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1328, dated July 22, 2016, except as required by paragraph (j)(1) of this AD. Do all related investigative and corrective actions before further flight. Thereafter, repeat the eddy current inspection at the applicable time specified in table 1 and table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1328, dated July 22, 2016.

(j) Exceptions to the Service Information

(1) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016; or Boeing Alert Service Bulletin 737–57A1328, dated July 22, 2016; specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) Where Boeing Alert Service Bulletin 737–57A1328, dated July 22, 2016, specifies a compliance time ''after the Original Issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) Where Boeing Alert Service Bulletin 737–57A1318, Revision 1, dated July 22, 2016, specifies a compliance time ''after the Revision 1 date of this service bulletin, whichever occurs later,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(k) Terminating Action

(1) Accomplishing the initial inspections and applicable related investigative and corrective actions required by paragraphs (g), (h), and (i) of this AD, as applicable, terminates all requirements of AD 2015–21–08.

(2) Accomplishing the initial inspections and applicable related investigative and corrective actions required by paragraphs (g) and (h) of this AD, as applicable, terminates all requirements of AD 2014–12–13.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO) Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2014–12–13, Amendment 39–17874 (79 FR 39300, July 10, 2014), are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

(5) Except as required by paragraph (j)(1) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(5)(i) and (l)(5)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or sub-step is labeled ''RC Exempt,'' then the RC requirement is removed from that step or sub-step. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(m) Related Information

(1) For more information about this AD, contact Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Staff, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 26, 2017.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–16357 Filed 8–10–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6417; Product Identifier 2015–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

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

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that published on May 10, 2016. Since the NPRM was issued, we have determined that the identified unsafe condition is adequately addressed by existing actions. Accordingly, the NPRM is withdrawn.

DATES: As of August 11, 2017, the proposed rule, which was published in the **Federal Register** on May 10, 2016 (81 FR 28770), is withdrawn.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6417; 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 action, the NPRM (81 FR 28770, May 10, 2016) (''the NPRM''), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Docket 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: Serj Harutunian, Aerospace Engineer, Propulsion Section, FAA, Los Angeles Aircraft Certification Office (ACO) Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an NPRM for a new AD for all The Boeing Company Model DC–10–10 and DC–10–10F airplanes, Model DC–10–15 airplanes, Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, Model DC–10–40 and DC–10–40F airplanes, Model MD–10–10F and MD–10–30F airplanes, and Model MD–11 and MD–11F airplanes. The NPRM published in the **Federal Register** on May 10, 2016 (81 FR 28770). The proposed AD would have required replacement of the fuel pump housing electrical connector or replacement of the fuel pump housing; repetitive inspections for proper operation of the fuel pump, and corrective actions if necessary; and revising the maintenance or inspection program to incorporate new airworthiness limitations. The proposed AD also would have required, for certain airplanes, a general visual inspection of the protective cap and replacement if necessary. The NPRM was prompted by results from fuel system reviews conducted by the manufacturer and multiple reports of fuel pump housing electrical connector failures related to ingress of airplane fluids. The proposed actions were intended to prevent failure of the fuel pump housing electrical connector, which could result in a potential ignition source in a fuel tank and consequent fire or explosion.

Actions Since the NPRM Was Issued

Since we issued the NPRM, we have determined that the identified unsafe condition is adequately addressed by existing actions.

Comments

We gave the public the opportunity to participate in considering the NPRM. The following presents the comments received on the proposal and the FAA's response to each comment. Multiple commenters (Boeing, FedEx, United Parcel Service (UPS), and Lufthansa Cargo) requested certain changes to the NPRM that are considered moot in light of this withdrawal.

Requests To Withdraw the NPRM

UPS stated that the unsafe condition identified in the NPRM is addressed by Boeing Service Bulletin MD11–28–145, dated July 15, 2014 (installation of sealed terminal lugs on the existing GEN 1 fuel pump connector), in combination with repetitive inspections, which accomplishes the same intent as having installed the GEN 4 fuel pump connector. UPS stated that AD 2016–04–16, Amendment 39–18410 (81 FR 12806, dated March 11, 2016) (''AD 2016–04–16''), also addresses issues with the fuel system. UPS concluded that sealing of the current GEN 1 fuel pump connector via Boeing Service Bulletin MD11–28–145, dated July 15, 2014, in conjunction with the installation of the fault current detectors installed via Boeing Alert Service Bulletin MD11–28A133, dated June 5, 2014 (referenced as an appropriate source of service information in AD 2016–04–16), including a repetitive 24-month inspection of the connectors as required by paragraph (j) of AD 2016–04–16, addresses the unsafe condition described by the NPRM. UPS stated that, furthermore, the installation of the ''uncommanded on'' system via Boeing Service Bulletin MD11–28–137, dated June 24, 2014 (referenced as an appropriate source of service information in AD 2016–04–16), provides an additional level of safety in all pump positions where the tanks normally empty and can potentially support a combustible environment. UPS stated that the other pump positions on the airplane remain submerged in fuel, thus not providing a combustible environment.

FedEx stated that according to the fire pyramid or fire triangle, three elements—oxygen, fuel (jet fuel), and heat (ignition)—are needed in order to have fire or explosion. FedEx noted that all of the main fuel pumps on MD11/DC10 airplanes are covered by fuel during all flight phases. FedEx stated that these pumps do not meet the aforementioned condition where fuel vapors are present surrounding the pump. FedEx remarked that only pumps in fuel tanks that become empty during flights, *i.e.,* auxiliary tanks and tail tanks, should be affected by the proposed AD. Based on this logic, FedEx concluded that the proposed AD should mandate the replacement of only the connector assemblies in any fuel tank that might normally be empty during flight. FedEx noted that AD 2016–04–16 has already addressed this safety concern and required the installation of fault current detectors in all fuel pumps. FedEx also noted that AD 2002–13–10, Amendment 39–12798 (67 FR 45053, dated July 8, 2002), requires repetitive inspections until a new connector assembly is certified.

We infer that FedEx and UPS are requesting we withdraw the NRPM because those commenters stated that the identified unsafe condition is already addressed.

We agree to withdraw the NPRM because the identified unsafe condition is adequately addressed by existing actions. When we issued the NPRM, we had determined that the NPRM was necessary to comply with the regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Subsequently, we have determined the fuel pump connector redesign/improvement issue is adequately addressed by the actions required by AD 2016–04–16. The risk of the unsafe condition developing during the remaining life of the airplanes identified in the applicability of the proposed AD (*e.g.,* the TriJet fleet) has been greatly reduced by the installation of additional ignition prevention design features such as fault current detectors, automatic pump shutoff, and uncommanded dry running detection systems, which are mandated by AD 2016–04–16. The risk of a fuel tank explosion in a Trijet airplane with low flammability exposure time fuel tanks is not foreseeable.

We are considering further rulemaking to revise AD 2016–04–16 to include an optional replacement, *i.e.,* installing the new connectors introduced in Boeing Service Bulletin DC10–28–264, dated May 15, 2015, and Boeing Service Bulletin MD11–28–146, dated May 15, 2015, as specified in the NPRM. Accomplishing this option would end the 24-month repetitive inspections required by paragraph (j) of AD 2016–04–16 for that airplane.

FAA's Conclusions

Upon further consideration, we have determined that the NPRM is not necessary to address the identified safety concern. Accordingly, the NPRM is withdrawn.

Withdrawal of the NPRM does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Authority for This Rulemaking

This withdrawal of an NPRM is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

List of Subjects in 14 CFR Part 39

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

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2016–6417, Product Identifier 2015–NM–134–AD, which was published in the **Federal Register** on May 10, 2016 (81 FR 28770).

Issued in Renton, Washington, on August 2, 2017.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–16775 Filed 8–10–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Subtitle A and Chapters I Through VII

[Docket ID: ED–2017–OS–0074]

Evaluation of Existing Regulations

AGENCY: Office of the Secretary, Department of Education.

ACTION: Request for comments; extension of comment period.

SUMMARY: On June 22, 2017, we published in the **Federal Register** a request for input on regulations that may be appropriate for repeal, replacement, or modification. That request established a 60-day comment period beginning on June 22, 2017, and closing on August 21, 2017. We are extending the public comment period for 30 days, until September 20, 2017.

DATES: The comment period for the request for comments published on June 22, 2017 (82 FR 28431), is extended. We must receive your comments on or before September 20, 2017.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''Help'' tab.

Postal Mail, Commercial Delivery, or Hand Delivery: The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments in response to this request, address them to Hilary Malawer, 400 Maryland Avenue SW., Room 6E231, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For further information on this document, please contact Hilary Malawer, Assistant General Counsel, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., Room 6E231, Washington, DC 20202. Telephone: (202) 401–6148 or by email: *Hilary.Malawer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 22, 2017, in accordance with Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' we published in the **Federal Register** a request for input on regulations that may be appropriate for repeal, replacement, or modification (82 FR 28431). That request established a 60-day comment period beginning on June 22, 2017, and closing on August 21, 2017. To ensure that all interested parties are provided ample time and opportunity to submit comments, we are extending the public comment period for an additional 30 days. Written comments must be submitted to us no later than September 20, 2017.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 7, 2017.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2017–16876 Filed 8–10–17; 8:45 am]

BILLING CODE 4000–01–P

Notices

Federal Register

Vol. 82, No. 154

Friday, August 11, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0054]

Availability of an Environmental Assessment for Field Testing of a Vaccine for Use Against Canine Lymphoma

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purposes of field testing, and then to field test, an unlicensed Canine Lymphoma Vaccine, Live Listeria Vector. Based on the environmental assessment, risk analysis, and other relevant data, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment. We are making the documents available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 11, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0054.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0054, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0054* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information redacted), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is authorized to promulgate regulations designed to ensure that veterinary biological products are pure, safe, potent, and efficacious before a veterinary biological product license may be issued. Veterinary biological products include viruses, serums, toxins, and analogous products of natural or synthetic origin, such as vaccines, antitoxins, or the immunizing components of microorganisms intended for the diagnosis, treatment, or prevention of diseases in domestic animals.

APHIS issues licenses to qualified establishments that produce veterinary biological products and issues permits to importers of such products. APHIS also enforces requirements concerning production, packaging, labeling, and shipping of these products and sets standards for the testing of these products. Regulations concerning veterinary biological products are contained in 9 CFR parts 101 to 124.

A field test is generally necessary to satisfy pre-licensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from APHIS, as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS considers the potential effects of this product on the safety of animals, public health, and the environment. Based upon a risk analysis and other relevant data, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Antelope Valley Bios, Inc.

Product: Canine Lymphoma Vaccine, Live Listeria Vector.

Possible Field Test Locations: Arizona, California, Connecticut, Delaware, Kansas, Maryland, Massachusetts, Missouri, Nevada, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, and Texas.

This list of possible field test locations includes States with veterinary clinics or oncology centers that will treat dogs, as well as States with resident dogs that receive treatment in another State then return home.

The above-mentioned product consists of a highly attenuated *Listeria monocytogenes* strain that expresses a human survivin fusion protein. It induces a strong cell-mediated immune response as an aid in the treatment of dogs with lymphomas. It will be administered only in a veterinary clinic or veterinary oncology center by trained personnel.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

We are publishing this notice to inform the public that we will accept written comments regarding the EA from interested or affected persons for a period of 30 days from the date of this notice. Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the associated product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following satisfactory completion of the field test, provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 7th day of August 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–16977 Filed 8–10–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Chequamegon-Nicolet National Forest, Forest Service, Department of Agriculture.

ACTION: Notice of Proposed New Fee Sites.

SUMMARY: The Chequamegon-Nicolet National Forest is proposing new recreation fee sites. The Chequamegon-Nicolet's proposal includes: A $75 nightly fee for the Franklin Lake Caretaker Cabin, and adding nine day-use sites to the Forest's day-use fee program. Sites proposed are: Ada Lake Beach, Bear Lake Beach, Bear Lake Boat Landing, Beck Road Trailhead, Block House Boat Landing, Gordon Lake Beach, Mondeaux Pines Picnic Site, Smith Rapids Picnic Area and Wanoka Trailhead.

Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance and market assessment. These fees are proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance and improvements to the facilities within the recreation areas.

An analysis of nearby recreation facilities with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area.

DATES: Comments will be accepted through September 5. New fees would begin May 2018.

ADDRESSES: Paul I.V. Strong, Forest Supervisor, Chequamegon-Nicolet National Forest, 500 Hanson Lake Road Rhinelander, WI 54501

FOR FURTHER INFORMATION CONTACT: Hilary Markin, Public Affairs Officer, 715–362–1354. Information about these and other proposed fee changes can also be found on the Chequamegon-Nicolet National Forest Web site: *https://www.fs.usda.gov/CNNF*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, P.L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

All proposed day-use sites have the six amenities required under the Federal Lands Recreation Enhancement Act and are similar to other fee sites on the Chequamegon-Nicolet National Forest. Franklin Lake Caretakers Cabin is a unique overnight opportunity not provided elsewhere on the forest. These proposed new fees are part of a larger fee proposal that includes campground increases and a change in the price of the annual day-use fee. For more information on these sites and the full proposal, visit *https://www.fs.usda.gov/CNNF/.*

Dated: July 18, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16941 Filed 8–10–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nevada and Placer Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nevada and Placer Counties Resource Advisory Committee (RAC) will meet in Truckee, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act of 2000 (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcwUAAS.*

DATES: The meeting will be held on Thursday, August 24, 2017, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Truckee Ranger Station, Conference Room, 10811 Stockrest Springs Road, Truckee, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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 at Truckee Ranger Station.

FOR FURTHER INFORMATION CONTACT: Michael Woodbridge, RAC Coordinator, by phone at 530–478–6205 or via email at *mjwoodbridge@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Welcome and orientation of members,
2. Federal Advisory Committee Act overview,
3. Development of project ranking citeria and voting process,
4. Elect a RAC chairperson,
5. Project proponent presentations, and
6. Review and selection of project proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing at least one week prior to the meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Michael Woodbridge, RAC Coordinator, 631 Coyote Street, Nevada City, California 95959; by email to *mjwoodbridge@fs.fed.us,* or via facsimile to 530–478–6109.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 17, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16936 Filed 8–10–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Mississippi Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Mississippi Resource Advisory Committee (RAC) will meet in Meadville, Mississippi. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following Web site: *https://www.fs.usda.gov/mississippi/.*

DATES: The meeting will be held on September 19, 2017, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Franklin County Public Library, 106 First Street, Meadville, Mississippi.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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 at Homochitto Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Bill Meriwether by phone at 601–384–5876 or via email at *bdmeriwether@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Call to order and welcome new members,
2. Elect a new chairperson,
3. Updates on RAC,
4. Title II Funds availabile for projects,
5. Discussion project proposals and make recommendations, and
6. Public comments.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 14, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Bill Meriwether, RAC Coordinator, Homochitto Ranger District, 1200 Highway 184 East, Meadville, Mississippi 39653; by email to *bdmeriwether@fs.fed.us,* or via facsimile to 601–384–2172.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Leslie Weldon,

Deputy Chief, National Forest System.

[FR Doc. 2017–16943 Filed 8–10–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nevada and Placer Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nevada and Placer Counties Resource Advisory Committee (RAC) will meet in Truckee, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act of 2000 (the Act) as reauthorized by the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcwUAAS.*

DATES: The meeting will be held on Thursday, August 17, 2017, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Truckee Ranger Station, Conference Room, 10811 Stockrest Springs Road, Truckee, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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 at Truckee Ranger Station.

FOR FURTHER INFORMATION CONTACT: Michael Woodbridge, RAC Coordinator, by phone at (530) 478–6205 or via email at *mjwoodbridge@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Welcome and oriententation of members,
2. Federal Advisory Committee Act overview,
3. Development of project ranking citeria and voting process,
4. Elect a chairperson,
5. Project proponent presentations, and
6. Review and selection of project proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing at least one week prior to the meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Michael Woodbridge, RAC Coordinator, 631 Coyote Street, Nevada City, California 95959; by email to *mjwoodbridge@fs.fed.us,* or via facsimile to 530–478–6109.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 17, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16942 Filed 8–10–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA

ACTION: Notice

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under our regulations. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions provide information on the procedures to comment, object or appeal, and establish the date that the Forest Service will use to determine if comments or appeals/objection were timely.

DATES: Publication of legal notices in the listed newspapers will begin on or after July 2017. The list of newspapers will remain in effect until June 2018, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kris Rutledge, Regional Planning Specialist, Intermountain Region, 324 25th Street, Ogden, UT 84401 and phone (801) 625–5146.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR 214, 219, and 218 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR 214, 219 and 218. In general, the notices will identify: the decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals/objection. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal/objection period. The newspapers to be used are as follows:

Regional Forester, Intermountain Region

Regional Forester decisions affecting National Forests in Idaho: *Idaho Statesman*

Regional Forester decisions affecting National Forests in Nevada: *Reno Gazette-Journal*

Regional Forester decisions affecting National Forests in Wyoming: *Casper Star-Tribune*

Regional Forester decisions affecting National Forests in Utah: *Salt Lake Tribune*

Regional Forester decisions that affect all National Forests in the Intermountain Region: *Salt Lake Tribune*

Ashley National Forest

Ashley Forest Supervisor decisions: *Vernal Express*

District Ranger decisions for Duchesne, Roosevelt: *Uintah Basin Standard*

Flaming Gorge District Ranger for decisions affecting Wyoming: *Rocket Miner*

Flaming Gorge and Vernal District Ranger for decisions affecting Utah: *Vernal Express*

Boise National Forest

Boise Forest Supervisor decisions: *Idaho Statesman*

Cascade District Ranger decisions: *The Star-News*

Emmett District Ranger decisions: *Messenger-Index*

District Ranger decisions for Idaho City and Mountain Home: *Idaho Statesman*

Lowman District Ranger decisions: *Idaho World*

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor and District Ranger decisions: *Casper Star-Tribune*

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal*

Caribou-Targhee Forest Supervisor decisions for the Targhee portion: *Post Register*

District Ranger decisions for Ashton, Dubois, Island Park, Palisades and Teton Basin: *Post Register*

District Ranger decisions for Montpelier, Soda Springs and Westside: *Idaho State Journal*

Dixie National Forest

Dixie Forest Supervisor decisions: *The Spectrum*

District Ranger decisions for Cedar City, Escalante, Pine Valley and Powell: *The Spectrum.*

Fremont (formerly Teasdale) District Ranger decisions: *Richfield Reaper*

Fishlake National Forest

Fishlake Forest Supervisor and District Ranger decisions: *Richfield Reaper*

Humboldt-Toiyabe National Forest

Humboldt-Toiyabe Forest Supervisor decisions that encompass all or portions of both the Humboldt and Toiyabe National Forests: *Reno Gazette-Journal*

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press*

Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal*

Austin District Ranger decisions: *The Battle Mountain Bugle*

Bridgeport and Carson District Ranger decisions: *Reno Gazette-Journal*

Ely District Ranger decisions: *The Ely Times*

District Ranger decisions for Jarbidge, Mountain City and Ruby Mountains: *Elko Daily Free Press*

Santa Rosa District Ranger decisions: *Humboldt Sun*

Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal*

Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News*

Manti-La Sal National Forest

Manti-La Sal Forest Supervisor decisions: *Sun Advocate*

Ferron District Ranger decisions: *Emery County Progress*

Moab District Ranger decisions: *Times Independent*

Monticello District Ranger decisions: *San Juan Record*
Price District Ranger decisions: *Sun Advocate*
Sanpete District Ranger decisions: *Sanpete Messenger*

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman*
Council District Ranger decisions: *Adams County Record*
District Ranger decisions for Krassel, McCall and New Meadows: *Star News*
Weiser District Ranger decisions: *Signal American*

Salmon-Challis National Forest

Salmon-Challis Forest Supervisor decisions for the Salmon portion: *The Recorder-Herald*
Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis Messenger*
District Ranger decisions for Lost River, Middle Fork and Challis-Yankee Fork: *The Challis Messenger*
District Ranger decisions for Leadore, North Fork and Salmon-Cobalt: *The Recorder-Herald*

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News*
District Ranger decisions for Fairfield and Minidoka: *The Times News*
Ketchum District Ranger decisions: *Idaho Mountain Express*
Sawtooth National Recreation Area: *The Challis Messenger*

Uinta-Wasatch-Cache National Forest

Forest Supervisor decisions for the Uinta portion, including the Vernon Unit: *Provo Daily Herald*
Forest Supervisor decisions for the Wasatch-Cache portion: *Salt Lake Tribune*
Forest Supervisor decisions for the entire Uinta-Wasatch-Cache: *Salt Lake Tribune*
District Ranger decisions for the Heber-Kamas, Pleasant Grove and Spanish Fork Ranger Districts: *Provo Daily Herald*
District Ranger decisions for Evanston and Mountain View: *Uinta County Herald*
District Ranger decisions for Salt Lake: *Salt Lake Tribune*
District Ranger decisions for Logan: *Logan Herald Journal*
District Ranger decisions for Ogden: *Standard Examiner*

Dated: July 18, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16939 Filed 8–10–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northern New Mexico Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northern New Mexico Resource Advisory Committee (RAC) will meet in Santa Fe, New Mexico. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following Web site: *https://www.fs.usda.gov/main/santafe/workingtogether/advisorycommittees.*

DATES: The meeting will be held on August 29–30, 2017, from 9:00 a.m. to 4:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Santa Fe National Forest (NF) Supervisor's Office, 11 Forest Lane, Santa Fe, New Mexico.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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 at the Santa Fe NF Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Reuben Montes, RAC Coordinator, by phone at 505 438–5356 or via email at *rmontes@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend projects proposals for Title II funds

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 25, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Reuben Montes, RAC Coordinator, Sante Fe NF Supervisor's Office, 11 Forest Lane, Santa Fe, New Mexico 87508; by email to *rmontes@fs.fed.us,* or via facsimile to 505 438–5391.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 17, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16938 Filed 8–10–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ozark-Ouachita Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ozark-Ouachita Resource Advisory Committee (RAC) will meet in Russellville, Arkansas. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following Web site: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcwBAAS.*

DATES: The meeting will be held on August 22, 2017, beginning at 2:00 p.m., Central Standard Time.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Ozark-St. Francis National Forests (NF) Supervisor's Office, 605 West Main, Russellville, Arkansas. Participants who would like to attend by teleconference please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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 at Ouachita NF Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Caroline Mitchell, RAC Coordinator, by phone at 501–321–5318 or via email at *carolinemitchell@fs.fed.us;* or Terry Krasko, Designated Federal Officer, by phone at 479–964–7234 or via email at *tkrasko@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend project proposals for Title II funds.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 15, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Caroline Mitchell, RAC Coordinator, Ouachita NF Supervisor's Office, Post Office Box 1270, Hot Springs, Arkansas; or via facsimile to 501–321–5399.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: July 17, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16937 Filed 8–10–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Rescission of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on frozen warmwater shrimp from Thailand for the period February 1, 2016, through January 31, 2017, based on the timely withdrawal of all requests for review.

DATES: Applicable August 11, 2017.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4682 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2017, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on frozen warmwater shrimp from Thailand for the period February 1, 2016, through January 31, 2017.[1] In February 2017, the Department received timely requests, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), to conduct an administrative review of this antidumping duty order from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the American Shrimp Processors Association (ASPA), and certain individual companies.[2] Based upon these requests, on April 10, 2017, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation listing 159 companies for which the Department received timely requests for review.[3]

In July 2017, all parties timely withdrew their requests for an administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. As noted above, all parties withdrew their requests for review by the 90-day deadline. Accordingly, we are rescinding the administrative review of the antidumping duty order on frozen warmwater shrimp from Thailand covering the period February 1, 2016, through January 31, 2017.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 9709 (February 8, 2017).

[2] *See* Good Luck Product Co., Ltd.'s (Good Luck's) February 16, 2017, Request for Administrative Review; Petitioner's February 23, 2017; Request for Administrative Review; May Ao Foods Co., Ltd./A Foods 1991 Co., Ltd.'s (collectively, Mayao's), Ongkorn Cold Storage Co., Ltd./Thai-Ger Marine Co., Ltd.'s (Ongkorn/Thai-Ger's), Thai Royal Frozen Food Co., Ltd.'s (Thai Royal's), Thai Union Frozen Products Public Co. Ltd.'s/Thai Union Seafood Co., Ltd.'s/Pakfood Public Company Limited/Asia Pacific (Thailand) Co., Ltd/Chaophraya Cold Storage Co. Ltd./Okeanos Co. Ltd./Okeanos Food Co. Ltd./Takzin Samut Co. Ltd.'s (collectively, Thai Union/Pakfood's), and Xian-Ning Seafood Co., Ltd.'s (Xian-Ning's) February 24, 2017, Requests for Administrative Review; and ASPA's and Charoen Pokphand Foods Public Company Limited's (CP Foods') February 28, 2017, Requests for Administrative Review.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 17188 (April 10, 2017).

[4] *See* CP Food's July 6, 2017, Withdrawal of Administrative Review Request; ASPA's, Petitioner's, Mayao's, Thai Union/Pakfood's, Ongkorn/Thai-Ger's, Thai Royal's, and Xian-Ning's July 7, 2017, Withdrawals of Administrative Review Request, and Good Luck's July 10, 2017, Withdrawal of Administrative Review Request.

regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: August 7, 2017.

James Maeder,

Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–16992 Filed 8–10–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review, in part, of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (Vietnam) for the period February 1, 2016 through January 31, 2017.

DATES: Applicable August 11, 2017.

FOR FURTHER INFORMATION CONTACT:
Irene Gorelik, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2017, based on timely requests for review of 55 companies by the Ad Hoc Shrimp Trade Action Committee (the petitioner) [1] and of 88 companies by the American Shrimp Processors Association (ASPA) [2] and various Vietnamese companies,[3] the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Vietnam covering the period February 1, 2016, through January 31, 2017.[4]

On July 7, 2017, Soc Trang Seafood Joint Stock Company withdrew its request for administrative review.[5] On July 7, 2017, the petitioner and ASPA withdrew their respective requests for an administrative review of Soc Trang Seafood Joint Stock Company and its various name iterations, as were listed in the *Initiation Notice*.[6] Subsequently, on July 10, 2017, the petitioner and ASPA also withdrew their respective requests for administrative review of Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd., Viet I-Mei Frozen Foods Co., Ltd., and Seavina Joint Stock Company and their various name iterations, as were listed in the *Initiation Notice*.[7] On July 10, 2017, Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. and Viet I-Mei Frozen Foods Co., Ltd. withdrew their respective requests for an administrative review; there are no remaining review requests on the record with respect to these companies.[8] Additionally, because Seavina Joint Stock Company did not request a review of itself, there are no remaining review requests for Seavina Joint Stock Company.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. Because the petitioner, ASPA, and the individual companies all withdrew their requests for administrative review within 90 days of the date of publication of the *Initiation Notice,* and no other interested party requested a review of these companies, the Department is rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1).[9] The administrative review remains active with respect to all other companies for whom a review was initiated.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period February 1, 2016, through January 31, 2017, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**, if appropriate.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary

[1] *See* Petitioner's Request for Administrative Review, dated February 24, 2017.

[2] *See* ASPA's Request for Administrative Review, dated February 28, 2017.

[3] *See* VASEP's Request for Administrative Review, dated February 27, 2017. *See also* Soc Trang Seafood Joint Stock Company's Request for Administrative Review, dated February 22, 2017; Viet I-Mei Frozen Foods Co., Ltd.'s Request for Administrative Review, dated February 28, 2017.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 17188 (April 10, 2017) (*Initiation Notice*).

[5] *See* Soc Trang Seafood Joint Stock Company's Submission, ''Stapimex Withdrawal of Request for Review,'' dated July 7, 2017.

[6] *See* Petitioners' Submission, ''Domestic Producers' Partial Withdrawal of Review Requests,'' dated July 7, 2017; and ASPA's Submission, ''Partial Withdrawal of Request for Administrative Review,'' dated July 7, 2017.

[7] *See* ASPA's Submission, ''Partial Withdrawal of Review Requests,'' dated July 10, 2017; and Petitioner's Submission, ''Partial Withdrawal of Review Requests,'' dated July 10, 2017.

[8] *See* Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. and Viet I-Mei Frozen Foods Co., Ltd.'s Submissions, ''Partial Withdrawal of Review Requests,'' dated July 10, 2017.

[9] Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd., and Quoc Viet Seaproducts Processing Trade and Import-Export Co., Ltd. (''Quoc Viet Co. Ltd.''); Seavina Joint Stock Company; Soc Trang Seafood Joint Stock Company (''STAPIMEX''); Viet I-Mei Frozen Foods Co., Ltd., and Viet I-Mei Frozen Foods Co. Ltd (''Viet I-Mei'').

information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 7, 2017.

James Maeder,

Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–16996 Filed 8–10–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Preliminary Results of Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 17, 2016, the Department of Commerce (the Department) initiated a changed circumstances review (CCR) of the antidumping duty order on glycine from the People's Republic of China (PRC). The Department preliminarily determines that Salvi Chemical Industries Ltd. (Salvi) is eligible to participate in a certification process, because Salvi has demonstrated that glycine produced by Salvi is no longer processed from Chinese-origin glycine. Interested parties are invited to comment on these preliminary results.

DATES: Effective August 11, 2017.

FOR FURTHER INFORMATION CONTACT: Madeline Heeren, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9179.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2012, the Department published its final anti-circumvention inquiry determination, where the record indicated that Salvi was processing Chinese glycine and labeling it to be of Indian origin.[1] The Department determined that glycine processed in India of Chinese origin does not change country of origin, and, therefore, Salvi had circumvented the *Order.*[2] As part of our determination, we stated that Salvi could not take part in a certification process, whereby Salvi's importers could certify that they had not imported Chinese-origin glycine and would not be subject to the antidumping duty rate for Chinese glycine.[3] Additionally, we stated that Salvi could also request a CCR if it could show that its exports of glycine to the United States were not processed from Chinese-origin glycine.[4] On July 18, 2016, the Department received a request from Salvi to initiate a CCR in order for the Department to determine that the glycine produced by Salvi is no longer processed from Chinese-origin glycine.[5] Additionally, Salvi requested that the Department determine that importers of glycine from Salvi are eligible to participate in a certification process.[6] On November 16, 2017, the Department initiated this CCR, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.216(d), upon finding that there is sufficient information to warrant a review of the *Order.*[7]

Scope of the Order

The product covered by this antidumping duty order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This proceeding includes glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS).[8] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.[9]

Methodology

We are conducting this CCR in accordance with section 751(b)(1) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[10] A list of topics in the Preliminary Decision Memorandum is included as an appendix to this notice.

The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Department's Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Changed Circumstances Review

We preliminarily determine that, since the *Circumvention Notice* and Final Scope Ruling were issued, Salvi has demonstrated that glycine produced by Salvi is no longer processed from Chinese-origin glycine.

If the Department upholds these preliminary results in the final results, we will notify U.S. Customs and Border Protection and allow Salvi's importers of subject merchandise to certify that the glycine being produced and

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[1] *See* Memorandum, ''Final Scope Ruling Concerning the Antidumping Duty Order on Glycine from the People's Republic of China,'' dated December 3, 2012 (Final Scope Ruling) at 14.

[2] *See Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order,* 77 FR 73426 (December 10, 2012) (*Circumvention Notice*) and accompanying Issues and Decision Memorandum for the Final Determination of the Anti-Circumvention Inquiry of the Antidumping Duty Order on Glycine from the People's Republic of China; *see also Antidumping Duty Order: Glycine from the People's Republic of China,* 60 FR 16116 (March 29, 1995) (*Order*); *see also* Final Scope Ruling.

[3] *See Circumvention Notice* and Final Scope Ruling.

[4] *See Circumvention Notice.*

[5] *See* Letter, ''Glycine from the People's Republic of China: Request for Changed Circumstances Review,'' dated July 18, 2016.

[6] *Id.*

[7] *See Glycine from the People's Republic of China: Initiation of Antidumping Duty Changed Circumstances Review,* 81 FR 81064 (November 17, 2016).

[8] In separate scope rulings, the Department determined that: (a) D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order and (b) PRC-glycine exported from India remains the same class or kind of merchandise as the PRC-origin glycine imported into India. *See Notice of Scope Rulings and Anticircumvention Inquiries,* 62 FR 62288 (November 21, 1997) and *Circumvention Notice,* respectively.

[9] *See Order.*

[10] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Changed Circumstances Review of Glycine from the People's Republic of China,'' dated concurrently with this determination and hereby adopted by this notice (Preliminary Decision Memorandum).

exported is not processed Chinese-origin glycine.

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[11] Rebuttal briefs, limited to issues raised in the case briefs, may be filed by no later than five days after the deadline for filing case briefs.[12] Parties that submit case or rebuttal briefs are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] All briefs are to be filed electronically using ACCESS.[14] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.[15]

Any interested party may submit a request for a hearing to the Assistant Secretary of Enforcement and Compliance using ACCESS within 30 days of publication of this notice in the **Federal Register**.[16] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.[17] If a request for a hearing is made, parties will be notified of the time and date of the hearing, which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[18]

Final Results of the Review

In accordance with 19 CFR 351.302(b), the Department extended the deadline of the final results of this CCR to November 3, 2017.[19]

Notification to Parties

The Department is issuing and publishing these results in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221(c)(3)(i).

[11] *See* 19 CFR 351.309(c)(1)(ii). The Department has exercised its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for submission of case briefs.

[12] *See* 19 CFR 351.309(d)(1).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *See* 19 CFR 351.303(b) and (f).

[15] *See* 19 CFR 351.303(b).

[16] *See* 19 CFR 351.310(c).

[17] *Id.*

[18] *See* 19 CFR 351.310(d).

[19] *See* Memorandum, "Glycine from the People's Republic of China: Extension of Deadline for Final Results of Changed Circumstances Review," dated August 4, 2017.

Dated: August 7, 2017.

Carole Showers,

Executive Director, Office of Policy performing the duties of Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Results of the Changed Circumstances Review

[FR Doc. 2017–16994 Filed 8–10–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–828]

Certain Uncoated Paper From Indonesia: Rescission, in Part, of Antidumping Duty Administrative Review; 2015–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 9, 2017, the Department of Commerce (the Department) initiated an administrative review of the (AD) antidumping duty order on certain uncoated paper (uncoated paper) from Indonesia for two companies for the period August 26, 2015, through February 28, 2017. Based on a timely withdrawal of a request for review, we are now rescinding this administrative review with respect to one company, PT. Indah Kiat Pulp and Paper Tbk, PT. Pabrik Kertas Tjiwi Kirnja Tbk, and PT. Pindo Deli Pulp and Paper Mills (PD) (collectively, APP).

DATES: Applicable August 11, 2017.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Manuel Rey, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–5518, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2017, the Department published a notice of opportunity to request an administrative review of the AD order on uncoated paper from Indonesia.[1] On March 31, 2017, the Department received timely requests to conduct an administrative review of two companies: (1) PT. Indah Kiat Pulp and Paper Tbk, PT. Pabrik Kertas Tjiwi Kirnja Tbk, and Pindo Deli Pulp and Paper Mills (PD) (collectively, APP); and (2) PT Anugerah Kertas Utama, PT Riau Andalan Kertas, and APRIL Fine Paper Macao Offshore Limited (collectively APRIL).[2] Based upon these requests, on May 9, 2017, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published a notice of initiation of an administrative review covering the period August 26, 2015, through February 28, 2017, with respect to two companies.[3] On June 12, 2017, APP withdrew its request for an administrative review.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. APP timely withdrew its request for an administrative review of itself and no other party requested a review of this company. Accordingly, we are rescinding this review with respect to APP, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For APP, the company for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review,* 82 FR 12551 (March 6, 2017).

[2] *See* Letter from APP, "Certain Uncoated Paper from Indonesia: Request for Administrative Reviews," dated March 31, 2017; and Letter from APRIL, "Uncoated Paper from Indonesia," dated March 31, 2017.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 21513 (May 9, 2017), as corrected by *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 26444, 26445, 26451 (June 7, 2017).

antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751 and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 7, 2017.

James Maeder,

Senior Director performing the duties of the Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–16995 Filed 8–10–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF086

Atlantic Highly Migratory Species; Exempted Fishing Permits

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

ACTION: Notice of availability of a final environmental assessment to issue an exempted fishing permit.

SUMMARY: NMFS announces the availability of a Final Environmental Assessment (EA) analyzing the impacts of issuing an exempted fishing permit (EFP) to Dr. David Kerstetter of Nova Southeastern University to evaluate pelagic longline (PLL) catch and bycatch rates from within two different sub-areas in the northern portion of the East Florida Coast (EFC) Pelagic Longline (PLL) Closed Area (north and south of 29°50′ N. lat.) and compare those rates to rates obtained by authorized samplers from an area outside the EFC PLL Closed Area, with certain terms and conditions. The overall purpose of the research project is to evaluate the effectiveness of existing area closures at meeting current conservation and management goals under current conditions using standardized PLL gear on a specified number of commercial vessels. In response to terms and conditions established by NMFS, the research project is also structured to maximize the survival of shark species, collect data on shark species identification, collect data on PLL soak times to reduce bycatch mortality of species such as dusky sharks, and to increase the Agency's understanding of data poor shark stocks to improve future management of these species. NMFS considered public comments and decided to issue the EFP given the need to assess and compare current catch and bycatch rates during normal commercial fishing operations from areas inside and outside the EFC PLL Closed Area.

DATES: The Final EA will be available on August 11, 2017.

ADDRESSES: A copy of the Final EA may be requested by contacting Atlantic Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell at (301) 427–8503 or Rick Pearson at (727) 824–5399.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a notice of intent to issue EFPs, Scientific Research Permits, Letters of Acknowledgement, and Chartering Permits for Atlantic highly migratory species (HMS) in 2017 (81 FR 80646, November 16, 2016). Although that notice anticipated a variety of such applications, it also stated that occasionally NMFS receives applications for research activities that were not anticipated, or for research that is outside the scope of general scientific sampling and tagging of Atlantic HMS, or rarely, for research that is particularly controversial and that NMFS will provide additional opportunity for public comment, consistent with the regulations at 50 CFR 600.745 if that were to occur.

As discussed in the November 2016 notice of intent to issue EFPs and related permits, issuance of EFPs and related permits are necessary because HMS regulations (*e.g.,* fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) sometimes otherwise prohibit activities that could be undertaken for scientific data collection or other valuable purposes. Thus, under 50 CFR 635.32, and consistent with 50 CFR 600.745, the Director of the Office of Sustainable Fisheries may, through issuance of an EFP, authorize for certain purposes the target or incidental harvest of species managed under a Fishery Management Plan (FMP) or fishery regulations that would otherwise be prohibited. Among the purposes of EFPs are the ''conduct of scientific research, the acquisition of information and data, . . . [and] the investigation of bycatch, economic discard and regulatory discard.'' 50 CFR 635.32(a)(1). These permits exempt permit holders from the specific portions of the regulations (*e.g.,* fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) that may otherwise prohibit the collection of HMS for public education, public display, or scientific research. The terms and conditions of individual permits are unique. EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*).

NMFS closed the EFC area to PLL gear year-round in early 2001 (65 FR 47213, August 1, 2000). The closure was implemented to reduce bycatch and incidental catch of overfished and protected species by PLL fishermen who target HMS because there was a noticeable difference in the bycatch of some non-target species (mainly undersized swordfish) between the EFC area and open areas. At the time, Atlantic blue marlin, white marlin, sailfish, West Atlantic bluefin tuna, North Atlantic albacore tuna, and swordfish were overfished with overfishing occurring, and bycatch reduction was a component of rebuilding efforts. In particular, the United States was implementing a 1999 swordfish rebuilding plan, and the closure helped reduce bycatch of undersized swordfish. Several other laws required that NMFS address bycatch in the HMS fisheries, including the Endangered Species Act (ESA), which required reductions in sea turtle bycatch in the PLL fishery. National Standard 9 of the MSA also requires that fishery management plans minimize bycatch and bycatch mortality to the extent practicable.

The closure has been in place for more than 15 years now and, since 2001, a number of changes in stock status and fishery management measures have occurred. Specifically, North Atlantic swordfish and North Atlantic albacore tuna have been rebuilt, current international assessments of white marlin and West Atlantic sailfish indicate that overfishing is likely not occurring, and Western Atlantic bluefin tuna is not subject to overfishing, Additionally, the PLL fishery has been required since 2004 to use circle hooks instead of J-hooks to reduce sea turtle bycatch, and individual bluefin tuna quota (IBQ) allocations were implemented in the PLL fishery through Amendment 7 to the 2006 Consolidated HMS Fishery Management Plan in 2014 (79 FR 71509, December 2, 2014). Allowing limited access to the EFC PLL Closed Area for research purposes via an EFP would provide important data from the closed area under these changed conditions. NMFS has not obtained scientific data related to catch and bycatch rates from this area since 2010, and that data suggested that more research was needed due to the small sample size and poor spatial distribution of PLL sets in the research area conducted from 2008–2010. The data resulting from the research under this EFP would be used to assess current bycatch rates during typical commercial fishing operations and to evaluate the effectiveness of the closed area in continuing to reduce bycatch of non-target species (*e.g.,* billfish, undersized swordfish, prohibited species, and protected species). It would also provide more current data about the socio-economic impact of reduced catches of target species (swordfish and tunas) as a result of the closure, assess changes in species availability and distribution over time, and contribute to future stock assessments or other fishery management measures. Among the purposes of EFPs in the regulations are the ''conduct of scientific research, the acquisition of information and data . . ., [and] the investigation of bycatch, economic discard and regulatory discard,'' and such an EFP would be in furtherance of those purposes (§ 635.32(a)(1)).

NMFS received an application to conduct research from within two different sub-areas in the northern portion of the EFC PLL Closed Area (north and south of 29°50′ N. lat.) and compare those rates to rates obtained from one portion of the open area (for comparative purposes) and published a notice of availability in the **Federal Register** for a Draft EA and a 30-day public comment period (82 FR 4856; January 17, 2017). On February 15, 2017 (82 FR 10746), NMFS extended the public comment period from February 16, 2017, until March 29, 2017. The EFP application is available for review on the HMS Management Division's Web site at *http://www.nmfs.noaa.gov/sfa/hms/compliance/efp/index.html.*

Availability of a Final Environmental Assessment

NMFS announces the availability of a Final EA that analyzes the potential impacts to the human environment of granting this EFP application for experimental PLL fishing within two sub-areas of the EFC PLL Closed Area and one area outside the Closed Area. Among other analyzed impacts, the Final EA projects the annual catches of all HMS species, as well as some non-HMS species interactions, from within two sub-areas of the EFC PLL Closed Area and one open area that could be expected to occur. Additionally, the Final EA describes NMFS' rationale for the preferred alternative and other alternatives considered for this research and includes responses to public comments on the Draft EA. The Final EA may be found on the HMS Management Division's Web site at *http://www.nmfs.noaa.gov/sfa/hms/compliance/efp/index.html.*

Response to Comments

During the public comment period NMFS received over 500 comments. The majority of the comments were submitted by recreational fishing constituents opposed to the research project. These commenters stated that the current EFC Closed Area has been effective at rebuilding several fish stocks and increasing recreational fishing opportunities and that it should remained closed to maintain those results and benefits. Several environmental organizations were opposed to the research project primarily because of concerns about what they considered to be excessive levels of bycatch (sharks, billfish, and undersized swordfish) at the level of effort proposed by the EFP applicant, although some groups recognized the need for the research. Comments from HMS commercial fishing industry participants and organizations recognized the need for the research, but expressed reservations that only one company (Day Boat Seafood LLC) would conduct and benefit from the project. As described below, NMFS has made changes to the preferred alternative described in the Final EA, based in part on public comments.

A. Purpose & Need for Proposed Research Project

Comment 1: There is no legitimate need for the proposed research project because the effect of pelagic longline (PLL) fishing within the closed area (a nursery for juvenile swordfish) is well-known. Conditions have not changed in the last 15 years.

Response: The EFC PLL Closed Area has been in place for more than 15 years. Since 2001, a number of changes in stock status and fishery management measures have occurred. Specifically, North Atlantic swordfish has been rebuilt since 2009, current international assessments of white marlin and West Atlantic sailfish indicate that overfishing is likely not occurring, West Atlantic bluefin tuna is not subject to overfishing, and North Atlantic albacore tuna has been rebuilt. Additionally, the PLL fishery has been required since 2004 to use circle hooks instead of J-hooks to reduce sea turtle bycatch, and IBQ allocations were implemented in the PLL fishery through Amendment 7 to the 2006 Consolidated HMS FMP in 2014 (79 FR 71509, December 2, 2014). Environmental conditions may have changed thereby affecting migratory patterns and species distributions of Atlantic HMS. Allowing limited access to the EFC PLL Closed Area for research purposes through an EFP would provide important data from the closed area under all of these changed conditions. Thus, the purpose of the research project is to evaluate PLL catches and catch rates of target and non-target species within two sub-areas in the northern portion of the EFC PLL Closed Area and an open area to evaluate the effectiveness of existing area closures at meeting current conservation and management goals under current conditions using standardized PLL gear on a specified number of commercial vessels. Vessels participating in this project would be required to submit electronic logbooks at the end of each set to NOVA Southeastern University; and these data would be available to NMFS upon request. During the project period, 40 percent of all sets would be observed by NMFS-approved observers or scientific research staff. Finally, NMFS would review 100 percent of electronic video monitoring data for all sets conducted under this EFP. The research is of limited scope and would be conducted in only a portion of the EFC PLL Closed Area and, therefore, is not expected to negate the known conservation benefits of the closed area. Among the purposes of EFPs in federal regulations are ''the investigation of bycatch, economic discard and regulatory discard,'' and this EFP would be in furtherance of those purposes (50 CFR 635.32(a)).

Comment 2: This scientific research project will help to revitalize the U.S.

highly migratory species (HMS) PLL fishery. It holds significant promise in evaluating responsible and sustainable ways to catch a larger percentage of swordfish quota allocated to the United States by ICCAT. We support efforts to assess the efficacy of the current closed areas and integrate new technologies into fisheries and fisheries research. Since the closure was implemented, many technological advances have been made in gear modifications, vessel monitoring, and bycatch mitigation tools and techniques that largely mitigate the duration and/or size of the PLL closed areas. Over the 15 years that the closure has been in place, little research has been conducted to evaluate the effectiveness of the existing closure in meeting current conservation and management goals.

Response: In the short-term, this project is anticipated to provide economic benefit to the vessels participating in the research and could increase U.S. North Atlantic swordfish landings by approximately seven percent, thus more fully utilizing the U.S. North Atlantic swordfish quota. In the long-term, this project is anticipated to provide scientific fisheries data to assess current bycatch rates during normal commercial fishing operations and to evaluate the effectiveness of the closed area in continuing to reduce bycatch of non-target species (*e.g.,* billfish, undersized swordfish, prohibited species, and protected species). It will also provide current data about the socio-economic impact of reduced catches of target species (swordfish and tunas) as a result of the closure, electronic vessel monitoring, changes in species availability and distribution over time, and contribute to future stock assessments or other fishery management measures.

B. Support for Alternative 1 (No Action)

Comment 3: The recovery of a once-overfished species (swordfish) does not warrant returning to the kind of fishing that caused overfishing (excessive harvest of juveniles) and created the need for closures in the first place. If closing the EFC area to PLL gear resulted in a stock rebound, then that area is obviously vital to the overall Western Atlantic swordfish stock and should remain permanently closed to PLL vessels.

Response: Issuance of this EFP would not represent a return to the level of fishing that contributed to overfishing of swordfish (including excessive harvest of juveniles). Specifically, this project is limited to six PLL vessels and 720 sets (with 480 sets distributed between two sub-areas of the EFC PLL Closed Area and the remainder occurring in the open area). Additionally, a historical comparison of the PLL fishery prior to 2001 to current conditions indicates a very different situation. The overall number of vessels landing swordfish has declined from 168 in 2001 to 90 vessels in 2016/2017 (to date). There has also been a decline in the number of PLL hooks fished from 7.6 million to 5.8 million. Several other time/area closures and gear restricted areas (GRAs) have been implemented since 2001, including the Desoto Canyon, Charleston Bump, and Northeastern closures, and the Cape Hatteras and Gulf of Mexico GRAs. Circle hooks now are required throughout the PLL fishery and weak hooks are required in the Gulf of Mexico. Electronic video monitoring systems (EM) are installed and must be utilized on all PLL vessels. Finally the individual bluefin quota (IBQ) program, which requires that sufficient IBQ be possessed prior to PLL fishing, may further limit effort in some circumstances. As described in Section 8.5 of the 2016 HMS SAFE Report, the result is that reported numbers of swordfish kept and discarded, large coastal sharks kept, and BAYS tunas kept from 2005–2015 decreased by more than the predicted values developed in Regulatory Amendment 1 to the 1999 FMP. Reported discards of pelagic sharks and all billfish also declined by more than the predicted values developed in Regulatory Amendment 1 to the 1999 FMP (swordfish kept: −41 percent; swordfish disc. −63 percent; LCS kept: −93 percent; BAYS kept: −36 percent; pelagic sharks disc. −32 percent; billfish disc. −53 percent).

Comment 4: NMFS should support conservation and sustainable fishing activities related to recreational fishing. Please do not reverse the progress that the EFC PLL Closed Area has made to recreational fisheries.

Response: Fishing activity conducted under this EFP is not anticipated to reduce recreational fishing opportunities for Atlantic HMS or to adversely affect the stocks that are recreationally fished. Recreational fishermen will still be able to go fishing off the eastern Florida coast, and the limited activities in this EFP are not expected to result in negative effects for recreationally-fished stocks. Successful recreational and commercial PLL fishing activities currently occur simultaneously in many areas of the Atlantic, Gulf of Mexico, and U.S. Caribbean.

C. Range of Alternatives in Draft Environmental Assessment

Comment 5: The Draft EA has not evaluated or discussed a number of possible reasonable alternatives that would meet the purpose and the need of the research project and could have less adverse impact to the human environment. The duration of the research should be reduced and data combined with data from the research conducted in the closed area from 2008–2010. The research project should be limited to the minimal number of sets and hooks necessary for statistical validity.

Response: NMFS analyzed a reasonable range of alternatives that are feasible to accomplish the purpose and need of the project, which is to evaluate PLL catches and catch rates of target and non-target species within two sub-areas of the northern portion of the EFC PLL Closed Area and compare those to an open area. These included not issuing an EFP (no action) and a smaller and larger geographic area (Alternatives 2 and 3, respectively). NMFS also analyzed both the level of effort proposed by the applicant and a lesser amount of fishing effort commensurate with current fishing effort. In the Final EA and EFP, NMFS has reduced the number of sets authorized from the requested (and previously-preferred) level of 1,080 sets/year to 720 sets/year and the number of hooks per set from 750 hooks/set to 600 hooks/set. These numbers are commensurate with current levels of fishing effort by the participating vessels.

A reduction in the duration of the project would not provide adequate sampling over time to account for seasonal variations in environmental conditions that may occur and thus would not meet the purpose and need of the EFP. Analysis of research data collected from 2008–2010 was used to develop projections for this EFP; however, changes in conditions since 2008–2010 prevent the combination of data sets. Although the previous research did obtain some significant results, the sample size was small and the spatial distribution of sets was poor. These results suggested that additional research was needed, and the current project size was designed to correct the errors in sample size and spatial distribution in the previous research.

D. Utilization of U.S Swordfish Quota

Comment 6: There is an implication that if the United States does not catch every swordfish allotted to it, then it will lose its quota to other nations. Although this argument has been around for years, the United States has not lost any swordfish quota.

Response: The United States has, to date, been successful in protecting its North Atlantic swordfish quota at ICCAT, despite significant underharvest of the quota in recent years. The United States has argued that restrictions on the U.S. fishery, such as the required use of circle hooks, contributed significantly to the stock's rebuilding and that in light of those sacrifices and the strict conservation measures that benefitted all countries fishing on the stock, the United States should be given some time to revitalize its fishery. The threat of losing quota to other countries without the same conservation measures remains real, and NMFS continues to work with stakeholders to find ways to revitalize the stock while effectively managing the stock and other affected species. NMFS also is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota. In 2016, preliminary data indicate that approximately 37 percent of the U.S. swordfish baseline quota and 33 percent of the adjusted quota was landed. Thus, the commenter's suggestion that our concern is catching ''every fish'' mischaracterizes and understates the quota issue. In the short-term, this research project provides an additional opportunity to harvest the swordfish quota while providing economic benefit to the vessels participating in the research. It is projected to increase U.S. landings of swordfish by approximately seven percent, thus more fully utilizing the U.S. North Atlantic swordfish quota. This is not the primary reason for issuing the EFP, which will gather much-needed research from the EFC PLL Closed Area, but the project will help revitalize the North Atlantic swordfish fishery in the near-term.

E. Project Design

Comment 7: If this EFP is authorized, it would allow more than 1,000 longlines to be set per year, with over 750 hooks per longline. This means that over 2.25 million additional hooks will be floating off of Florida's coast.

Response: While the preferred alternative in the Draft EA would have authorized up to 1,080 sets per year with 750 hooks per longline, NMFS has modified the preferred alternative in the Final EA and EFP to limit the number of sets to be commensurate with current effort in the open area. NMFS would authorize 720 longline sets per year with up to 600 hooks per set under this EFP. Of those, 480 sets would be authorized to be deployed between two sub-areas in the EFC PLL Closed Area. Thus, 288,000 hooks would be authorized in the EFC PLL Closed Area. NMFS emphasizes that these hooks would not be ''additional'' hooks, as they would otherwise be deployed in areas currently open off Florida's east coast. This EFP only authorizes an amount of fishing effort commensurate with current levels of effort by participating vessels.

Comment 8: An initial adjustment period should be provided for fishermen participating in the study area to allow them to learn how to fish the Gulf Stream waters and 'normalize' techniques and catches before data are collected or used for the purposes of the study. This will allow data to be reflective of experienced fishing practices in the EFC PLL Closed Area, rather than being influenced by data collected while fishermen are learning how to fish in the area.

Response: The vessels and captains authorized to participate in this research project are experienced with fishing in areas immediately adjacent to the EFC PLL Closed Area. It would not be prudent to authorize fishing activities in the closed area without collecting the resultant data. NMFS believes that the participating captains will more quickly adjust their fishing practices while fishing under the provisions and terms and conditions of the EFP, rather being allowed to fish in the closed area without the EFP restrictions. In addition, pending annual review, if the EFP is authorized for an additional two years, variations between years could be recorded to see if changes in catch or bycatch rates occur due to improvements in fishing techniques.

Comment 9: Data collection during this study should be at as high a resolution as possible in order to determine fine-scale differences in catch and bycatch in time and space.

Response: Vessels participating in this project would be required to submit electronic logbooks, including date, time, location, and basic oceanographic conditions, at the end of each set to the research applicant at NOVA Southeastern University. These data would be available to NMFS upon request. The electronic logbook data would be audited every three months by the researcher who would compare randomly selected capture events in the electronic logbook to these events as recorded by electronic video data. NMFS will review one hundred percent of the electronic video data during the project. In addition, all existing reporting requirements would apply to participating vessels including logbook reporting and observer coverage requirements, which include latitude and longitude fields.

Comment 10: We recommend a maximum mainline length of 5 miles, allowable soak times no longer than 3–4 hours, and retrieval of the gear in the order in which it was deployed. Reducing the amount of time that hooks are in the water could enhance the survival of fish and other animals caught incidentally or that must be released according to regulation.

Response: The purpose of this study is to collect commercial fishery data from PLL vessels using normal fishing methods to effectively assess the difference between the closed and open area effects during such operations. Reducing the mainline length and soak times would not be representative of how commercial PLL vessels normally fish their gear. However, research investigating shorter mainline lengths, soak times, and gear retrieval techniques would be valuable and NMFS will consider these recommendations for future research.

F. Observer Coverage Rates and Vessel Monitoring

Comment 11: Some commenters stated that, if the project were to take place, it should have an unbiased observer coverage rate of 100 percent of all sets and that the EA must be supplemented with a defensible observer coverage rate to support the proposed project. Conversely, other commenters stated that the level of monitoring is excessive, because observer coverage is expensive, and a 33 percent coverage rate, in addition to 100 percent electronic video monitoring, may unnecessarily increase project costs and create an expensive precedent for future similar research.

Response: We recognize that authorizing access to the EFC PLL Closed Area by commercial fishing vessels to conduct research warrants a high degree of oversight and monitoring. NMFS believes that an observer coverage rate of 40 percent is appropriate, given that additional funding has been obtained to ensure that 100 percent of electronic video monitoring data for all sets conducted under this EFP would be reviewed and the costs of 100 percent observer coverage would be prohibitive. Furthermore, 100 percent observer coverage is unnecessary given the other monitoring measures in place for this project. Forty percent observer coverage in addition to these other measures will ensure sufficient monitoring and accurate data collection and verification.

Comment 12: Some commenters stated that this project should evaluate expanding the use of EM to all catch and bycatch species. Optimizing the configuration of EM for all catch could improve the reliability of data collected, especially for bycatch species like sharks, and ultimately allow for additional accountability at a reduced cost. Conversely, other commenters stated that this project is not sufficient in scale or scope to support any future decision by NMFS to use EM to record and analyze all catch and bycatch for the purpose of managing the PLL fishery as a whole in open areas. Yet other commenters stated that the project will also evaluate electronic logbooks for more streamlined and real-time reporting that combines catch data with oceanographic information. These data could help better understand where and under what conditions bycatch species occur and how fishermen can best avoid them.

Response: EM equipment became required on all HMS PLL vessels on June 1, 2015. Thus, NMFS has approximately two years' worth of experience using the equipment and analyzing the data. In this project, NMFS will be reviewing one hundred percent of electronic video (EM) data. Thus the project will provide additional experience and data that could help better evaluate the effectiveness and limitations of EM data in recording and identifying all species of catch and bycatch.

G. Project Participation

Comment 13: This EFP would give the applicant a distinct competitive market advantage with respect to some species, which other boats in the PLL fleet will not have during the project period.

Response: The research project is temporary and relatively short in duration (one year, with a possibility to renew annually twice pending annual review). The vessels fishing in this project would be fishing in the open areas absent this EFP, and there are costs associated with participation in this project. Some increased catch in target species is expected and will, in part, compensate the vessel owners for their participation in the project. Any financial advantages will be limited. The research applicant, not NMFS, selected and worked with the commercial fishing entity to develop this particular research project. Other entities may submit similar applications for EFPs at any time for consideration by NMFS. Such applications would be reviewed and evaluated for merit, based upon a sound scientific study design and other criteria.

Comment 14: This project should engage the participation of captains and crew with the greatest level of experience, including especially those that have prior experience fishing in this EFC area before it was closed. Failure to do this may generate catch and bycatch results that are not truly representative of the entire U.S. HMS PLL fleet. NMFS should allow other vessels or companies to apply and compete for the privilege to participate in the fishing activity specified in the EFP.

Response: The EFP application indicates that experienced PLL fishermen would participate in the project. These vessels and captains are currently fishing in areas immediately adjacent to the EFC PLL Closed Area. NMFS did not select the participating vessels. The EFP applicant and principal investigator selected the participants based upon their experience and the amount of fishing effort and methods needed to accomplish the objectives of the research.

H. Catch and Bycatch Impacts

Comment 15: Allowing PLL vessels in the EFC Closed Area will likely drive down stock abundance by killing dusky sharks, white sharks, undersized swordfish, marlin, sailfish, sea turtles, marine mammals, and many other species. PLL fishing is indiscriminate and was a major cause of the collapse of the swordfish fishery over 20 years ago.

Response: NMFS received many comments expressing concern about excessive levels of bycatch that could occur as a result of issuing the EFP. Given the size, scope, duration, and strict research protocols associated with the research project, NMFS does not anticipate that issuance of the EFP would result in any significant ecological economic impacts. The participating vessels are already fishing in areas that are currently open. The EFP would authorize the same amount of fishing effort compared to the baseline of normal operations that occur in open areas. There would be no overall increase in fishing effort as a result of the project, although fishing would occur in different areas and certain catches and interactions would be expected to increase. None of these increases are expected to adversely affect the stocks or to have significant environmental impacts. The management measures that have been implemented in the PLL fishery since 2001, (including, but not limited to, circle hooks, gear restrictions, careful release equipment and training, individual bluefin tuna quotas, catch quotas, prohibited species, and electronic video monitoring) in combination with the strict research protocols associated with the research project are expected to mitigate any unforeseen ecological impacts such as unexpected bycatch levels. Discards of blue and white marlin are projected to remain largely unchanged. The amount of sailfish catch projected for this research project (226 individual sailfish) is not expected to lead to overfishing or have negative effects on the stock, as the overall TAC recommended by ICCAT (Rec. 16–11) for this stock is 1,030 mt. Similarly, the amount of swordfish projected to be caught is not expected to lead to overfishing as it would remain well within the 2017 adjusted U.S. North Atlantic swordfish quota which is expected to be 3,359.4 mt (equivalent to the 2016 adjusted quota). Although discards (dead and alive) of undersized swordfish are projected to increase, this would not be desirable for the vessel captain who would likely change fishing areas and modify fishing techniques to avoid such bycatch. NMFS intends to monitor this project carefully, and will consider the amount of undersized swordfish and other bycatch captured during annual review of the EFP. NMFS has added additional terms and conditions to the EFP, including individual vessel limits, to address dusky shark and other shark bycatch. While a commenter noted concerns about white shark interactions, no interactions with white sharks are expected. If white shark interactions do occur, they are not expected to have ecological impacts as recent research indicates white shark populations are apparently increasing in abundance since the 1990s when a variety of conservation measures were implemented. This also would be considered during annual review of the EFP. Sea turtle bycatch is projected to be reduced and marine mammal bycatch is expected to remain unchanged.

Comment 16: Allowing research fishing in depths of 100 fathoms and less will likely lead to interactions with unwanted and undersized species.

Response: Historically, some fishermen working with the principal investigator have fished a portion of their longline gear in slower water on the west side of the Gulf Stream and a portion of their longline gear in the faster moving waters of the Gulf Stream. This allows their gear to ''swing'' with the current. The principal investigator has indicated that the slower water along the west side of the Gulf Stream is in proximity to the 100 fathom contour. A purpose of the project is to collect data about PLL catch and bycatch that will help address questions such as the one mentioned in this comment. The answer would not be known until fishery data are collected and analyzed through this research project.

I. Support for Bycatch Limits

Comment 17: The EFP must include bycatch limits, either individual vessels or fleetwide, for target and non-target finfish species including shark and billfish species. EFP investigators should be required to cease operations if and when any species-specific catch limit is reached.

Response: Bycatch limits are applied as a precautionary measure for certain shark species due to the current stock status of dusky sharks and problems of misidentification with silky and night sharks. Bycatch limits for other species are not necessary because of differences in stock status (*i.e.,* not overfished, no overfishing), low projected catches, or easier identification during monitoring. However, NMFS will closely monitor the catches during the project duration and has the ability to modify the conditions of the EFP, and to end the research project, to address bycatch as warranted.

Comment 18: The EFP must include limits on interactions, takes and catches of species protected under the ESA and/or the MMPA.

Response: Sea turtle interactions are projected to decline and marine mammal interactions are projected to remain the same under this EFP, versus if all fishing effort were in the open area. All existing ESA and MMPA requirements otherwise applicable to PLL fishing are applicable to the fishing activities conducted under this EFP. The PLL fishery is governed by the ITS contained in the 2004 PLL BiOp. Sea turtle interactions (all species) have remained well below the incidental take statement (ITS) established in the 2004 PLL BiOp since its implementation. With regards to marine mammals, the PLL fishery must comply with the Atlantic Large Whale Take Reduction Plan and the Pelagic Longline Take Reduction Plan. These plans include broad-based gear modifications and time/area closures.

Comment 19: What bycatch numbers will be deemed acceptable? The levels of acceptable bycatch must be at or below those achieved by the closures.

Response: Any bycatch derived from within the EFC PLL Closed Area under this EFP would be above the level achieved by the closure because there is currently no PLL fishing activity in the area. NMFS has not determined the level of bycatch that would be considered acceptable, except for dusky sharks which are overfished and may be confused with other shark species. A general benchmark for fish species would be the likely projected annual catch levels analyzed in chapter four of the Final EA. However, these would also need to be assessed on an event by event basis. NMFS, in cooperation with the principal investigator, would determine if the catch of a certain species was unusually large and/or unexpected. The use of electronic logbooks, 100 percent video monitoring, increased observer coverage (40 percent), and communication with the principal investigator would help enable this determination. Then, it would be necessary to assess whether the catch could lead to, or exacerbate, overfishing of the species. Extra precaution would be necessary for currently overfished species including blue and white marlin and certain shark species. Based upon this information, the principal investigator and NMFS would coordinate an appropriate response (*e.g.,* relocation, soak time reduction, temporary or permanent suspension of fishing activities). NMFS will closely monitor catches during the project duration and has the ability to modify the conditions of the EFP, and to end the research project, to address bycatch as warranted.

J. Economic Impacts

Comment 20: The issuance of an EFP would have an adverse indirect socio-ecological effect resulting from a reduction in catches of HMS and other species. This adverse indirect impact would affect recreational billfish anglers, recreational tournament operators, and all of those industries which are connected to the recreational fishery (marinas, tackle stores, boat manufacturers, etc.). The money spent on recreational fishing far outweighs any benefit commercial fishing may bring.

Response: Issuance of an EFP is not anticipated to cause or contribute to overfishing of HMS or other species as described in the ecological effects analysis in the Final EA. Recreational fishing for HMS is an important social and economic activity. Mandatory reporting of recreational swordfish and billfish landings became effective in 2001. However, a comparatively small amount of swordfish and billfish were reported as landed from recreational anglers in the state of Florida in 2016. Data indicate that 290 swordfish, 102 sailfish, 2 blue marlin, and 1 white marlin were reported landed. Reporting of releases is optional, but only 1 blue marlin was reportedly released in Florida in 2016. Collecting commercial fisheries data under this EFP is not anticipated to reduce the economic benefits of recreational fishing.

Comment 21: Data derived from the issuance of an EFP could benefit the U.S. PLL fleet. The PLL closures have had profound economic impacts on the fishery.

Response: This research project could benefit the management of all U.S. HMS fisheries by allowing for improved management decision making based upon current and accurate information.

Comment 22: The Draft EA does not provide adequate information and/or a determination whether a Finding of No Significant Impact (FONSI) can be made. The Draft EA determined that the proposed activity will have a potential adverse socioeconomic impact due to gear conflicts and a reduction in recreational catch. This adverse impact does not support a FONSI.

Response: A determination that there could be adverse indirect socio-economic impacts to the recreational fishing community does not, by itself, indicate that the overall impact of the research project is significant. NMFS anticipates that these impacts should be partially mitigated because the research area is located far offshore, and well north of where the vast majority of Florida anglers are concentrated. Also, the strict research protocols and limits associated with the research project should mitigate impacts on recreational anglers. Thus, the finding of no significant impact was warranted.

K. Gear Conflicts With Other Fisheries

Comment 23: There is an overlap of the areas in the EFP and areas utilized in the royal red shrimp, rock shrimp, golden crab, and golden tilefish fisheries. These fisheries employ trawl, trap, and bottom longline gear respectively that are not compatible with the presence of pelagic longlines. Similarly, PLL gear fished in the same area where recreational and commercial hook-and-line fishing activity is occurring for dolphin or wahoo could create user conflicts, both through potential interaction with the PLL gear as well as a real or perceived localized depletion of these and other pelagic species.

Response: This EFP would authorize a limited number of PLL sets by up to six vessels at one time in the project area. This level of fishing effort is not anticipated to result in a substantial number of interactions with fishing gears in other fisheries. These other fisheries also occur in other areas of the Atlantic and Gulf of Mexico where PLL fishing occurs, and these other fisheries occurred in the EFC area prior to its closure to PLL gear. In those areas and times, fishermen on the vessels have been able to communicate and work to minimize the potential for gear interactions. NMFS anticipates that this communication and coordination will continue to occur during the EFP project period.

L. Impacts on ESA & MMPA Listed Species

Comment 24: The Draft EA does not include a detailed assessment of the potential impacts of the proposed action on ESA-listed species or marine mammals. Interactions with marine mammals must be carefully considered by the agency to ensure that the project is consistent with the existing Take Reduction Plan for this fishery and the requirements of the MMPA to manage fisheries interactions with marine mammals.

Response: Interactions with listed species and marine mammals were considered by the agency to ensure that the research project is consistent with the existing Take Reduction Plan for this fishery and the requirements of the MMPA. As described in the response to Comment 18, all requirements otherwise applicable to PLL fishing are applicable to fishing activities conducted under this EFP. Although a limited amount of fishing effort under this EFP would occur in areas currently closed to PLL gear, the analysis in the EA shows that sea turtle interactions are projected to decline and marine mammal interactions are projected to remain the same under either Alternative 2 and Preferred Alternative 3 of this EFP, with effort relocated to the closed area versus if fishing effort were to occur solely in the open area. The level of fishing activity that would be authorized under this EFP in Preferred Alternative 3 does not represent any increase in fishing effort or methods other than those currently deployed in the U.S. PLL fishery, as analyzed in the 2004 PLL BiOp. Relocating part of the effort to the closed area does not alter that analysis. No additional take or quota use beyond that already authorized and analyzed in previous consultations on the PLL fishery is authorized by this permit. Similarly, the PLL fishery must comply with the Atlantic Large Whale Take Reduction Plan and the Pelagic Longline Take Reduction Plan. These plans include broad-based gear modifications and time/area closures. Additionally, the terms and conditions of the EFP require that any interactions with sea turtles or marine mammals must immediately be reported to the HMS Management Division, and the project terms and conditions may be altered or the project stopped if interactions are at problematic levels in relation to the established limits and protections.

Comment 25: The EFP should include a full discussion of consideration of reinitiating ESA Section 7 Consultation to consider the effect of the proposed EFP on the findings of the 2004 PLL Biological Opinion (BiOp).

Response: Fishing activity authorized under this EFP would be conducted using the same fishing methods and at the same level of fishing effort as currently exists outside of the project area. Furthermore, catches of sea turtles are projected to decrease as a result of this EFP. The 2004 PLL BiOp states that if the fishing type is similar, and the associated fishing effort does not represent a significant increase over the effort levels for the overall fishery considered in this BiOp, then issuance of some EFPs would be expected to fall within the level of effort and impacts considered in the BiOp. For example, issuance of an EFP to an active commercial vessel likely does not add additional effects than would otherwise accrue from the vessel's normal commercial activities. Thus, this research project is consistent with the findings of the 2004 BiOp.

M. Cumulative Impacts Assessment

Comment 26: NMFS has not demonstrated its methodology or Region of Influence (ROI) for conducting its cumulative impacts analysis for the proposed action. As the ROI for HMS includes the south Atlantic and the Gulf of Mexico (recent swordfish tag data from The Billfish Foundation shows juvenile swordfish migrating from the DeSoto Canyon to the Atlantic coast of south Florida), other actions in the ROI such as Department of Defense and offshore oil & gas operations should be addressed as part of the cumulative impacts analysis.

Response: Cumulative impacts are the impacts on the environment which result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7). The cumulative impacts assessment contained in the draft EA for this research project describes all past, present, and reasonably foreseeable future actions for all fish stocks interacting with PLL gear across the range of those stocks (or their region of influence) which, for many, includes the entire Atlantic Ocean and Gulf of Mexico. Although offshore oil and gas operations and Department of Defense activities may affect HMS, the incremental effect of authorizing a limited number of commercial PLL vessels that are currently fishing in open areas to fish and conduct research in two sub-areas of the EFC PLL Closed Area, when added to these other past, present, and reasonably foreseeable future actions, is not expected to produce adverse significant cumulative impacts.

N. Impacts on Dolphin Fishery

Comment 27: A reasonable trip limit of no more than 4,000 lbs of dolphin should be applied to the participating vessels while fishing in this area under the EFP. This will prevent the EFP fishery from using an excessive amount of the commercial dolphin quota before the rest of the PLL fleet has an opportunity when the Charleston Bump area opens on May 1st. Further, this will minimize conflicts with the interests of the recreational fishery. Finally, this is consistent with the trip limit currently applied to the commercial dolphin harvest when landings reach 75 percent of the commercial quota. NMFS should also implement a limit of 25,000 pound whole weight on the total amount of dolphin that can be landed with PLL gear from the EFC PLL Closed Area.

Response: Under 50 CFR part 622.274, if pelagic longline gear is on board a vessel, a person aboard such vessel may not fish for or retain a dolphin or wahoo in the EFC PLL Closed Area. An exemption from this regulation has been submitted to the Southeast Regional Office (SERO) of NMFS under their EFP requirements to enable vessels to retain dolphin and wahoo during research operations, subject to otherwise applicable commercial fishing restrictions for the stocks. As recommended by the South Atlantic Fishery Management Council (SAFMC), a dolphin and wahoo exemption has been approved by the SERO Regional Administrator pending approval of this EFP by the HMS Management Division. Participating vessels would be limited to a 4,000 pound whole weight trip limit for dolphin when any portion of the trip occurs in the EFC PLL Closed Area. Additionally, participating vessels would be limited to the existing 500-pound trip limit for wahoo specified at 50 CFR 622.278(a)(1)(i). All other commercial dolphin and wahoo regulations, including the requirement to be issued a commercial dolphin-wahoo permit, would also apply. The environmental effects of this exemption have been analyzed in the Final EA. NMFS has determined that issuance of the EFP should not affect dolphin or wahoo in any way not already considered and analyzed under the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic and it would not result in exceeding the annual catch limits for those species. Thus, the 25,000 pound whole weight total dolphin landing limit requested by the commenter is determined to not be necessary at this time.

Comment 28: If the Charleston Bump area continues to be closed from February 1st to April 30th, there should be no special access during that same time frame given to the area immediately south of the 31 °N. Lat. line where all the HMS are migrating from unless the Charleston Bump was reopened at the same time.

Response: The purpose of this research project is to evaluate PLL catches and catch rates of target and non-target species within a portion of the EFC PLL Closed Area on a year-round basis to evaluate the effectiveness of existing area closures at meeting current conservation and management goals. Therefore, prohibiting research activities in the area for three months would prevent the collection of important seasonal catch rate information that could potentially be used to address this issue in the future.

O. Essential Fish Habitat

Comment 29: The Draft EA notes that essential fish habitat (EFH) for HMS (including species targeted by PLL gear) exists within the EFC PLL Closed Area, but no EFH Assessment has been completed for the proposed action. NMFS must conduct an EFH Assessment in order to determine if the proposed action would adversely affect EFH. Both alternatives would co-occur within the Stetson Miami Terrace coral habitat area of particular concern (CHAPC) and Preferred Alternative 3 would also overlap with the Oculina Bank CHAPC. If PLL gear fished in these areas unintentionally comes into contact with the bottom, the gear may damage this fragile coral habitat. The Oculina Bank and Stetson Miami Terrance are considered EFH–HAPC.

Response: An EFH assessment has been conducted for the proposed and final actions. As stated in the EFH assessment in the Draft and Final EA, issuance of the EFP is not anticipated to have an impact on EFH. The only gear to be deployed is PLL gear which has minimal or no impact on EFH for HMS or other species. PLL gear is typically fished in the water column where it does not come into contact with the benthic substrate. Thus, no impacts to benthic habitat or other EFH are anticipated.

P. Suggestions for Additional Research

Comment 30: NMFS should develop a hook and line survey to collect important population dynamics information from recreational and for-hire anglers.

Response: NMFS appreciates this comment; however it is outside the scope of alternatives addressed in the Draft EA. NMFS notes that the current Marine Recreational Information Program (MRIP) collects some of this information.

Comment 31: NMFS should conduct research into shorter sets and soak-times for longlines and how they might enhance survival of incidentally-caught fish and undersize target fish.

Response: NMFS appreciates this comment and agrees that research investigating shorter mainline lengths, soak times, and gear retrieval techniques would be valuable. In a document entitled ''Atlantic HMS Management Based Research Needs and Priorities'' (2014), examining the feasibility of gear alternatives in Gulf of Mexico and Atlantic Ocean to reduce bycatch while maintaining target catch was identified as a high priority.

Description of Preferred Alternative in Final Environmental Assessment

The research conducted within the EFC PLL Closed Area and in the open area would be carried out by no more than six PLL vessels at any one time. An additional six ''backup'' vessels could be used to conduct research as replacements if any mechanical or technical issues arise on the other six vessels. The research project would be authorized for 12 months and, pending annual analysis review for any changed environmental conditions or impacts and of catches and catch rates of all species, as well as individual vessel performance, may be re-authorized for two additional 12-month periods. A maximum of 720 sets per year (12 months) would be authorized to occur between the six vessels, and sets would be distributed evenly between two sub-areas of the EFC PLL Closed Area and the open area. Each set would consist of a maximum of 600 16/0 or larger circle hooks. During the research project, 40 percent of sets occurring in both portions of the EFC PLL Closed Area and in the open area would be observed by scientific research staff or NMFS-approved observers.

The commercial vessels that would be participating in this EFP project are otherwise authorized to fish and, absent this EFP, would be conducting normal PLL fishing operations in open areas consistent with their past practices. NMFS conducted an analysis that compared projected catches if the vessels were to continue fishing only in open areas (*i.e.,* all effort in open areas) versus projected catches from fishing operations under the EFP (*i.e.,* 2/3 effort in closed areas and 1/3 effort in the open area). The analysis indicated that fishing operations under the EFP could result in comparatively higher interactions with dusky, silky, and night sharks, whether fishing occurred at the level requested by the applicant or at the reduced level commensurate with past fishing activity. Therefore, many of the terms and conditions in the EFP are structured to limit interactions with and maximize the survival of these shark species, collect data on shark species identification, collect data on PLL soak times to reduce bycatch mortality, such as dusky sharks, and to increase the Agency's understanding of these data poor stocks to improve future management of these species. The terms and conditions include:

- NMFS would review 100 percent of electronic monitoring data for 100 percent of sets occurring in both portions of the EFC PLL Closed Area and in the open area.
- After three dusky sharks are caught dead at haulback by a vessel participating in the EFP, that vessel or its replacement vessel would be required to reduce the soak time of the gear to no longer than 10 hours when conducting fishing operations under the EFP. If, after reducing the soak time to no longer than 10 hours, an additional three dusky sharks are caught dead at haulback, then that vessel or its replacement vessel would no longer be authorized to fish in the EFC PLL Closed Area under this EFP, if issued, for the remainder of the 12-month project period, unless otherwise permitted by NMFS.
- All live sharks caught but not being retained must be safely sampled (*e.g.,* fin clip) and photographed without removing the shark from the water. All fin clips and photographs would be sent to the Southeast Fisheries Science Center (SEFSC) for identification purposes.
- All sharks that are dead at haulback, including prohibited species, and all sharks being retained for sale must be biologically sampled (*i.e.,* vertebra and reproductive organs removed) to facilitate species identification and collection of life history information. All biological samples would be sent to an address specified by the SEFSC.

• Sets inside and outside of the two sub-areas of the EFC PLL Closed Area would be equipped with hook timers, in accordance with protocols established by NMFS, to determine when animals were captured and when mortality occurs. This will help determine appropriate PLL soak time to minimize dusky and other shark mortality.

• To assist in current research efforts on shortfin mako sharks, observers are requested to place a specified number of pop-up satellite archival tags (PSATS) on shortfin mako sharks that are released alive.

• NMFS will closely monitor the catches during the project duration and has the ability to modify the conditions of the EFP, and end the research project, to address bycatch as warranted.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: August 4, 2017.

Emily H. Menashes,

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

[FR Doc. 2017–16990 Filed 8–10–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF592

Marine Mammals; File No. 21158

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Robert Garrott, Ph.D., Montana State University, 310 Lewis Hall, Bozeman, MT 59717, has applied in due form for a permit to conduct research on Weddell seals (*Leptoncychotes weddellii*).

DATES: Written, telefaxed, or email comments must be received on or before September 11, 2017.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 21158 from the list of available applications.

These documents are also available upon written request or by appointment in the 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.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to continue long-term studies of the Erebus Bay, Antarctica, Weddell seal population to evaluate how temporal variation in the marine environment affects individual life histories and the population dynamics of long-lived mammal. Research involves the annual capture of up to 675 Weddell seal pups at 1–4 days after birth, flipper tagging, and release. A maximum of 150 of these pups would also receive a temperature recording flipper tag, be physically weighed, and have a skin biopsy taken for genetics when initially tagged. These pups would be re-captured again at 20 days of age to be weighed, and again at weaning for weighing and to remove the temperature tags. The applicant also proposes to capture up to 285 adults Weddell seals using the head-bagging technique to flipper tag previously untagged seals or replace lost or damaged tags of previously tagged individuals. An additional 100 previously tagged adult Weddell seals would be captured to obtain a skin biopsy for genetics. Up to 75 adult female Weddell seals would be photographed on the 3 occasions when their pup is weighed to obtained an estimate of the mother's mass through photogrammetry. An additional 15 females would be physically weighed when their pups were initially tagged and weighed. The applicant proposes to conduct up to eight mark-resight surveys, approaching animals to read their flipper tags. The applicant also requests incidental take of crabeater seals (*Lobodon carcinophagus*) and leopard seals (*Hydrurga leptonyx*) that may be unintentionally harassed. This permit would be valid for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 8, 2017.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–16985 Filed 8–10–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF596

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Post Data-Workshop Webinar Gulf of Mexico Gray Snapper; Public Meetings

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

ACTION: Notice of SEDAR 51 assessment webinar II for Gulf of Mexico gray snapper.

SUMMARY: The SEDAR 51 assessment process of Gulf of Mexico gray snapper will consist of a Data Workshop, a series of assessment webinars, and a Review Workshop.

DATES: The SEDAR 51 assessment webinar II will be held August 21, 2017 from 1 p.m.–3 p.m. Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar. SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366. Email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the assessment webinar I are as follows:

1. Using datasets and initial assessment analysis recommended from the Data Workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 2 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: August 7, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–16933 Filed 8–10–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF518

Marine Conservation Plan for Pacific Insular Areas Other Than American Samoa, Guam, and the Northern Mariana Islands; Western Pacific Sustainable Fisheries Fund

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of a Marine Conservation Plan (MCP) for Pacific Insular Areas other than American Samoa, Guam, and the Northern Mariana Islands.

DATES: This agency decision is valid from August 4, 2017, through August 3, 2020.

ADDRESSES: You may obtain a copy of the MCP, identified by NOAA–NMFS–2017–0077, from the Federal e-Rulemaking Portal, *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0077,* or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–725–5171.

SUPPLEMENTARY INFORMATION: Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary), and at the request and in consultation with the Council, to negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA). A PIAFA would allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, that is, in the EEZ around the Pacific Remote Island Areas (PRIA). The PRIA are Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, and Palmyra Atoll. Before entering into a PIAFA for the PRIA, the Council must develop and submit to the Secretary a 3-year MCP that details the uses for funds collected by the Secretary under the PIAFA. NMFS is the designee of the Secretary for MCP review and approval.

The Magnuson-Stevens Act requires any payments received under a PIAFA, and any funds or contributions received in support of conservation and management objectives for the PRIA MCP, to be deposited into the Western Pacific Sustainable Fisheries Fund (Fund) for use by the Council. Additionally, amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act for violations by foreign vessels occurring in the EEZ off the PRIA are deposited into the Fund for use by the Council. Section 204(e)(7)(C) of the Magnuson-Stevens Act also authorizes the Council to use the Fund to meet conservation and management objectives in the State of Hawaii, if funds remain after implementing the PRIA MCP.

An MCP must be consistent with the Council's fishery ecosystem plans (FEPs), identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned marine conservation projects. Although no foreign fishing in the PRIA is being considered at this time, the Council reviewed and approved the draft MCP for PRIA in June 2017 and sent the MCP to NMFS for review on July 7, 2017.

The PRIA MCP contains five conservation and management objectives, consistent with the PRIA and Pelagic FEPs:

1. Support quality research and monitoring to obtain the most complete scientific information available to assess

and manage fisheries within an ecosystem approach.

2. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council's decision-making process.

3. Promote regional cooperation to manage domestic and international fisheries.

4. Encourage development of technologies and methods to achieve the most effective level of monitoring, control, and surveillance, and to ensure safety at sea.

5. Support Western Pacific community demonstration projects and Western Pacific Community Development Program to promote participation and access to fisheries for eligible communities.

In addition, the PRIA MCP contains seven conservation and management objectives, consistent with the Hawaii FEP:

1. Support quality research and monitoring to obtain the most complete scientific information available to assess and manage fisheries within an ecosystem approach.

2. Promote an ecosystem approach to fisheries management including reducing bycatch in fisheries, minimizing impacts on marine habitats and protected species, and addressing climate change adaptation and mitigation.

3. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council's decision-making process.

4. Recognize the importance of island cultures and traditional fishing practices in managing fishery resources and foster opportunities for participation.

5. Promote responsible domestic fisheries development to provided long-term economic growth and stability by reducing foreign imports and increasing local seafood production.

6. Promote regional cooperation and capacity-building to manage domestic and international fisheries.

7. Encourage development of technologies and methods to achieve the most effective level of monitoring, control, and surveillance, and to ensure safety at sea.

Please refer to the MCP for planned projects and activities designed to meet each conservation and management objective, for the evaluative criteria, and for the priority rankings.

This notice announces that NMFS has reviewed the MCP for the PRIA, and has determined that it satisfies the requirements of the Magnuson-Stevens Act. Accordingly, NMFS has approved the MCP for the 3-year period from August 4, 2017, through August 3, 2020. This MCP supersedes the MCP previously approved for the period August 4, 2014, through August 3, 2017 (79 FR 44753, August 1, 2014).

Dated: August 8, 2017.

Emily H. Menashes,

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

[FR Doc. 2017–16988 Filed 8–10–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Patent Examiner Employment Application

ACTION: Proposed extension of an existing information collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on a proposed extension of an existing information collection: 0651–0042 (Patent Examiner Employment Application).

DATES: Written comments must be submitted on or before October 10, 2017.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0042 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to LaRita Jones, Chief of the Workforce Employment Division, Office of Human Resources, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–145; by telephone at 571–272–6196; or by email to *larita.jones@upsto.gov* with ''0651–0042 comment'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

In the current employment environment, information technology professionals and engineering graduates are in great demand. The USPTO is in direct competition with private industry for the same caliber of candidates with the requisite knowledge and skills to perform patent examination work. The use of automated online systems during recruitment allows the USPTO to remain competitive, meet hiring goals, and fulfill the agency's Congressional commitment to reduce the pendency rate for the examination of patent applications.

The USPTO uses the Monster Hiring Management (MHM) system to rapidly review applications for employment of entry-level patent examiners. Using MHM saves time by eliminating paper applications; reducing by several weeks the time Office of Human Resources staff need to spend processing and reviewing applications. Given the time sensitive hiring needs of the Patent Examining Corps, the MHM system provides increased speed and accuracy during the employment process.

The MHM online application collects supplemental information to an candidate's USAjobs application. This information assists the Human Resource Specialists and hiring managers in determining whether an applicant possesses the basic qualification requirements for the patent examiner position. From the information collected, the MHM system creates an electronic real-time candidate inventory on applicants' expertise and technical knowledge, which allows the USPTO to instantaneously review applications from multiple potential applicants.

The use of the MHM online application fully complies with 5 U.S.C. 2301, which requires adequate public notice to assure open competition by guaranteeing that necessary employment information will be accessible and available to the public on inquiry. It is also fully compliant with Section 508 (29 U.S.C. 794(d)), which requires agencies to provide disabled employees and members of the public access to information that is comparable to the access available to others.

II. Method of Collection

With the use of MHM, the applicant's information is collected electronically from the application. The *USAJobs.gov* Web site provides the online job announcement that links the applicant to the application and the MHM system. The application is completed online and then transmitted to the USPTO via the Internet.

III. Data

OMB Control Number: 0651–0042.

IC Instruments and Forms: There are no forms associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,660 responses per year.

Estimated Time per Response: The USPTO estimates that the employment application takes approximately 30 minutes (0.50 hours) to complete (See Table 1 below). This includes the time to gather the necessary information, respond to the MHM prompts, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 5,330 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: $239,690. The USPTO expects that engineers and scientists will complete these applications. The professional hourly rate for these respondents is estimated at an hourly rate of $44.97. This rate is the median hourly wage in May 2016 according to the Bureau of Labor Statistics Occupational Employment Statistics (OES) program estimates for engineers ($43.75; OES 17–2000) and scientists ($46.19; OES 19–2099). Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $239,690.00 per year.

TABLE 1—ANNUAL HOURLY COST BURDEN

IC #	Item	Estimated time for response (hr) (a)	Estimated annual responses (b)	Estimated annual burden (c) (a) × (b)	Estimated hourly rate (d)	Estimated annual hourly cost (e) (c) × (d)
1	Patent Examiner Employee Application.	0.50 (30 minutes)	10,660	5,330	$44.97	$239,690.00
Total	....	....	10,660	5,330	....	$239,690.00

Estimated Total Annual (Non-hour) Respondent Cost Burden: $0.00. There are no filing fees or start-up, maintenance, record keeping, or postage costs associated with this information collection.

IV. Request for Comments

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have the practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Marcie Lovett,

Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office.

[FR Doc. 2017–16940 Filed 8–10–17; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and a service from the Procurement List that were previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before September 10, 2017.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): 4820–00–052–4653—Valve, Ball

Mandatory Source(s) of Supply: The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL

Contracting Activity: Defense Logistics Agency Land and Maritime

NSN(s)—Product Name(s):

7045–01–599–5296—Privacy Filter, iPad

7530–01–515–7902—Paper, Printer, Ink Jet, Photo Quality, Double Side, 26 lb., Letter, 94 Bright White

Mandatory Source(s) of Supply: Wiscraft, Inc., Milwaukee, WI

Contracting Activity: General Services Administration, New York, NY

NSN(s)—Product Name(s):

7520–01–648–3552—Pen, Biobased, Gel Stick, Cushion Grip, Medium Point, Blue

7520–01–648–3553—Pen, Biobased, Gel Stick, Cushion Grip, Medium Point, Black

7520–01–648–3554—Pen, Biobased, Gel Stick, Cushion Grip, Medium Point, Red

Mandatory Source(s) of Supply: Alphapointe, Kansas City, MO

Contracting Activity: General Services Administration, New York, NY

Service

Service Type: Janitorial/Custodial Service

Mandatory for: Pennington Memorial U.S. Army Reserve Center: 2164 Harding Highway East, Marion, OH

Mandatory Source(s) of Supply: MARCA Industries, Inc., Marion, OH

Contracting Activity: DEPT OF THE ARMY, W6QM MICC FT MCCOY (RC)

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2017–17000 Filed 8–10–17; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a service from the Procurement List previously furnished by such agency.

DATES: *Date added to and deleted from the Procurement List:* September 10, 2017.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/26/2017 (82 FR 24308–24309) and 6/9/2017 (82 FR 26780), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

NSN(s)—Product Name(s):
7125–01–151–5435—Cabinet, Key, Wall Mounting, 30 Key, Gray Steel
7125–00–132–8973—Cabinet, Key, Wall Mounting, 70 Key, Grey
7125–00–285–3049—Cabinet, Key, Wall Mounting, 90 Key
Mandatory for: Total Government Requirement
Mandatory Source(s) of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: General Services Administration, Philadelphia, PA
Distribution: A-List

Service

Service Type: Records Information Management Service
Mandatory for: NAVSUP, GLS, Personal Property/Household Goods (HHG) Program, 937 N. Harbor Drive, San Diego, CA
Mandatory Source(s) of Supply: Mississippi Industries for the Blind, Jackson, MS
Contracting Activity: DEPT OF THE NAVY, NAVSUP FLT LOG CTR, SAN DIEGO

Deletion

On 6/30/2017 (82 FR 29852), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletion from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army Reserve Center: 10541 Calle Lee, Building 2, Los Alamitos, CA
Mandatory Source(s) of Supply: Elwyn, Aston, PA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–MOFFETT FIELD

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2017–16999 Filed 8–10–17; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0077]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 11, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0077. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216–34, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form.

OMB Control Number: 1845–0127.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 4,613.

Total Estimated Number of Annual Burden Hours: 875.

Abstract: The HEAL Lender's application for Insurance Claim and the request for Collection Assistance forms are used in the administration of the Health Education Assistant Loan (HEAL) program. The HEAL program provided federally insured loans to students in certain health professions disciplines, and these forms are used in the administration of the HEAL program. The Lender's Application for Insurance Claim is used by the lending institution to request payment of a claim by the Federal Government. The Request for Collection Assistance form is used by the lender to request proclaims assistance from the Department. Section 525 of the Consolidated Appropriations Act, 2014, transferred the collection of the Health Education Assistance Loan (HEAL) program loans from the U.S. Department of Health and Human Services (HHS) to the U.S. Department of Education (ED).

Dated: August 8, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–16974 Filed 8–10–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.325B]

Reopening; Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Early Childhood Personnel Center

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: On April 19, 2017, we published in the **Federal Register** (82 FR 18447) a notice inviting applications (NIA) for the Personnel Development to Improve Services and Results for Children with Disabilities—Early Childhood Personnel Center competition. The NIA established a deadline date of June 5, 2017, for the transmittal of applications. This notice reopens the competition until September 11, 2017.

DATES:

Deadline for Transmittal of Applications: September 11, 2017.

SUPPLEMENTARY INFORMATION: No applications received in response to the NIA were funded because the applicants did not adequately address the selection criteria for the competition. Therefore, we are reopening the competition to allow applicants to submit or resubmit applications that meet the requirements in the NIA, in order to ensure that State Part C and Part B, section 619 programs receive the technical assistance necessary to implement high-quality Comprehensive Systems of Personnel Development.

We have eliminated the formatting and page-limit requirements specified in the NIA. Further, the specification in the NIA that the Secretary will not consider budgets above the maximum award amount is no longer applicable. However, we will only fund a successful application up to $2,000,000 for any single budget period of 12 months.

Applicants that have already submitted applications under the FY 2017 competition are encouraged to review their applications and determine whether they have met all eligibility requirements and adequately addressed the selection criteria in the NIA and the application package, which is available at *www.grants.gov.*

Applications that were previously deemed ineligible for review must be resubmitted to be considered for review. If a new application is not submitted by an applicant whose application was reviewed, the Department will use the application that was submitted before 4:30:00 p.m., Washington DC time, on June 5, 2017, 4:30:00 p.m.

Finally, this competition is subject to intergovernmental review as set forth in Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2017.

Note: All information in the NIA for this competition remains the same, except for the deadline for the transmittal of applications, the formatting and page limit requirements, the mandatory page limit, the eligibility of applications that exceed the maximum award amount, and the intergovernmental review requirements.

Program Authority: 20 U.S.C. 1462 and 1481.

FOR FURTHER INFORMATION CONTACT: Tracie Dickson, U.S. Department of Education, 400 Maryland Avenue SW., Room 5181, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7844.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5113, Potomac Center Plaza, Washington DC 20202–2500. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 8, 2017.

Kimberly M. Richey,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2017–17014 Filed 8–10–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC17–13–000]

Commission Information Collection Activities (FERC–717); Comment Request; Revision and Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of revised information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on a revision to the information collection, FERC–717, (Open Access Same-Time Information System and Standards for Business Practices and Communication Protocol) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due October 10, 2017.

ADDRESSES: You may submit comments identified by Docket No. IC17–13–000 by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–717, Open Access Same-Time information System and Standards for Business Practices & Communication Protocols.

OMB Control No.: 1902–0173.

Type of Request: Three-year approval of the FERC–717 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission directs all public utilities that own, control or operate facilities for transmitting energy in interstate commerce to provide certain types of information regarding their transmission operations on an Open Access Same-time Information System (OASIS). The Commission does not believe that open-access nondiscriminatory transmission services can be completely realized until it removes real-world obstacles that prevent transmission customers from competing effectively with the Transmission Provider. One of the obstacles is unequal access to transmission information. The Commission believes that transmission customers must have simultaneous access to the same information available to the Transmission Provider if truly nondiscriminatory transmission services are to be a reality.

The Commission also established Standards of Conduct requiring that personnel engaged in transmission system operations function independently from personnel engaged in marketing functions. The Standards of Conduct were designed to prevent employees of a public utility (or any of its affiliates) engaged in marketing functions from preferential access to OASIS-related information or from engaging in unduly discriminatory business practices. Companies were required to separate their transmission operations/reliability functions from their marketing/merchant functions and prevent system operators from providing merchant employees and employees of affiliates with transmission-related information not available to all customers at the same time through public posting on the OASIS.

Type of Respondents: Transmission Owners and Transmission Operators.

Estimate of Annual Burden:[1] The Commission estimates a reduction in the annual public reporting burden for the FERC–717. The numbers comport two separate entities: Transmission Owners and Transmission Operators. The respondent estimate provide corresponds to 170 Transmission Operators. The rational is that many Transmission Owners have elected to turn over operational control of their collective transmission systems to Transmission Operators, including RTOs/IS0s (as authorized in 18 CFR 37.5). These Transmission Operators offer OASIS access to the collective systems facilitating a single OASIS transmission request serving multiple transmission systems. As a result of these efficiency gains, the lower respondent count is appropriate. For completeness, we ascribe the reduction in Transmission Owners to mergers and acquisitions occurring during the time periods examined.

Many Transmission Owners have turned over operational control of their collective transmission systems to Transmission Operators, including RTOs/ISOs. As a result of the efficiency gains, and an overestimate of the respondents in our past request, we are submitting a more accurate number of respondents. The changes in business practice standards from version to version requires a different number of hours each time a respondent submits there response. The estimate below reflects the work associated with the most recent version of the standards:

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

FERC–717, OPEN ACCESS SAME-TIME INFORMATION SYSTEM AND STANDARDS FOR BUSINESS PRACTICES & COMMUNICATION PROTOCOLS

Information collection requirements	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours and cost per response [2] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)
FERC–717	170	1	170	30 $2,295	5,100 $390,150

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 7, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–16959 Filed 8–10–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1966–001.
Applicants: NRG Wholesale Generation LP.
Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.
Filed Date: 8/7/17.
Accession Number: 20170807–5112.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER15–2572–004.
Applicants: GenOn Energy Management, LLC.
Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.
Filed Date: 8/7/17.
Accession Number: 20170807–5108.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER15–2573–004.
Applicants: GenOn Energy Management, LLC.
Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.
Filed Date: 8/7/17.
Accession Number: 20170807–5109.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER16–209–004.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Central Power Electric Cooperative Formula Rate Compliance Filing to be effective 1/1/2016.
Filed Date: 8/7/17.
Accession Number: 20170807–5144.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER16–1774–003.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Western Farmers Electric Cooperative Formula Rate Compliance Filing to be effective 7/1/2016.
Filed Date: 8/7/17.
Accession Number: 20170807–5152.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER16–2665–003.
Applicants: NRG Power Midwest LP.
Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.
Filed Date: 8/7/17.
Accession Number: 20170807–5111.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–274–002.
Applicants: GenOn Energy Management, LLC.
Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.
Filed Date: 8/7/17.
Accession Number: 20170807–5110.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–1342–001.
Applicants: Duke Energy Florida, LLC, Duke Energy Carolinas, LLC.
Description: Compliance filing: Correct Loss Factor Tariff Records to be effective 5/1/2017.
Filed Date: 8/7/17.
Accession Number: 20170807–5077.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–2250–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–08–07_SA 2523 ITC-Pheasant Run 4th Revised GIA (J075 J466) to be effective 7/24/2017.
Filed Date: 8/7/17.
Accession Number: 20170807–5078.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–2251–000.
Applicants: GenOn Energy Management, LLC.
Description: § 205(d) Rate Filing: Rate Schedule FERC No. 1 to be effective 9/1/2017.
Filed Date: 8/7/17.
Accession Number: 20170807–5093.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–2252–000.
Applicants: NRG Power Marketing LLC.
Description: § 205(d) Rate Filing: Rate Schedule FERC No. 1 to be effective 9/1/2017.
Filed Date: 8/7/17.
Accession Number: 20170807–5094.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–2253–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corporation submits Average System Cost Filing for Sales of Electric Power to the Bonneville Power Administration, FY 2018–2019.
Filed Date: 8/7/17.
Accession Number: 20170807–5121.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–2254–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notices of Cancellation IFA & DSA Mid Valley Landfill Project SA Nos. 73 & 74 to be effective 12/3/2017.
Filed Date: 8/7/17.
Accession Number: 20170807–5127.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–2255–000.
Applicants: PJM Interconnection, L.L.C.

[2] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC's 2017 annual average of $158,754 (for salary plus benefits), the average hourly cost is $76.50/hour.

Description: § 205(d) Rate Filing: Original Service Agreement No. 4758, Queue Position No. AA2–177 to be effective 7/10/2017.
Filed Date: 8/7/17.
Accession Number: 20170807–5139.
Comments Due: 5 p.m. ET 8/28/17.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF17–1266–000.
Applicants: Escondido Bioenergy Facilty, LLC.
Description: Form 556 of Escondido Bioenergy Facilty, LLC.
Filed Date: 8/3/17.
Accession Number: 20170803–5043.
Comments Due: 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 5:00 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: August 7, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–16958 Filed 8–10–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14851–000]

White Pine Waterpower, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 13, 2017, White Pine Waterpower, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the White Pine Pumped Storage Project to be located near the town of Ely in White Pine, Nevada. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The applicant proposes to study two alternative closed-loop pumped storage alternatives at the site: One sized to 250 megawatts (MW) and the other to 500 MW. The 500-MW alternative would consist of the following: (1) A new upper reservoir with a surface area of 52 acres and a storage capacity of 2,400 acre-feet at a surface elevation of approximately 8,530 feet above mean sea level (msl) created through construction of a new earth or rock-filled dam; (2) a new lower reservoir with a surface area of 40 acres and a total storage capacity of 2,400 acre-feet at a surface elevation of 6,290 feet msl; (3) 10,600 feet of tunnel and penstock connecting the upper and lower reservoirs; (5) a new underground powerhouse containing three turbine-generator units; (6) a new 1.5 mile transmission line connecting the powerhouse to a nearby electric grid interconnection, (7) appurtenant facilities. The 500-MW alternative would have an annual generation of 502,717 megawatt-hours (MWh).

For the 250-MW alternative, the new upper and lower reservoirs would be sized to have half of the storage of the 500-MW alternative (1,200 acre-feet), reducing the dam size needed to impound the reservoirs. The alternative would require 11,700 feet of tunnel and penstock and have 2 pump-generating units. The 250-MW alternative would require the same transmission line and would have an estimated annual generation of 547,500 MWh.

Applicant Contact: Matthew Shapiro, CEO, Gridflex Energy, LLC, 1210 W. Franklin Street, Suite 2, Boise, ID 83702.

FERC Contact: Jim Fargo; phone: (202) 502–6095.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14851–000.

More information about this project, including a copy of the application, can be viewed or printed on the eLibrary link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14851) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 7, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–16960 Filed 8–10–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–151–000.
Applicants: Waverly Wind Farm LLC.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Waverly Wind Farm LLC.
Filed Date: 8/4/17.
Accession Number: 20170804–5211.
Comments Due: 5 p.m. ET 8/25/17.

Docket Numbers: EC17–152–000.
Applicants: GenOn Energy, Inc.
Description: Application of GenOn Energy, Inc. and Its Public Utility Subsidiaries for Approval Under Section 203 of the Federal Power Act and Request for Expedited Action.
Filed Date: 8/4/17.
Accession Number: 20170804–5214.
Comments Due: 5 p.m. ET 8/25/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–328–004; *ER10–2196–004; ER10–2740–012; ER10–2742–011; ER11–4027–009; ER13–1143–005; ER13–1144–005; ER14–152–008; ER15–1657–005; ER17–1849–001.*
Applicants: Cogentrix Virginia Financing Holding Com, Elgin Energy

Center, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, James River Genco, LLC, Nautilus Power, LLC, Rocky Road Power, LLC, SEPG Energy Marketing Services, LLC, Tilton Energy LLC, Lakewood Cogeneration, L.P.

Description: Notice of Non-Material Change in Status of Cogentrix Virginia Financing Holding Company, LLC, et al.

Filed Date: 8/4/17.

Accession Number: 20170804–5216.

Comments Due: 5 p.m. ET 8/25/17.

Docket Numbers: ER17–2248–000.

Applicants: Sierra Pacific Power Company.

Description: Notice of Cancellation of Emergency Services Agreement of Sierra Pacific Power Company.

Filed Date: 8/4/17.

Accession Number: 20170804–5230.

Comments Due: 5 p.m. ET 8/25/17.

Docket Numbers: ER17–2249–000.

Applicants: Midcontinent Independent System Operator, Inc., Duke Energy Indiana, LLC.

Description: § 205(d) Rate Filing: 2017–08–07_DEI–DEI WDS Termination to be effective 8/8/2017.

Filed Date: 8/7/17.

Accession Number: 20170807–5072.

Comments Due: 5 p.m. ET 8/28/17.

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 5:00 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: August 7, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–16957 Filed 8–10–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9034–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements

Filed 07/31/2017 Through 08/04/2017

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20170150, Final Supplement, DOS, ND, Line 67 Expansion (previously known as the Alberta Clipper Pipeline), *Contact:* Mary D. Hassell 202–736–7428.

EIS No. 20170151, Draft, USFS, MN, School Trust Land Exchange, *Comment Period Ends:* 10/10/2017, *Contact:* Peter Taylor 218–626–4368.

EIS No. 20170152, Draft, BR, CA, San Luis Low Point Improvement Project, *Comment Period Ends:* 09/25/2017, *Contact:* Nicole Johnson 916–978–5085.

EIS No. 20170153, Final, ARS, ID, U.S. Sheep Experimental Station Grazing and Associated Activities Project, *Review Period Ends:* 09/11/2017, *Contact:* Gary Mayo 202–260–9494.

Dated: August 8, 2017.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2017–17018 Filed 8–10–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9965–41–Region 10]

Public Notice of State of Idaho National Pollutant Discharge Elimination System (NPDES) Program Submission for EPA Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comment; notice of public hearing.

SUMMARY: The United States Environmental Protection Agency (EPA) is requesting comments on and will hold public hearings for the State of Idaho's National Pollutant Discharge Elimination System (NPDES) program application (to be referred to as the ''IPDES program application'' or the ''application''). The Governor of the State of Idaho submitted the application to the EPA Region 10 Administrator pursuant to section 402 of the Clean Water Act (CWA or 'the Act'). With this submission, the Idaho Department of Environmental Quality (IDEQ) seeks approval to administer the Idaho Pollutant Discharge Elimination System (IPDES) program regulating discharges of pollutants into waters of the United States under its jurisdiction. The State's request includes an implementation plan to transfer from the EPA to IDEQ the administration of specific program components in four phases over a four-year period beginning July 1, 2018, or upon program approval, whichever is later. If the EPA approves the IPDES program, IDEQ will administer this program, subject to continuing EPA oversight and enforcement authority, in place of the NPDES program now administered by the EPA. The EPA will retain permitting authority over all facilities that are located within a tribal reservation and/or facilities that discharge to tribal waters. Today, the EPA is requesting comments on the State's application and providing notice of public hearings that will be held at locations throughout the state. At the close of the public comment period, the EPA will review all the public comments received and will either approve or disapprove the State's request for program approval. If approved, the NPDES program authority will begin to transfer from the EPA to IDEQ on or after July 1, 2018, with the final program phase being transferred to IDEQ on or after July 1, 2021.

DATES: Comments must be received on or before October 10, 2017.

ADDRESSES: *Location of Informational Meetings and Public Hearings:* EPA Region 10 will hold five information meetings, with each followed by a public hearing on the following dates and times. Please check the Web site at *https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization* prior to the scheduled dates for any updates to this information.

TABLE I–1—LOCATIONS FOR INFORMATIONAL AND PUBLIC MEETINGS

Informational meeting and public hearing city/location/address/phone number	Date and time
Idaho Falls.	
Central Public Library, 457 W Broadway St., Idaho Falls, ID 83402, (208) 612–8460.	*September 11, 2017:* Duration: 4:00 p.m. until no later than 8:00 p.m. (MT). *Information meeting* at 4:00 p.m. until 5:30 p.m. *Hearing* will begin promptly at 6:00 p.m., until testimony is complete.
Twin Falls.	
Twin Falls Public Library, 201 Fourth Avenue East, Twin Falls, ID 83301, (208) 733–2964.	*September 12, 2017:* Duration: 4:00 p.m. until no later than 8:00 p.m. (MT). *Information meeting* at 4:00 p.m. until 5:30 p.m. *Hearing* will begin promptly at 6:00 p.m., until testimony is complete.
Boise.	
Boise Public Library, 715 S Capitol Blvd., Boise, ID 83702, (208) 972–8200.	*September 13, 2017:* Duration: 4:00 p.m. until no later than 8:00 p.m. (MT). *Information meeting* at 4:00 p.m. until 5:30 p.m. *Hearing* will begin promptly at 6:00 p.m., until testimony is complete.
Lewiston.	
Lewiston Community Center, 1424 Main St., Lewiston, ID 83501, (208) 746–2313.	*September 14, 2017:* Duration: 4:00 p.m. until no later than 8:00 p.m. (PT). *Information meeting* at 4:00 p.m. until 5:30 p.m. *Hearing* will begin promptly at 6:00 p.m., until testimony is complete.
Coeur d'Alene.	
Coeur d'Alene Public Library, 702 E Front Ave., Coeur d'Alene, ID 83814, (208) 769–2315.	*September 15, 2017:* Duration: 2:00 p.m. until no later than 6:00 p.m. (PT). *Information meeting* at 2:00 p.m. until 3:30 p.m. *Hearing* will begin promptly at 4:00 p.m., until testimony is complete.

Providing Comments. The EPA will consider comments on the IPDES program application before making a final decision. You may submit comments by any of the following methods:

By Email: Send comments by email to *IdahoNPDEScomments@epa.gov,*

By Mail/Hand Delivery/Courier: Deliver comment to U.S. EPA, Attn: Idaho NPDES Comments, Office of Water and Watersheds, Mail Stop OWW–191, 1200 Sixth Ave., Suite 900, Seattle, WA 98101–3140.

Viewing and/or Obtaining Copies of Documents. A copy of the application and related documents may be viewed or downloaded, at no cost, from the EPA Web site at *https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization.* Copies of documents are also available for viewing or copying at the EPA Region 10 Library, 1200 Sixth Avenue, Suite 900 M/S OMP–0102, Seattle, WA 98101 and at the EPA Idaho Operations Office, 950 W Bannock, Suite 900, Boise, ID 83702 or call 208–378–5746. The R10 library is open Monday through Friday, excluding federal holidays, 9:00 a.m.–12:00 p.m., and 1:00 p.m.–4:00 p.m. For information about the cost of obtaining a copy or other information refer to EPA's Web page at *https://www.epa.gov/libraries/region-10-library-services* or call (206) 553–1289. IDEQ will provide copies of the application available for viewing at their Boise office and on their Web site. The application, related documents and program development documents can be viewed or downloaded, at no cost, from the IDEQ Web site *http://www.deq.idaho.gov/water-quality/ipdes/program-application/.* The IDEQ contact is Mary Anne Nelson, IPDES Program Manager; *mary.anne.nelson@deq.idaho.gov;* (208) 373–0291.

FOR FURTHER INFORMATION CONTACT: Visit *https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization* or contact Karen Burgess, NPDES Permits Unit, EPA Region 10; (206) 553–1644; *burgess.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. Does this action apply to me?

Entities potentially affected by this action are: The EPA; territorial, and tribal programs; and the regulated community and citizens within the state of Idaho. This table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities that this action is likely to regulate.

TABLE I–2—ENTITIES POTENTIALLY AFFECTED BY THIS PROPOSED APPROVAL

Category	Examples of potentially affected entities
State, Territorial, and Indian Tribal Governments.	States, Territories, and Indian Tribes that provide certification under section 401 of the CWA; States, Territories, and Indian Tribes that own or operate treatment works.
Municipalities	POTWs required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
Industry	Facilities required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
NPDES Stakeholders	Any party that may review and provide comments on NPDES permits.
Citizens of the state of Idaho	Any party that may review and provide comments on NPDES permits.

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 action is the EPA taking?

The State of Idaho submitted a complete description of their IPDES program and associated documents to the EPA. In accordance with CWA section 402(b), 33 U.S.C. 1342(b), and NPDES regulations at 40 CFR part 123, the EPA shall approve a submitted program unless adequate authority does not exist as required by the CWA.

C. What is the EPA's authority for taking this action?

CWA section 402 established the NPDES permitting program and gives the EPA authority to approve state NPDES programs. 33 U.S.C. 1342(b).

State Permit Program Approval: Section 402 of the CWA, 33 U.S.C. 1342, created the NPDES program under which the EPA may issue permits authorizing the point source discharge of pollutants to waters of the United States under conditions required by the Act. The CWA Section 402(b), 33 U.S.C. 1342(b), provides that the EPA shall approve a State to administer its own permit program, upon the Governor's request, provided the State has appropriate legal authority and a program sufficient to meet the Act's requirements. The regulatory requirements for state program approval are set forth in 40 CFR part 123 (*https://www.ecfr.gov/*), and subpart B provides the requirements of state program submissions, which IDEQ refers to as the IPDES program application.

Decision Process: Pursuant to 40 CFR 123.21 and 123.61(b), the EPA must approve or disapprove the submitted IPDES program, which has been determined to be complete, within 90 days of receipt, unless this review period is extended by mutual agreement between the EPA and the State. The State must show, among other things that it has the authority to issue permits which comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and an opportunity for a hearing on each proposed permit. After the close of the public comment period and completion of the required consultations, the Regional Administrator for EPA Region 10 will make a decision to approve or disapprove the IPDES program based on the requirements of section 402 of the CWA and 40 CFR part 123. If the Regional Administrator approves the IPDES program, the Regional Administrator will so notify the State and sign the proposed Memorandum of Agreement between the EPA and IDEQ (MOA). Notice would be published in the **Federal Register** and, as of the date of program approval, the EPA would suspend issuance of NPDES permits in Idaho in accordance with the State's approved schedule to transfer NPDES program authority in accordance with the phased implementation plan. If the Regional Administrator disapproves the IPDES program, IDEQ will be notified of the reasons for disapproval and of any revisions or modifications to the program that are necessary to obtain approval. The EPA will not make a final decision on IPDES program approval until after: (1) Considering all public comments provided during the public comment period and from the public hearings, and preparing a responsiveness summary and (2) completion of government to government tribal consultations, as requested, with federally recognized tribes in Idaho.

Informational Meetings: Informational meetings will include a technical overview of both the federal and state programs and provide an opportunity for question and answer. IDEQ will participate with EPA during these meetings. Questions and answers following the informational meeting will not be entered into the official record. Comments for the official record must be made in accordance with the public hearings procedures and/or submitted as written comments before the end of the comment period.

Public Hearing Procedures. The public hearings will be conducted in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to give written and/or oral testimony into the official record. The following procedures will be used at the public hearings. (1) The Presiding Officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may inform attendees of any time limitations during the opening statement of the hearing. (2) Any person may submit written statements or documents for the hearing record. (3) The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator. (4) The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of this Notice to allow any person time to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing. (5) Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for use of the Hearing Panel and other interested persons. Persons wishing to make oral testimony supporting their written comments are encouraged to give a summary of their points rather than reading lengthy written comments verbatim into the record. All comments received by the EPA in accordance with the instructions for 'Providing Comments' by the ending date of the comment period and/or presented at the public hearing, will be considered by the EPA before final IPDES program approval.

IPDES Program Application Summary: By letter dated, and received by the EPA on August 31, 2016, the Governor of Idaho submitted the IPDES program application for program approval. The application consisted of five main components required under 40 CFR 123.21: (1) A letter from the governor requesting approval of the state's application, (2) a program description that describes how the state will issue IPDES permits, ensure compliance with permit conditions, conduct enforcement, as well as fund and manage the program including programmatic information and data, (3) a statement from the Attorney General's office certifying that the state's laws and regulations provide sufficient authority to the state to implement the discharge, pretreatment, and biosolids components of the NPDES program, (4) a Memorandum of Agreement (MOA) between the state and EPA which establishes, in part, timeframes for a phased approach for the state to assume authority, (5) copies of all applicable statutes and regulations including those that govern the state administrative procedures, which the state adopted to ensure the necessary authority for implementing the IPDES program, including Idaho House Bill 406 directing IDEQ to pursue permitting authority. IDEQ submitted their Continuing Planning Process (CPP) as required under 40 CFR 130.5 for program approval. Appendices to the Program Description include other IPDES program documents including guidance, forms and templates that IDEQ will use to implement their program.

The EPA deemed the application complete on September 30, 2016, in a letter that also identified initial issues to be addressed before program approval. In accordance with 40 CFR 123.21(d), IDEQ requested to extend the statutory review period for the application until June 30, 2018. The EPA and IDEQ will use the period of time until program approval to address issues, complete the public process, develop the IPDES program and build capacity for both permitting and enforcement functions.

IPDES Program Summary: As required under section 402(b) of the CWA, 33 U.S.C. 1342(b), and 40 CFR 123.22, the IPDES program description specifies how IDEQ will administer the NPDES program. IDEQ will issue IPDES permits under their jurisdiction; conduct compliance and enforcement activities; gather and maintain NPDES records and report to the EPA; and oversee the regulated activities of all IPDES-permitted facilities. The EPA will retain the authority to issue NPDES permits for facilities located on tribal lands and/or discharging to tribal waters. The scope of IDEQ permitting authority includes individual and general permits for discharges to waters of the United States from facilities or activities, including industrial (*e.g.,* commercial, mining, oil and gas, and silviculture discharges; animal feeding operations; and aquatic animal production facilities) and municipal wastewater treatment facilities (*e.g.,* publicly and privately owned treatment works); discharges to waters of the United States from federal facilities; storm water discharges, including municipal storm sewer systems (combined and separate); construction and industrial storm water general permits; and individual permits for storm water discharges; sewage sludge (biosolids) under 40 CFR part 503 and the pretreatment program under 40 CFR part 403. IDEQ's program will not include permitting of discharges incidental to the normal operation of a non-military, non-recreational vessel operating in a capacity as a means of transportation; the EPA will continue to issue permits under CWA section 402 to regulate such discharges from non-military, non-recreational vessels greater than 79 feet in length and all ballast water discharges.

IDEQ will assume permitting and compliance authority for the NPDES program in four phases. The EPA will retain full permitting and compliance authority over facilities until that authority is transferred to IDEQ in accordance with the following schedule:

Phase I—Individual Municipal Permits and Pretreatment upon gaining program authority (anticipated July 1, 2018).

Phase II—Individual Industrial Permits, one year after program authorization (anticipated July 1, 2019).

Phase III—General Permits (Aquaculture, Pesticide, CAFO, Suction Dredge, Remediation), two years after program authorization (anticipated July 1, 2020).

Phase IV—Federal Facilities, General and Individual Stormwater Permits and Biosolids, three years after program authorization (anticipated July 1, 2021).

Authority: This action is taken under the authority of section 402 of the Clean Water Act as amended, 33 U.S.C. 1342. I hereby provide public notice of the application by the State of Idaho for approval to administer the State NPDES program, in accordance with 40 CFR 123.61.

Dated: July 17, 2017.

Daniel D. Opalski,

Acting Deputy Regional Administrator, EPA, Region 10.

[FR Doc. 2017–16822 Filed 8–10–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the *Privacy Act of 1974,* as amended (''Privacy Act''), this document announces the establishment of a computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Department of Housing and Urban Development (HUD). The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Universal Service Fund (USF) Lifeline program, which is administered by USAC under the direction of the FCC.

DATES: Written comments are due on or before September 11, 2017. This computer matching program will commence on September 11, 2017 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Mr. Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, FCC, 445 12th Street SW., Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), or Veterans and Survivors Pension Benefit. In a Report and Order adopted on March 31, 2016, the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

PARTICIPATING AGENCY:

The Department of Housing and Urban Development—Enterprise Income Verification System (EIV) (HUD/PIH–05), Inventory Management System (IMS/PIC) (HUD/PIH–01), and Tenant Rental Assistance Certification Systems (TRACS) (HUD/H–11);

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

47 U.S.C. 254; 47 CFR 54.400 *et seq.; Lifeline and Link Up Reform and Modernization, et al.,* Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (*2016 Lifeline Modernization Order*).

PURPOSE(S):

In the *2016 Lifeline Modernization Order,* the FCC required USAC to develop and operate a National Lifeline Eligibility Verifier (National Verifier) to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission.'' 31 FCC Rcd 3962, 4006, para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that a USAC-operated Lifeline Eligibility Database (LED) will communicate with information systems and databases operated by other Federal and State agencies. *Id.* at 4011–2, paras. 135–7.

CATEGORIES OF INDIVIDUALS:

The categories of individuals whose information is involved in this matching program include, but are not limited to, those individuals (residing in a single household) who have applied for Lifeline benefits; are currently receiving Lifeline benefits; are individuals who enable another individual in their household to qualify for Lifeline benefits; are minors whose status qualifies a parent or guardian for Lifeline benefits; are individuals who have received Lifeline benefits; or are individuals acting on behalf of an eligible telecommunications carrier (ETC) who have enrolled individuals in the Lifeline program.

CATEGORIES OF RECORDS:

The categories of records involved in the matching program include, but are not limited to, a Lifeline applicant or subscriber's full name; physical and mailing addresses; partial Social Security number or Tribal ID number; date of birth; qualifying person's full name (if qualifying person is different from subscriber); qualifying person's physical and mailing addresses; qualifying person's partial Social Security number or Tribal ID number, and qualifying person's date of birth. The National Verifier will transfer these data elements to the source agencies, which will respond either ''yes'' or ''no'' that the individual is enrolled in a Lifeline-qualifying assistance program.

SYSTEM(S) OF RECORDS:

The USAC records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline Program, a notice of which the FCC published at 78 FR 73535 (Dec. 6, 2013). The FCC is in the process of publishing an update to this system of records that reflects the new uses involved in operating this matching program.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2017–16963 Filed 8–10–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the *Privacy Act of 1974,* as amended (''Privacy Act''), this notice announces the establishment of a computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Department of Housing and Urban Development (HUD). The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Universal Service Fund (USF) Lifeline program, which is administered by USAC under the direction of the FCC.

DATES: Written comments are due on or before September 11, 2017. This computer matching program will commence on September 11, 2017 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Mr. Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, FCC, 445 12th Street SW., Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), or Veterans and Survivors Pension Benefit. In a Report and Order adopted on March 31, 2016, the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

PARTICIPATING AGENCY:

The Department of Housing and Urban Development—Enterprise Income Verification System (EIV) (HUD/PIH–05), Inventory Management System (IMS/PIC) (HUD/PIH–01), and Tenant Rental Assistance Certification Systems (TRACS) (HUD/H–11);

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

47 U.S.C. 254; 47 CFR 54.400 *et seq.; Lifeline and Link Up Reform and Modernization, et al.,* Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (*2016 Lifeline Modernization Order*).

PURPOSE(S):

In the *2016 Lifeline Modernization Order,* the FCC required USAC to develop and operate a National Lifeline Eligibility Verifier (National Verifier) to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission.'' 31 FCC Rcd 3962, 4006, para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that a USAC-operated Lifeline Eligibility Database (LED) will communicate with information systems and databases operated by other Federal and State agencies. *Id.* at 4011–2, paras. 135–7.

CATEGORIES OF INDIVIDUALS:

The categories of individuals whose information is involved in this matching program include, but are not limited to, those individuals (residing in a single household) who have applied for Lifeline benefits; are currently receiving Lifeline benefits; are individuals who enable another individual in their household to qualify for Lifeline benefits; are minors whose status qualifies a parent or guardian for Lifeline benefits; are individuals who have received Lifeline benefits; or are individuals acting on behalf of an eligible telecommunications carrier (ETC) who have enrolled individuals in the Lifeline program.

CATEGORIES OF RECORDS:

The categories of records involved in the matching program include, but are not limited to, a Lifeline applicant or subscriber's full name; physical and mailing addresses; partial Social Security number or Tribal ID number; date of birth; qualifying person's full name (if qualifying person is different from subscriber); qualifying person's physical and mailing addresses;

qualifying person's partial Social Security number or Tribal ID number, and qualifying person's date of birth. The National Verifier will transfer these data elements to the source agencies, which will respond either ''yes'' or ''no'' that the individual is enrolled in a Lifeline-qualifying assistance program.

SYSTEM(S) OF RECORDS:

The USAC records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline Program, a notice of which the FCC published at 78 FR 73535 (Dec. 6, 2013). The FCC is in the process of publishing an update to this system of records that reflects the new uses involved in operating this matching program.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2017–17006 Filed 8–10–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0812]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 10, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0812.

Title: Regulatory Fee True-Up, Waiver or Exemption.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and Not-for-profit institutions.

Number of Respondents and Responses: 19,674 respondents and 19,774 responses.

Estimated Time per Response: 0.25 hour–1 hour.

Frequency of Response: Annual, on occasion and one-time reporting requirements; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 158 and 47 U.S.C. 159, Sections 4(i), 4(j) 8,9, and 303(r) of the Communications Act, as amended.

Total Annual Burden: 10,016 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Licensees or regulatees concerned about disclosure of sensitive information in any submissions to the Commission may request confidential treatment pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them.

This information collection consolidates and revises the currently approved information collection requirements under OMB Control Numbers 3060–0655 and 3060–1064 into 3060–0812.

The Commission provides broadcast licensees and commercial mobile radio service (CMRS) licensees with a ''true-up'' opportunity to update or otherwise correct their assessed fee amounts well before the actual due date for payment of regulatory fees. Providing a ''true-up'' opportunity is necessary because the data sources that are used to generate the fee assessments are subject to change at time of transfer or assignment of the license. The ''true-up'' is also an opportunity for regulatees to correct inaccuracies.

Per 47 CFR 1.1119 and 1.1166, the FCC may, upon a properly submitted written request, waive or defer collection of an application fee or waive, reduce, or defer payment of a regulatory fee in a specific instance for good cause shown where such action would promote the public interest. When submitting the request, no specific form is required.

FCC requires that when licensees or regulates request exemption from regulatory fees based on their non-profit status, they must file a one-time documentation sufficient to establish their non-profit status. The documentation may take the form of an IRS Determination Letter, a state charter indicating non-profit status, proof of church affiliation indicating tax exempt status, etc.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2017–16932 Filed 8–10–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 25, 2017.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *MBC Trust, Santa Barbara, California; and its Trustees Craig Zimmerman, Michelle Konoske and Joshua Rabinowitz, all of Santa Barbara, California;* to acquire voting shares of Montecito Bancorp, and thereby indirectly acquire voting shares of Montecito Bank & Trust, both of Santa Barbara, California.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *David R. Holloway,* Sublette, Kansas, individually, to acquire voting shares of Santa Fe Trail Banc Shares, Inc., and thereby indirectly acquire voting shares of Centera Bank, Sublette, Kansas.

In addition, David R. Holloway, Sublette, Kansas, MaryAnn H. Miller, and Kenneth D. Miller, Cimarron, Kansas have applied to acquire and/or retain shares of Santa Fe Trail Banc Shares, Inc., Sublette, Kansas, and for approval as members of the Holloway family group acting in concert, to control shares of Santa Fe Trail Banc Shares, Inc., Sublette, Kansas.

2. *Joe D. Butcher Trust No. 1 and Joe D. Butcher as Trustee, the Donna L. Butcher Trust No. 1 and Donna L. Butcher as Trustee, and Kimberly J. Fairbank,* all of Cimarron, Kansas; to retain shares of Santa Fe Trail Banc Shares, Inc., Sublette, Kansas, and for approval as members of the Butcher family group acting in concert, to control Santa Fe Trail Banc Shares, Inc., Sublette, Kansas and thereby control shares of Centera Bank, Sublette, Kansas.

Board of Governors of the Federal Reserve System, August 7, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–16909 Filed 8–10–17; 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 applications will also 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 September 5, 2017.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Equity Bancshares, Inc.,* Wichita, Kansas; to acquire 100 percent of the voting shares of Cache Holdings, Inc., parent of Patriot Bank, both of Tulsa, Oklahoma.

2. *Equity Bancshares, Inc.,* Wichita, Kansas; to acquire, through its subsidiary, ENB Merger Sub, Inc., Oklahoma City, Oklahoma, 100 percent of the voting shares of Eastman National Bancshares, Inc., and thereby acquire The Eastman National Bank of Newkirk, both of Newkirk, Oklahoma.

In connection with this application, ENB Merger Sub, Inc., Oklahoma City, Oklahoma, has applied to become a bank holding company

3. *National Bank Holdings Corporation,* Greenwood Village, Colorado; to acquire 100 percent of the voting shares of Peoples, Inc., Lawrence, Kansas, and thereby indirectly acquire Peoples National Bank, Colorado Springs, Colorado, and Peoples Bank, Lawrence, Kansas.

Board of Governors of the Federal Reserve System, August 7, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–16908 Filed 8–10–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the mandatory Notifications Related to Community Development and Public Welfare Investments of State Member Banks (FR H–6; OMB No. 7100–0278).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

DATES: Comments must be submitted on or before October 10, 2017.

ADDRESSES: You may submit comments, identified by *FR H–6,* by any of the following methods:

• Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

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

• *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.

• *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, 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/apps/foia/proposedregs.aspx* 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 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the 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 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, 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.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposed revisions prior to giving final approval.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

Report title: Notifications Related to Community Development and Public Welfare Investments of State Member Banks.

Agency form number: FR H–6.

OMB control number: 7100–0278.

Frequency: Event-generated.

Respondents: State member banks.

Estimated number of respondents: Post Notification, 20; Application (Prior Approval), 71; and Extension of divestiture period, 1.

Estimated average hours per response: Post Notification, 2 hours; Application (Prior Approval) 5 hours; and Extension of divestiture period, 5 hours.

Estimated annual burden hours: Post Notification, 40 hours; Application (Prior Approval) 355 hours; and Extension of divestiture period, 5 hours.

General Description of Report: Regulation H requires state member banks planning to make community development or public welfare investments to comply with the Regulation H notification requirements: (1) If the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank; (2) if certain criteria are not met, and the investment requires prior Board approval, a request for approval must be sent to the appropriate Federal Reserve Bank; and, (3) if the Board orders divestiture, but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank.

Legal authorization and confidentiality: The Board's Legal Division has determined that the public welfare investment notice, request for approval, and request for extension of the divestiture period are authorized by the Federal Reserve Act, (12 U.S.C. 338a), and by the Board's Regulation H, (12 CFR 208.22). The obligation of state member banks to make public welfare investments under both the Reserve Bank post-notice and the Board's prior approval procedure is mandatory. The request for extension of the divestiture period is required to obtain a benefit. Individual respondent data generally are not regarded as confidential. However, a bank that submits confidential proprietary information may request confidential treatment of that information pursuant to section (b)(4) of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). Such a determination would be made on a case-by-case basis in response to a specific request for disclosure. If examination ratings are included in a submission, those will be considered confidential under exemption 8 of the FOIA, (5 U.S.C. 552(b)(8)).

Consultation outside the agency: Given that most community development entities obtain funding from a variety of local and regional financial institutions, Board staff consults with other agencies' staff to discuss applications relating to such investments, as appropriate.

Board of Governors of the Federal Reserve System, August 8, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–17012 Filed 8–10–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 28, 2017.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Emmet Ross Harris, Novia Kinsel Harris, Karen Ray Elliff, all of George West, Texas, Farrell Harris Saunders, Stuart Donovan Saunders, and minor children of Stuart Donovan Saunders, all of Houston, Texas;* to acquire voting shares of Live Oak Bancshares Corporation, and thereby indirectly acquire voting shares of South Trust Bank, N.A., both of George West, Texas.

Board of Governors of the Federal Reserve System, August 8, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–17003 Filed 8–10–17; 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 applications will also 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 September 6, 2017.

A. Federal Reserve Bank of Minneapolis (Brendan S. Murrin, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Drayton Bancor, Inc.,* Drayton, North Dakota; to merge with Pembina County Bankshares Ltd. and thereby indirectly acquire Citizens State Bank-Midwest, both of Cavalier, North Dakota.

In connection with this application, Applicant also has applied to acquire Citizens Insurance Agency, Inc., Cavalier, North Dakota, and Walhalla Insurance Agency LLC, Walhalla, North Dakota, and thereby engage in general insurance activities in towns of less than 5,000 in population pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, August 8, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–17001 Filed 8–10–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). 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 September 6, 2017.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *The Charles Schwab Corporation,* San Francisco, California; to acquire voting shares of Nordstrom FSB, Scottsdale, Arizona

Board of Governors of the Federal Reserve System, August 8, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–17002 Filed 8–10–17; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2017–01; Docket No. 2017–0002; Sequence No. 4]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Master Plan for the Consolidation of the U.S. Food and Drug Administration Headquarters at the Federal Research Center at White Oak, Located in Silver Spring, MD

AGENCY: National Capital Region, General Services Administration (GSA).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations, GSA Order, PBS P1095.1F, Environmental Considerations in Decision Making, dated October 19, 1999, and the GSA Public Buildings Service NEPA Desk Guide, GSA plans to prepare an Environmental Impact Statement (EIS) for the proposed Master Plan to support the consolidation of the U.S. Food and Drug Administration (FDA) Headquarters at the Federal Research Center at White Oak, located in Silver Spring, Maryland.

DATES:

Applicable: Friday, August 18, 2017.

The public scoping meeting date is: Tuesday, September 12, 2017, from 6:30 p.m. to 8:30 p.m., Eastern Daylight Time (EDT).

ADDRESSES: CHI Center, 10501 New Hampshire Avenue, Silver Spring, Maryland 20903.

FOR FURTHER INFORMATION CONTACT: Paul Gyamfi, GSA, National Capital Region, Public Buildings Service, Office of Planning and Design Quality, at 202–440–3405. Please contact this number if special assistance is needed to attend and participate in the scoping meeting.

SUPPLEMENTARY INFORMATION: GSA intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts resulting from the proposed Master Plan to support the FDA Headquarters consolidation at the Federal Research Center (FRC) at White Oak, located in Silver Spring, Maryland.

Background

In 1997, GSA completed an EIS that analyzed the impacts from the consolidation of 5,975 FDA employees at the FRC. In 2005, GSA completed a Supplemental Environmental Impact Statement (SEIS) that analyzed the impacts of increasing the number of employees from 5,947 to 7,720 and the impacts of adding a new eastern access entrance point into the FRC. In 2009, GSA completed its second SEIS that analyzed the impacts of increasing the number of employees (from 7,720 to 8,889) needed to conduct the complex and comprehensive reviews mandated by new legislation. To accommodate future growth and further consolidate FDA operations, GSA is preparing an EIS to assess the impacts of an employee population increase, of up to an approximately 18,000 employees, over a period of 15 years.

The purpose of the proposed action is to provide a Master Plan for the FDA Campus at FRC to accommodate the projected growth. The need for the proposed action is to continue to support the FDA Headquarters consolidation at FRC, and provide the necessary office and laboratory space, in order to conduct the complex and comprehensive reviews mandated by Congress.

Alternatives Under Consideration

GSA will analyze a range of alternatives (including the no action alternative) for the proposed Master Plan of the FDA Headquarters, to increase the campus population by up to an approximately 18,000 employees over 15 years. As part of the EIS, GSA will study the impacts of each alternative on the human environment.

Scoping Process

In accordance with NEPA, a scoping process will be conducted to aid in determining the alternatives to be considered and the scope of issues to be addressed, as well as for identifying the significant issues related to the proposed Master Plan. Scoping will be accomplished through a public scoping meeting, direct mail correspondence to potentially interested persons, agencies, and organizations, and meetings with agencies having an interest in the Master Plan. It is important that Federal, regional, State, and local agencies, and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS.

Public Scoping Meeting

A public scoping meeting will be held on Tuesday, September 12, 2017, from 6:30 p.m. to 8:30 p.m., EDT. The meeting will be an informal open house along with a brief presentation, where visitors may come, receive information, and give comments. GSA is publishing notices in the Washington Post, Montgomery County Sentinel, and Prince George's Sentinel announcing the meeting.

Written Comments

Agencies and the public are encouraged to provide written comments on the scoping issues in addition to, or in lieu of, giving their comments at the public scoping meeting. Written comments regarding the environmental analysis for the proposed Master Plan must be postmarked between Monday, August 21, 2017, and Monday, September 25, 2017, and sent to the following address: General Services Administration, Public Buildings Service, Office of Planning and Design Quality, Attention: Paul Gyamfi, 301 7th Street SW., Room 4004, Washington, DC 20407. Email: *paul.gyamfi@gsa.gov* using the subject line: FDA White Oak Master Plan Comment.

Dated: August 4, 2017.

Mina Wright,

Director, Office of Planning and Design Quality, Public Buildings Service, National Capital Region, General Services Administration.

[FR Doc. 2017–16945 Filed 8–10–17; 8:45 am]

BILLING CODE 6820–Y1–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10454]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 11, 2017.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at Web site address at *https://www.cms.gov/Regulations-and-*

Guidance/Legislation/Paperwork ReductionActof1995/PRA-Listing.html.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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. The term ''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 publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. No comments were received in response to the 60-day comment period. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Disclosure of State Rating Requirements; *Use:* The final rule ''Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review'' implements sections 2701, 2702, and 2703 of the Public Health Service Act (PHS Act), as added and amended by the Affordable Care Act, and sections 1302(e) and 1312(c) of the Affordable Care Act. The rule directs that states submit to CMS certain information about state rating and risk pooling requirements for their individual, small group, and large group markets, as applicable. Specifically, states will inform CMS of age rating ratios that are narrower than 3:1 for adults; tobacco use rating ratios that are narrower than 1.5:1; a state-established uniform age curve; geographic rating areas; whether premiums in the small and large group market are required to be based on average enrollee amounts (also known as composite premiums); and, in states that do not permit any rating variation based on age or tobacco use, uniform family tier structures and corresponding multipliers. In addition, states that elect to merge their individual and small group market risk pools into a combined pool will notify CMS of such election. This information will allow CMS to determine whether state-specific rules apply or Federal default rules apply. It will also support the accuracy of the Federal risk adjustment methodology. *Form Number:* CMS–10454 (OMB control number: 0938–1258); *Frequency:* On Occasion; *Affected Public:* State, Local, or Tribal Governments, Private Sector; *Number of Respondents:* 47; *Total Annual Responses:* 47; *Total Annual Hours:* 2,239. (For policy questions regarding this collection contact Russell Tipps at 301–492–4371.)

Dated: August 8, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–17020 Filed 8–10–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7046–N]

Health Insurance Marketplace℠, Medicare, Medicaid, and Children's Health Insurance Programs; Meeting of the Advisory Panel on Outreach and Education (APOE), September 13, 2017

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace℠, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES: *Meeting Date:* Wednesday, September 13, 2017, 8:30 a.m. to 4:00 p.m. eastern daylight time (e.d.t).

Deadline for Meeting Registration, Presentations, Special Accommodations and Comments: Wednesday, August 30, 2017, 5:00 p.m. (e.d.t.).

ADDRESSES: *Meeting Location:* U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 505A, Conference Room, Washington, DC 20201.

Presentations and Written Comments: Presentations and written comments should be submitted to: Thomas Dudley, Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–05–06, Baltimore, MD 21244–1850 or via email at *Thomas.Dudley@cms.hhs.gov.*

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the Web site *https://www.regonline.com/apoesept2017meeting* or by contacting the DFO as listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Thomas Dudley, Designated Federal Official, Office of Communications, CMS, 7500 Security Boulevard, Mail Stop S1–05–06, Baltimore, MD 21244–1850, 410–786–1442, email *Thomas.Dudley@cms.hhs.gov.* Additional information about the APOE is available on the Internet at: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.html.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. App. 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory Panel on Medicare Education [1] (the

[1] We note that the Citizen's Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR

Continued

predecessor to the APOE) on January 21, 1999 (64 FR 7899, February 17, 1999) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105–33).

The Medicare Modernization Act of 2003 (MMA) (Pub. L. 108–173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. We have had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Affordable Care Act (Patient Protection and Affordable Care Act, Public Law 111–148, and Health Care and Education Reconciliation Act of 2010, Public Law 111–152) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and the Children's Health Insurance Program (CHIP). Qualified individuals and qualified employers are now able to purchase private health insurance coverage through a competitive marketplace, called an Affordable Insurance Exchange (also called Health Insurance Marketplace℠,[2] or Marketplace℠). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through the Marketplace℠. The APOE allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 19, 2017, and will terminate on January 19, 2019 unless renewed by appropriate action.

Under the current charter, the APOE will advise the Secretary and the Administrator on optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), or coverage available through the Health Insurance Marketplace℠ and other CMS programs.
- Enhancing the federal government's effectiveness in informing Health Insurance Marketplace℠, Medicare, Medicaid, and CHIP consumers, issuers, providers, and stakeholders, through education and outreach programs, on issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Health Insurance Marketplace℠, Medicare, Medicaid, and CHIP education programs and other CMS programs as designated.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel are: Kellan Baker, Associate Director, Center for American Progress; Robert Blancato, President, Matz, Blancato & Associates; Dale Blasier, Professor of Orthopaedic Surgery, Department of Orthopaedics, Arkansas Children's Hospital; Deborah Britt, Executive Director of Community & Public Relations, Piedmont Fayette Hospital; Deena Chisolm, Associate Professor of Pediatrics & Public Health, The Ohio State University, Nationwide Children's Hospital; Josephine DeLeon, Director, Anti-Poverty Initiatives, Catholic Charities of California; Robert Espinoza, Vice President of Policy, Paraprofessional Healthcare Institute; Louise Scherer Knight, Director, The Sidney Kimmel Comprehensive Cancer Center at Johns Hopkins; Roanne Osborne-Gaskin, M.D., Senior Medical Director, MDWise, Inc.; Cathy Phan, Outreach and Education Coordinator, Asian American Health Coalition DBA HOPE Clinic; Kamilah Pickett, Litigation Support, Independent Contractor; Brendan Riley, Outreach and Enrollment Coordinator, NC Community Health Center Association; Alvia Siddiqi, Medicaid Managed Care Community Network (MCCN) Medical Director, Advocate Physician Partners, Carla Smith, Executive Vice President, Healthcare Information and Management Systems Society (HIMSS); Tobin Van Ostern, Vice President and Co-Founder, Young Invincibles Advisors; and Paula Villescaz, Senior Consultant, Assembly Health Committee, California State Legislature.

II. Provisions of This Notice

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the September 13, 2017 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (March 22, 2017) meeting
- Review CMS programs and initiatives
- Provide an opportunity for public comment
- Summarize the meeting and review recommendations and next steps

4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

[2] Health Insurance Marketplace℠ and Marketplace℠ are service marks of the U.S. Department of Health & Human Services.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

III. Security and Building

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

Since this meeting will be held in a Federal Government Building, the Hubert H. Humphrey Building, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. To gain access to the building, participants will be required to show a government-issued photo identification (for example, driver's license or passport), and must be listed on an approved security list before persons are permitted entrance. Persons not registered in advance will not be permitted into the Hubert H. Humphrey Building and will not be permitted to attend the Panel meeting.

All persons entering the building must pass through a metal detector. In addition, all items brought to the Hubert H. Humphrey Building, whether personal or for the purpose of presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for the purpose of presentation.

Authority: 42 U.S.C. 217a, sec. 222 of the Public Health Service Act, as amended; 42 U.S.C. 1314(f), sec. 1114(f) of the Social Security Act; and Public Law 92–463, as amended (5 U.S.C. App. 2).

Dated: August 2, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2017–16979 Filed 8–10–17; 8:45 am]

BILLING CODE 4120–01–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, 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, Macula Degenerative Diseases

Date: August 23, 2017.

Time: 1:00 p.m. to 5:00 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: Nataliya Gordiyenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301.435.1265, *gordiyenkon@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: August 7, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–16914 Filed 8–10–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Muscular Dystrophy Coordinating Committee (MDCC).

The meeting will be open to the public and accessible by live webcast. Attendance is 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: Muscular Dystrophy Coordinating Committee.

Type of meeting: Open Meeting.

Date: October 4, 2017.

Time: 8:30 a.m. to 4:30 p.m. *Eastern Time*—Approximate end time.

Agenda: Agenda: The purpose of this meeting is to bring together committee members, representing government agencies, patient advocacy groups, other voluntary health organizations, and patients and their families to update one another on progress relevant to the Action Plan for the Muscular Dystrophies and to coordinate activities and discuss gaps and opportunities leading to better understanding of the muscular dystrophies, advances in treatments, and improvements in patients' and their families' lives. Prior to the meeting, an agenda will be posted to the MDCC meeting registration Web site: *https://meetings.ninds.nih.gov/meetings/Oct42017/.*

Registration: To register, please go to: *https://meetings.ninds.nih.gov/meetings/Oct42017/.*

Webcast Live: For those not able to attend in person, this meeting will be webcast at: *http://videocast.nih.gov/.*

Place: Neuroscience Center, Conference Room C/D, 6001 Executive Boulevard, Rockville, Maryland 20852.

Contact Person: Glen H. Nuckolls, Ph.D., Executive Secretary, Muscular Dystrophy Coordinating Committee, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Boulevard, NSC 2203, Bethesda, MD 20892, (301) 496–5745, *glen.nuckolls@ninds.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.

All visitors must go through a security check at the building entrance to receive a visitor's badge. A government issued photo ID is required. Further information can be found at the registration Web site: *https://meetings.ninds.nih.gov/meetings/Oct42017/.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 4, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–16915 Filed 8–10–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1738]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before November 9, 2017.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1738, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, 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 flood hazard determinations 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 the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ‘‘Flood Insurance.’’)

Dated: July 31, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-watershed-based studies:

Community	Community map repository address
City of Carson City, Nevada (Independent City)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 17–09–0078S Preliminary Date: March 10, 2017	
City of Carson City	Carson City Permit Center, 108 East Proctor Street, Carson City, NV 89701.

[FR Doc. 2017–16948 Filed 8–10–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1732

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before November 9, 2017.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1732, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, 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 flood hazard determinations 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 the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 13, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-watershed-based studies:

Community	Community map repository address
Matanuska-Susitna Borough, Alaska and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 14–10–0576S Preliminary Date: August 19, 2016	
Matanuska-Susitna Borough	Matanuska-Susitna Borough Planning Department, 350 East Dahlia Avenue, Palmer, AK 99645.

[FR Doc. 2017–16952 Filed 8–10–17; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1735]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

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.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, 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 flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 13, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Etowah	City of Gadsden (16–04–6644P).	The Honorable Sherman Guyton, Mayor, City of Gadsden, P.O. Box 267, Gadsden, AL 35901.	City Hall, 90 Broad Street, Gadsden, AL 35901.	*http://www.msc.fema.gov/lomc*	Oct. 6, 2017	010080
Madison	City of Huntsville (16–04–8443P).	The Honorable Thomas M. Battle, Jr., Mayor, City of Huntsville, 308 Fountain Circle, 8th Floor, Huntsville, AL 35801.	City Hall, 308 Fountain Circle, 8th Floor, Huntsville, AL 35801.	*http://www.msc.fema.gov/lomc*	Sep. 14, 2017	010153
Montgomery	City of Montgomery (16–04–7922P).	The Honorable Todd Strange, Mayor, City of Montgomery, 103 North Perry Street, Montgomery, AL 36104.	Engineering Department, 25 Washington Avenue, Montgomery, AL 36104.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	010174
Morgan	City of Hartselle (16–04–8327P).	The Honorable Randy Garrison, Mayor, City of Hartselle, 200 Sparkman Street Northwest, Hartselle, AL 35640.	City Hall, 200 Sparkman Street Northwest, Hartselle, AL 35640.	*http://www.msc.fema.gov/lomc*	Sep. 21, 2017	010178
Washington	Unincorporated areas of Washington County (17–04–3238P).	The Honorable Allen Bailey, Chairman, Washington County Board of Commissioners, P.O. Box 146, Chatom, AL 36518.	Washington County Engineering Department, 45 Court Street, Chatom, AL 36518.	*http://www.msc.fema.gov/lomc*	Sep. 25, 2017	010302
Colorado:						
Adams	Unincorporated areas of Adams County (17–08–0045P).	The Honorable Eva J. Henry, Chair, Adams County, Board of Commissioners, 4430 South Adams County Parkway, 5th Floor, Suite C5000A, Brighton, CO 80601.	Adams County Community and Economic Development Department, 4430 South Adams County Parkway, 1st Floor, Suite W2000, Brighton, CO 80601.	*http://www.msc.fema.gov/lomc*	Sep. 22, 2017	080001
Arapahoe	City of Centennial (17–08–0306P).	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Public Works Department, 13133 East Arapahoe Road, Centennial, CO 80112.	*http://www.msc.fema.gov/lomc*	Oct. 6, 2017	080315
Gilpin	City of Black Hawk (17–08–0165P).	The Honorable David Spellman, Mayor, City of Black Hawk, P.O. Box 17, Black Hawk, CO 80422.	Planning and Development Department, 211 Church Street, Black Hawk, CO 80422.	*http://www.msc.fema.gov/lomc*	Oct. 6, 2017	080076
Jefferson	City of Arvada (17–08–0045P).	The Honorable Marc Williams, Mayor, City of Arvada, 8101 Ralston Road, P.O. Box 8101, Arvada, CO 80001.	Engineering Department, 8101 Ralston Road, Arvada, CO 80001.	*http://www.msc.fema.gov/lomc*	Sep. 22, 2017	085072
	Unincorporated areas of Jefferson County (17–08–0045P).	The Honorable Libby Szabo, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Planning and Zoning Department, 100 Jefferson County Parkway, Golden, CO 80419.	*http://www.msc.fema.gov/lomc*	Sep. 22, 2017	080087
Florida:						
Bay	Unincorporated areas of Bay County (17–04–2939P).	The Honorable William T. Dozier, Chairman, Bay County, Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Department, 840 West 11th Street, Panama City, FL 32401.	*http://www.msc.fema.gov/lomc*	Sep. 20, 2017	120004
Charlotte	Unincorporated areas of Charlotte County (17–04–3469P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*http://www.msc.fema.gov/lomc*	Oct. 4, 2017	120061
Manatee	City of Bradenton (17–04–1546P).	The Honorable Wayne H. Poston, Mayor, City of Bradenton, 101 Old Main Street West, Bradenton, FL 34205.	Building and Construction Services Department, 101 Old Main Street West, Bradenton, FL 34205.	*http://www.msc.fema.gov/lomc*	Oct. 19, 2017	120155
	City of Holmes Beach (17–04–2767P).	The Honorable Bob Johnson, Mayor, City of Holmes Beach, 5801 Marina Drive, Holmes Beach, FL 34217.	Building and Zoning Department, 5801 Marina Drive, Holmes Beach, FL 34217.	*http://www.msc.fema.gov/lomc*	Oct. 16, 2017	125114

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
	Unincorporated areas of Manatee County (16–04–7267P).	The Honorable Betsy Benac, Chair, Manatee County, Board of Commissioners, P.O. Box 1000, Bradenton, FL 34205.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	*http://www.msc.fema.gov/lomc*	Oct. 19, 2017	120153
	Unincorporated areas of Manatee County (17–04–1546P).	The Honorable Betsy Benac, Chair, Manatee County, Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	*http://www.msc.fema.gov/lomc*	Sep. 21, 2017	120153
Monroe	Village of Islamorada (17–04–0974P).	The Honorable Jim Mooney, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Planning and Development Services Department, 86800 Overseas Highway, Islamorada, FL 33036.	*http://www.msc.fema.gov/lomc*	Aug. 31, 2017	120424
Orange	Unincorporated areas of Orange County (16–04–8268P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, Orlando, FL 32801.	Orange County Stormwater Division, 4200 South John Young Parkway, Orlando, FL 32839.	*http://www.msc.fema.gov/lomc*	Sep. 22, 2017	120179
Osceola	Unincorporated areas of Osceola County (16–04–8268P).	The Honorable Brandon Arrington, Chairman, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Division, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*http://www.msc.fema.gov/lomc*	Sep. 22, 2017	120189
Polk	Unincorporated areas of Polk County (16–04–7727P).	The Honorable Melony M. Bell, Chair, Polk County, Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	*http://www.msc.fema.gov/lomc*	Sep. 14, 2017	120261
St. Johns	Unincorporated areas of St. Johns County (17–04–1817P).	The Honorable James K. Johns, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Building Services Division, 4040 Lewis Speedway, St. Augustine, FL 32084.	*http://www.msc.fema.gov/lomc*	Sep. 13, 2017	125147
Louisiana: Ouachita.	City of Monroe (17–06–1426P).	The Honorable James E. Mayo, Mayor, City of Monroe, P.O. Box 123, Monroe, LA 71210.	City Hall, 3901 Jackson Street, Monroe, LA 71202.	*http://www.msc.fema.gov/lomc*	Aug. 25, 2017	220136
Maine: Oxford	Town of Hiram (17–01–0730P).	The Honorable Joyce Siracuse, Chair, Town of Hiram Board of Selectmen, 25 Allard Circle, Hiram, ME 04041.	Town Hall, 25 Allard Circle, Hiram, ME 04041.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2017	230094
Massachusetts: Essex.	City of Gloucester (17–01–0964P).	The Honorable Sefatia Romeo Theken, Mayor, City of Gloucester, 9 Dale Avenue, Gloucester, MA 01930.	Community Development Department, 3 Pond Road, Gloucester, MA 01930.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	250082
North Carolina:						
Carteret	Town of Indian Beach (17–04–0494P).	The Honorable Stewart Pickett, Mayor, Town of Indian Beach, 1400 Salter Path Road, Salter Path, NC 28575.	Planning and Inspections Department, 1400 Salter Path Road, Salter Path, NC 28575.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	370433
	Unincorporated areas of Carteret County (17–04–0494P).	The Honorable Mark Mansfield, Chairman, Carteret County Board of Commissioners, 302 Courthouse Square, Beaufort, NC 28516.	Carteret County Planning and Inspections Department, 402 Broad Street, Beaufort, NC 28516.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	370043
Onslow	Town of North Topsail Beach (17–04–2762P).	The Honorable Fred J. Burns, Mayor, Town of North Topsail Beach, 2008 Loggerhead Court, North Topsail Beach, NC 28460.	Planning Department, 2008 Loggerhead Court, North Topsail Beach, NC 28460.	*http://www.msc.fema.gov/lomc*	Oct. 6, 2017	370466
Transylvania	Unincorporated areas of Transylvania County (17–04–1024P).	The Honorable Larry Chapman, Chairman, Transylvania County Board of Commissioners, 101 South Broad Street, Brevard, NC 28712.	Transylvania County Inspections Department, 98 East Morgan Street, Brevard, NC 28712.	*http://www.msc.fema.gov/lomc*	Jun. 27, 2017	370230

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
North Dakota: Morton.	City of Mandan (17–08–0166P).	The Honorable Tim Helbling, Mayor, City of Mandan, 203 2nd Avenue Northwest, Mandan, ND 58554.	City Hall, 203 2nd Avenue Northwest, Mandan, ND 58554.	*http://www.msc.fema.gov/lomc*	Sep. 18, 2017	380072
Oklahoma: Oklahoma.	City of Midwest City (17–06–0756P).	The Honorable Matthew Dukes, Mayor, City of Midwest City, 100 North Midwest Boulevard, Midwest City, OK 73110.	Engineering Department, 100 North Midwest Boulevard, Midwest City, OK 73110.	*http://www.msc.fema.gov/lomc*	Oct. 16, 2017	400405
Pennsylvania: Allegheny.	Township of North Fayette (16–03–2516P).	The Honorable James Morosetti, Chairman, Township of North Fayette Board of Supervisors, 400 North Branch Road, Oakdale, PA 15071.	Community Development Department, 400 North Branch Road, Oakdale, PA 15071.	*http://www.msc.fema.gov/lomc*	Sep. 11, 2017	421085
Texas:						
Bexar	City of San Antonio (16–06–2628P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	Sep. 21, 2017	480045
	City of San Antonio (17–06–1346P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	Sep. 29, 2017	480045
Dallas and Tarrant.	City of Grapevine (17–06–1387P).	The Honorable William D. Tate, Mayor, City of Grapevine, P. O. Box 95104, Grapevine, TX 76099.	City Hall, 200 South Main Street, Grapevine, TX 76051.	*http://www.msc.fema.gov/lomc*	Sep. 14, 2017	480598
Denton	City of The Colony (17–06–0854P).	The Honorable Joe McCourry, Mayor, City of The Colony, 6800 Main Street, The Colony, TX 75056.	City Hall, 6800 Main Street, The Colony, TX 75056.	*http://www.msc.fema.gov/lomc*	Sep. 11, 2017	481581
Harris	Unincorporated areas of Harris County (16–06–4008P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.msc.fema.gov/lomc*	Oct. 16, 2017	480287
Tarrant	Town of Flower Mound (17–06–1387P).	The Honorable Thomas Hayden, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Engineering Department, 2121 Cross Timbers Road, Flower Mound, TX 75028.	*http://www.msc.fema.gov/lomc*	Sep. 14, 2017	480777
Travis	City of Austin (16–06–3748P).	The Honorable Steve Adler, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	1 Texas Center, 505 Barton Springs Road, 12th Floor, Austin, TX 78703.	*http://www.msc.fema.gov/lomc*	Sep. 11, 2017	480624
Utah: Iron	City of Cedar City (17–08–0143P).	The Honorable Maile Wilson, Mayor, City of Cedar City, 10 North Main Street, Cedar City, UT 84720.	City Hall, 10 North Main Street, Cedar City, UT 84720.	*http://www.msc.fema.gov/lomc*	Oct. 12, 2017	490074
Virginia:						
Fauquier	Unincorporated areas of Fauquier County (17–03–0226P).	Mr. Paul S. McCulla, Fauquier County Administrator, 10 Hotel Street, Warrenton, VA 20186.	Fauquier County Zoning and Development Services Department, 29 Ashby Street, 3rd Floor, Warrenton, VA 20186.	*http://www.msc.fema.gov/lomc*	Oct. 12, 2017	510055
Prince William	Unincorporated areas of Prince William County (17–03–0300P).	Mr. Christopher E. Martino, Prince William County Executive, 1 County Complex Court, Woodbridge, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Woodbridge, VA 22192.	*http://www.msc.fema.gov/lomc*	Sep. 21, 2017	510119

[FR Doc. 2017–16951 Filed 8–10–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2017–N093; FXES11140800000–178–FF08EVEN00]

Low-Effect Habitat Conservation Plan for the Morro Shoulderband Snail; Rothman Parcel, Community of Los Osos, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Philip R. Rothman and Pamela J. Rothman for a 10-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended. The application addresses the potential for ''take'' of the federally endangered Morro shoulderband snail likely to occur incidental to the construction and maintenance of a single-family residence on an existing legal parcel and associated infrastructure/landscaping in the unincorporated community of Los Osos, San Luis Obispo County, California. We invite comments from the public on the application package, which includes a draft low-effect habitat conservation plan (HCP) and draft low-effect screening form and environmental action statement, which constitutes our proposed National Environmental Policy Act (NEPA) compliance.

DATES: To ensure consideration, please send your written comments by September 11, 2017.

ADDRESSES: You may download a copy of the draft HCP and draft low-effect screening form and environmental action statement on the internet at *http://www.fws.gov/ventura/,* or you may request copies of the documents by U.S. mail to our Ventura office, or by phone (see **FOR FURTHER INFORMATION CONTACT**). Please address written comments to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Julie M. Vanderwier, Senior Fish and Wildlife Biologist, at the Ventura office address or by phone at (805) 677–3400.

SUPPLEMENTARY INFORMATION: We have received an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act; 16 U.S.C. 1531 *et seq.*). The application addresses take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) likely to occur incidental to the construction and maintenance of a single-family residence and associated infrastructure/landscaping. The requested permit term is 10 years, and the permit would be subject to renewal. We invite comments from the public on the application package. Issuance of an ITP pursuant to this HCP has been determined to be eligible for a categorical exclusion under NEPA.

Background

The Morro shoulderband snail was listed as endangered on December 15, 1994 (59 FR 64613). Section 9 of the Act and its implementing regulations (16 U.S.C. 1531 *et seq.*) prohibit the take of fish or wildlife species listed as endangered or threatened. Under the Act, ''take'' is defined to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). Under section 10(a)(1)(B) of the Act, we may issue permits to authorize take of listed species if it is incidental to other lawful activities and not the purpose of carrying out that activity. The Code of Federal Regulations provides those regulations governing incidental take permits for threatened and endangered species at 50 CFR 17.32 and 17.22. Issuance of an incidental take permit must not jeopardize the existence of any federally listed fish, wildlife, or plant species.

The Applicant's Proposed Project

The project involves the construction and maintenance of a single-family residence and associated infrastructure/landscaping on an existing, legal parcel in the Cabrillo Estates subdivision of Los Osos, County of San Luis Obispo, California. The HCP provides the support necessary for the Service to issue an ITP that would authorize take, in this instance, of the Morro shoulderband snail (*Helminthoglypta walkeriana*). The County of San Luis Obispo requires demonstration that the property owner is in compliance with the Endangered Species Act of 1973, as amended (Act), as part of their permitting requirements.

The draft HCP contains two alternatives to the proposed action: ''No Action'' and ''Project Redesign.'' Under the ''No Action'' alternative, an ITP for the Rothman single-family residence would not be issued. The Rothman single-family residence could not legally be built, and the mitigation fee would not be available to contribute to recovery actions for Morro shoulderband snails. Since the property is privately owned, there are ongoing economic considerations (*e.g.,* payment of property taxes) associated with continued ownership of a property and its intended use. The sale of the property for purposes (*e.g.,* as a conservation easement) other than the identified activity is not economically feasible. For these reasons, the ''No Action'' alternative has been rejected.

The ''Project Redesign'' alternative would involve redesign of the Rothman project to reduce or avoid altogether take of Morro shoulderband snail. This alternative was not selected, due to the parcel's small size and marginal value to the long-term conservation of the Morro shoulderband snail of habitat on the site. A reduction or redesign of the project footprint would not meet the applicants' needs and would not significantly reduce the effects of the taking of Morro shoulderband snails such that there would be a greater benefit to species survival and recovery. For these reasons, the ''Project Redesign'' alternative has also been rejected.

Our Preliminary Determination

We have determined that the applicants' proposal will have a minor or negligible effect on the Morro shoulderband snail and that the HCP qualifies for processing as a low-effect plan consistent with our Habitat Conservation Planning and Incidental Take Permit Processing Handbook (December 2016). Three criteria form the basis for our determination: (1) The proposed project as described in the HCP would result in minor or negligible effects on federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor negligible effects on other environmental values or resources; and (3) HCP impacts, considered together with those of other past, present, and reasonably foreseeable future projects, would not result in cumulatively significant effects. It is our preliminary determination that HCP approval and ITP issuance qualify for categorical exclusion under the NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215). However, we may revise our determination based upon review of public comments received in response to this notice.

Next Steps

We will evaluate the permit application, including the draft HCP and comments we receive, to determine whether it meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of the ITP would comply with section 7 of the Act by conducting an intra-Service consultation pursuant to section 7(a)(2).

Public Review

We request comments from the public regarding our preliminary determination that the applicant's proposal will have a minor or negligible effect on the Morro shoulderband snail and that the HCP qualifies for processing as low effect. We will evaluate comments received and make a final determination regarding whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will incorporate the results of our intra-Service consultation, in combination with the above findings, in our final analysis to determine whether to issue the ITP. If all of our requirements are met, we will issue the ITP to the applicant. Permit issuance would not occur less than 30 days after the publication date of this notice.

Public Comments

If you wish to comment on the permit application, HCP, and associated documents, you may submit comments by either of the methods provided in **ADDRESSES.**

Public Availability of Comments

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 view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Act and the NEPA public involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6).

Dated: August 7, 2017.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2017–16976 Filed 8–10–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2017–0043; FXIA16710900000–178–FF09A30000]

Endangered and Threatened Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered and threatened species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before September 11, 2017.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2017–0043.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2017–0043; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Viewing Comments: Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: Joyce Russell, Government Information Specialist, Division of Management Authority, U.S. Fish and Wildlife Service Headquarters, MS: IA; 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2023; facsimile 703–358–2280.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **FOR FURTHER INFORMATION**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; Jan. 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

We invite the public to comment on applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (16 U.S.C. 1531 *et seq.;* ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

Applicant: Liliana Cortez Ortiz, Ann Arbor, MI; PRT–26524C

The applicant requests a permit to import howler monkey (*Alouatta palliata palliata*) biological samples from nongovernmental organization (NGO) Asociación para el Desarrollo de Solentiname, Isla Mancarrón, El Archipielago de Solentiname, Nicaragua, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoological Society of Philadelphia, PA; PRT–31910C

The applicant requests a permit to import one captive born female jaguar (*Panthera onca*) from Zoo de Granby, Quebec, Canada, for the purpose of enhancement of the survival of the species.

Applicant: Ricardo Longoria, Natalia, TX; PRT–192403

The applicant requests renewal of a permit to authorize interstate commerce, export and cull excess barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), and red lechwe (*Kobus lechwe*) from the captive herds maintained at their facility for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Cynthia Page-Karjian, Florida Atlantic Univ, Fort Pierce, FL; PRT–34054C

The applicant requests a permit to import DNA samples from the following species: leatherback sea turtle (*Dermochelys coriacea*), green sea turtle (*Chelonia mydas*), and hawksbill sea turtle (*Eretmochelys imbricata*) for the purpose of scientific research. This notification is for a single import.

Applicant: John Aynes, Oklahoma City, OK; PRT–29141A

The applicant requests a renewal and amendment to a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species: Golden conure/Queen of Bavaria conure (*Aratinga guarouba*), which is listed as the golden parakeet; red-vented cockatoo (*Cacatua haematuropygia*), which is listed as the Philippine cockatoo; citron cockatoo (*Cacatua sulphurea citrinocristata*); and blue-throated macaw (*Ara glaucogularis*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Jason Troxell, Eagle River, AK; PRT–32830

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoises (*Astrochelys radiata*) to enhance species survival. This notification covers activities conducted by the applicant over a 5-year period.

Multiple Applicants

Applicant: Sal Davino, Morristown, NJ; PRT–21334C

Applicant: Sharon Fisher, Dorr, MI; PRT–32360C

The applicant requests a permit to import sport-hunted trophies of a male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

IV. Next Steps

If the Service decides to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the **Federal Register** notice announcing the permit issuance date by searching in *www.regulations.gov* under the permit number listed in this document.

V. Public Comments

You may submit your comments and materials concerning this notice by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email or fax or to an address not listed in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

We will post all hardcopy comments on *http://www.regulations.gov.*

VI. Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Joyce Russell,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2017–16947 Filed 8–10–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation projects and facilities to reflect current costs of administration, operation, maintenance, and rehabilitation.

DATES: The irrigation assessment rates are current as of January 1, 2017.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation project or facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to find contacts at the regional or local office at which the project or facility is located.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rate Adjustment was published in the **Federal Register** on April 21, 2017 (82 FR 18770) to propose adjustments to the irrigation assessment rates at several BIA irrigation projects. The public and interested parties were provided an opportunity to submit written comments during the 60-day period that ended June 20, 2017.

Did BIA defer or change any proposed rate increases?

Yes. For the Flathead Indian Irrigation Project, the full rate increase to $33.50 as published in the proposed notice for the 2018 rate will not be implemented. The final 2018 rate will be changed from $33.50 to $29.00, with the remainder of the full rate increase to be implemented in 2019. For the Wind River Irrigation Project, the Crowheart and A Canal Units increase to $15.75 as published in the proposed notice for the 2017 rate will not be implemented. The final 2017 rate is $15.50. All other rates are to be implemented at the respective irrigation projects as published.

Did BIA receive any comments on the proposed irrigation assessment rate adjustments?

Yes. Written comments were received related to the proposed irrigation rate adjustment for the Flathead (FIIP) and Colorado River (CRIIP) Indian Irrigation Projects.

What issues were of concern to the commenters?

Commenters raised concerns on the proposed rates about the following issues:

The Following Comments Are Specific to the Flathead Indian Irrigation Project

Written comments relating to the proposed rate adjustment were received by letter. BIA's summary of the issues and BIA's responses are provided below.

Comment: Several commenters expressed a position that, under the irrigation districts' repayment contracts, only irrigation districts have the power to assess themselves.

Response: As noted in the April 21, 2017 **Federal Register** notice, BIA is required to establish irrigation assessment rates that recover the costs to administer, operate, maintain, and rehabilitate our projects. As owner of the FIIP, it is BIA's responsibility to ensure adequate resources are made available to meet the requirements noted above. BIA's authority to assess rates dates back to the Act of May 29, 1908, is codified at 25 U.S.C. 381 *et seq.,* and is addressed in the BIA's regulations at 25 CFR part 171. Additionally, the repayment contracts between the irrigation districts and Interior explicitly state that operation and maintenance expenses ''shall be paid . . . as provided . . . by rules made or to be made . . . by the Secretary of the Interior.'' The repayment contracts between the irrigation districts and Interior capture the irrigators' obligation to pay annual assessments as well as the irrigation districts' authority to collect such assessments for payment to the United States. The authority to assess rates, however, rests solely with Interior and has not been delegated to the irrigation districts.

Comment: Several commenters requested that the rate increase be deferred until current litigation is resolved regarding the transfer of the operation and maintenance of the FIIP.

Response: As current project operator, BIA must plan for the 2018 season and set O&M rates at a level sufficient to cover the costs of administering, operating, maintaining and rehabilitating the FIIP. It is imperative that the project operator be able to operate and maintain the project, ensure adequate staffing levels, purchase supplies and materials, repair and/or replace existing key infrastructure, implement an invasive weed control program, maintain operating equipment, maintain an adequate equipment sinking fund for replacing vital heavy equipment, and maintain an adequate Emergency Reserve Fund. Additionally, the project operator will also need to address deferred maintenance projects on the FIIP.

Comment: One commenter stated that a 29% increase is unwarranted at this time.

Response: The costs associated with operating and maintaining the FIIP have historically and consistently exceeded the amount paid through assessments. Even during the timeframe during which the Cooperative Management Entity operated the FIIP, the O&M assessment rate was increased twice, in 2010 and 2011. Since reassumption, the BIA has made clear the need to increase FIIP assessments rates to address its operation and maintenance needs and has publicly noticed the need to raise rates in both 2015 and 2016 (see 80 FR 33279, June 11, 2015, and 81 FR 51927, August 5, 2016, respectively). The only reason rate increases were not implemented during these years was because of the timeframe necessary to communicate an increase to the counties that collect the O&M funds. Rate increases have been needed for many years, and FIIP's ability to address its operation and maintenance needs have been compromised by not increasing rates since 2011.

Moreover, the methodology used by BIA to determine the 2017 O&M rate was reasonable. Based on a review of historical income receipts and expenditures, a budget of projected income receipts and expenditures is developed approximately two years before the O&M assessments are collected and expenses are incurred. BIA relies on financial reports generated by the Financial and Business Management System for reviewing past expenditures and projecting a future budget and expenditures. Procurement files and records maintained by the FIIP were also reviewed and considered.

Comment: One commenter stated that no rate increase should be made at this time because of local agricultural economics.

Response: BIA's projects are important economic contributors to the local communities they serve, and they contribute millions of dollars in crop value annually. Unfortunately, the costs associated with operating and maintaining an irrigation project may increase independently of prices and costs that are realized by the irrigators. Historically, BIA tempered irrigation rate increases to demonstrate sensitivity to the economic impact on water users, but that past practice resulted in a rate deficiency at some irrigation projects and BIA does not have discretionary funds to subsidize irrigation projects. Therefore, funding to operate and maintain these projects needs to come from revenues from the water users served by those projects.

BIA's irrigation program has been the subject of several Office of Inspector General (OIG) and U.S. Government Accountability Office (GAO) audits. In the most recent OIG audit, No. 96–I–641, March 1996, the OIG concluded:

> Operation and maintenance revenues were insufficient to maintain the projects, and some projects had deteriorated to the extent that their continued capability to deliver water was in doubt. This occurred because operation and maintenance rates were not based on the full cost of delivering irrigation water, including the costs of systematically rehabilitating and replacing project facilities and equipment, and because project personnel did not seek regular rate increases to cover the full cost of project operation.

A previous OIG audit performed on one of the BIA's largest irrigation projects, the Wapato Indian Irrigation Project, No. 95–I–1402, September 1995, reached the same conclusion.

To address the issues noted in these audits, BIA must systematically review and evaluate irrigation assessment rates and adjust them, when necessary, to reflect the full costs to operate and perform all appropriate maintenance on the irrigation project or facility infrastructure to ensure safe and reliable operation. If this review and adjustment is not accomplished, a rate deficiency can accumulate over time. Rate deficiencies force BIA to raise irrigation assessment rates in larger increments over shorter periods than would have been otherwise necessary.

Comment: One commenter stated that the proposed rate increase was not discussed with the Joint Board of Control (JBC) nor the Confederated Salish and Kootenai Tribes (CSKT).

Response: The status of the FIIP budget and the need to increase rates were communicated to the JBC as early as 2014 and have been discussed with both the JBC and CSKT numerous times since then. BIA publicly noticed its intent to increase assessment rates in both 2015 and 2016 (see 80 FR 33279, June 11, 2015, and 81 FR 51927, August 5, 2016). Regarding the 2018 proposed increase, the Project Manager provided and discussed the proposed budget information that supports the rate increase to the JBC in January 2017. This information was also provided at an April 11, 2017 water user meeting. The CSKT was also notified of the rate increase.

Comment: One commenter recommended a gradual rate increase over the next 5 to 7 years.

Response: BIA has projected this proposed rate increase for several years, and anticipated increasing the assessment rates in both 2015 and 2016. The FIIP O&M budget was prepared in accordance with BIA financial guidelines. BIA considers the following items when determining an irrigation's project's budget: Project personnel costs; materials and supplies; vehicle and equipment repairs; equipment; capitalization expenses; acquisition expenses; rehabilitation costs; maintenance of a reserve fund for contingencies or emergencies; and other expenses that are determined to be necessary to operate and maintain an irrigation project.

Based on increased costs associated with administering, operating, maintaining and rehabilitating the FIIP, the need for the proposed rate increase is clear and the $7.50 increase is justified. However, given the timing of the **Federal Register** notice, BIA has decided to impose only a $3.00 increase in 2018 and postpone the remainder of the increase until 2019.

The Following Comment Is Specific to the Colorado River Indian Irrigation Project

Comment: One commenter suggested that the rate for the Colorado River Indian Tribes should be increased by 11%. Included were several reports related to previous and recent information collected regarding the Colorado River Indian Irrigation Project (CRIIP).

Response: The recent information collected concerning the CRIIP is being evaluated to determine how this might impact the future operation and maintenance activities of the project. However, in order to implement an increase it would be necessary to propose the change and again solicit comments. For the purpose of this notice, the proposed rate as published in the **Federal Register** at 82 FR 18770 (April 21, 2017) will remain unchanged.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *www.gpo.gov.*

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior (Secretary) by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

Whom can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project name	Project/agency contacts
Northwest Region Contacts	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, OR 97232–4169,Telephone: (503) 231–6702.	
Flathead Indian Irrigation Project	Pete Plant, Acting Superintendent, Pete Plant, Irrigation Project Manager, P.O. Box 40, Pablo, MT 59855, Telephones: (406) 675–2700 ext. 1300 Superintendent, (406) 745–2661 ext. 2 Project Manager.
Fort Hall Irrigation Project	David Bollinger, Irrigation Project Manager, Building #2 Bannock Ave., Fort Hall, ID 83203–0220, Telephone: (208) 238–6264.
Wapato Irrigation Project	David Shaw, Superintendent, Larry Nelson, Acting Project Administrator, P.O. Box 220, Wapato, WA 98951–0220, Telephones: (509) 865–2421 Superintendent, (509) 877–3155 Acting Project Administrator.
Rocky Mountain Region Contacts	
Darryl LaCounte, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 2021 4th Avenue North, Billings, MT 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Thedis Crowe, Superintendent, Greg Tatsey, Irrigation Project Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent, (406) 338–7519, Irrigation Project Manager.
Crow Irrigation Project	Vianna Stewart, Superintendent, John Anevski, Acting Irrigation Project Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672, Superintendent, (406) 247–7998, Acting Irrigation Project Manager.
Fort Belknap Irrigation Project	John St. Pierre, Superintendent, John Anevski, Acting Irrigation Project Manager (BIA), (Project operation & maintenance contracted to Tribes), R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent, (406) 353–8454, Irrigation Project Manager (Tribal Office).
Fort Peck Irrigation Project	Howard Beemer, Superintendent, Huber Wright, Acting Irrigation Project Manager, P.O. Box 637, Poplar, MT 59255, Telephones: (406) 768–5312, Superintendent, (406) 653–1752, Irrigation Project Manager.

Project name	Project/agency contacts
Wind River Irrigation Project	Norma Gourneau, Superintendent, John Anevski, Acting Irrigation Project Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent, (406) 247–7998, Acting Irrigation Project Manager.
Southwest Region Contacts	
William T. Walker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, NM 87104, Telephone: (505) 563–3100.	
Pine River Irrigation Project	Priscilla Bancroft, Superintendent, Vickie Begay, Irrigation Project Manager, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent, (970) 563–9484, Irrigation Project Manager.
Western Region Contacts	
Bryan Bowker, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 N. Central Ave., 4th Floor Mailroom, Phoenix, AZ 85004, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Kellie Youngbear, Superintendent, Gary Colvin, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Joseph McDade, Superintendent, (Project operation & management compacted to Tribes), 2719 Argent Ave., Suite 4, Gateway Plaza, Elko, NV 89801, Telephone: (775) 738–5165, (208) 759–3100, (Tribal Office).
Yuma Project, Indian Unit	Denni Shields, Superintendent, 256 South Second Avenue, Suite D, Yuma, AZ 85364, Telephone: (928) 782–1202.
San Carlos Irrigation Project Indian Works and Joint Works.	Ferris Begay, Project Manager, Clarence Begay, Irrigation Manager, 13805 N. Arizona Boulevard, Coolidge, AZ 85128, Telephone: (520) 723–6225.
Uintah Irrigation Project	Antonio Pingree, Acting Superintendent, Ken Asay, Irrigation System Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300, (435) 722–4344.
Walker River Irrigation Project	Robert Eben, Superintendent, 311 E. Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500

What irrigation assessments or charges are adjusted by this notice?

The rate table below contains the current rates for all irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. The table also contains the final rates for the 2017 calendar year and subsequent years where applicable. An asterisk immediately following the rate category notes the irrigation projects where 2017 rates are different from the 2016 rates.

Project name	Rate category	Final 2016 rate	Final 2017 rate	Final 2018 rate **
Northwest Region Rate Table				
Flathead Indian Irrigation Project (See Note #1)	Basic-per acre—A	$26.00	$26.00	$29.00
	Basic-per acre—B	13.00	13.00	14.50
	Minimum Charge per tract	75.00	75.00	75.00

Project name	Rate category	Final 2016 rate	Final 2017 rate
Fort Hall Irrigation Project	Basic per acre *	$52.00	$54.00
	Minimum Charge per tract *	37.00	38.50
Fort Hall Irrigation Project—Minor Units	Basic per acre *	31.00	32.50
	Minimum Charge per tract *	37.00	38.50
Fort Hall Irrigation Project—Michaud	Basic per acre *	55.00	57.50
	Pressure per acre *	83.00	88.50
	Minimum Charge per tract *	37.00	38.50
Wapato Irrigation Project—Toppenish/Simcoe Units	Minimum Charge per bill	25.00	25.00
	Basic per acre	25.00	25.00
Wapato Irrigation Project—Ahtanum Units	Minimum Charge per bill	30.00	30.00
	Basic per acre	30.00	30.00
Wapato Irrigation Project—Satus Unit	Minimum Charge per bill	79.00	79.00
	“A” Basic per acre	79.00	79.00
	“B” Basic per acre	85.00	85.00
Wapato Irrigation Project—Additional Works	Minimum Charge per bill *	78.00	80.00
	Basic per acre *	78.00	80.00
Wapato Irrigation Project—Water Rental	Minimum Charge	86.00	86.00
	Basic per acre	86.00	86.00
Rocky Mountain Region Rate Table			
Blackfeet Irrigation Project	Basic-per acre	20.00	20.00

Project name	Rate category	Final 2016 rate	Final 2017 rate
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units).	Basic-per acre *	26.00	28.00
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units).	Basic-per acre *	26.00	28.00
Crow Irrigation Project—Two Leggins Unit	Basic-per acre	14.00	14.00
Crow Irrigation Two Leggins Drainage District	Basic-per acre	2.00	2.00
Fort Belknap Irrigation Project	Basic-per acre	16.00	16.00
Fort Peck Irrigation Project	Basic-per acre	26.00	26.50
Wind River Irrigation Project—Units 2, 3 and 4	Basic-per acre *	22.50	23.50
Wind River Irrigation Project—Unit 6	Basic-per acre	21.00	21.00
Wind River Irrigation Project—LeClair District (see Note #2)	Basic-per acre	47.00	47.00
Wind River Irrigation Project—Crow Heart Unit	Basic-per acre	15.50	15.50
Wind River Irrigation Project—A Canal Unit	Basic-per acre	15.50	15.50
Wind River Irrigation Project—Riverton Valley Irrigation District	Basic-per acre *	26.00	30.65
Southwest Region Rate Table			
Pine River Irrigation Project	Minimum Charge per tract	50.00	50.00
	Basic-per acre *	18.00	19.00
Western Region Rate Table			
Colorado River Irrigation Project	Basic per acre up to 5.75 acre-feet	54.00	54.00
	Excess Water per acre-foot over 5.75 acre-feet.	17.00	17.00
Duck Valley Irrigation Project	Basic per acre	5.30	5.30
Yuma Project, Indian Unit (See Note #3)	Basic per acre up to 5.0 acre-feet *	113.00	118.50
	Excess Water per acre-foot over 5.0 acre-feet *.	24.50	27.50
	Basic per acre up to 5.0 acre-feet (Ranch 5) *.	113.00	118.50

Project name	Rate category	Final 2016 rate	Final 2017 rate	Final 2018 rate **
San Carlos Irrigation Project (Joint Works) (See Note #4).	Basic per acre *	$30.00	$25.00	$27.90.
	Final 2017–2018 Construction Water Rate Schedule:			
		Off Project Construction	On Project Construction—Gravity Water	On Project Construction—Pump Water.
	Administrative Fee	$300.00	$300.00	$300.00.
	Usage Fee	$250.00 per month	No Fee	$100.00 per acre foot.
	Excess Water Rate †	$5.00 per 1,000 gal	No Charge	No Charge.

† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.

Project name	Rate category	Final 2016 rate	Final 2017 rate
San Carlos Irrigation Project (Indian Works) (See Note #5)	Basic per acre	$81.00	$81.00
Uintah Irrigation Project	Basic per acre	18.00	18.00
	Minimum Bill	25.00	25.00
Walker River Irrigation Project	Basic per acre	31.00	31.00

* Notes irrigation projects where rates are adjusted.

** The requirement for a final 2018 Rate is only applicable to the Flathead and San Carlos Irrigation Projects due to their specific billing requirements.

Note #1: **Federal Register** Notice on April 06, 2017 established the 2017 rate for the Flathead Indian Irrigation Project (82 FR 16849). This notice makes final the 2018 rate for the FIIP.

Note #2: The O&M rate may vary yearly based upon the budget submitted by the LeClair District.

Note #3: The O&M rate for the Yuma Project, Indian Unit has two components. The first component is the O&M rate established by the Bureau of Reclamation (BOR), the owner and operator of the Project. The BOR rate for 2017 is $115.00/acre. The second component is for the O&M rate established by BIA to cover administrative costs including billing and collections for the Project. The 2017 BIA rate is $3.50/acre.

Note #4: The construction water rate schedule identifies the fees assessed for use of irrigation water for non-irrigation purposes. **Federal Register** Notice on April 06, 2017 established the 2017 rate for the SCIP–JW (82 FR 16849). This notice makes final the 2018 rate for the SCIP–JW.

Note #5: The 2017 O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is the O&M rate established by the San Carlos Irrigation Project—Indian Works, the owner and operator of the Project; this rate is $50.00 per acre. The second component is for the O&M rate established by the San Carlos Irrigation Project—Joint Works and is determined to be $25.00 per acre. The third component is the O&M rate established by the San Carlos Irrigation Project Joint Control Board and is $6.00 per acre.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this notice under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined there to be substantial direct effects on federally recognized Tribes because the irrigation projects are located on or associated with Indian reservations. To fulfill its consultation responsibility to Tribes and Tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by project, agency, and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments are not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These rate adjustments do not impose an unfunded mandate on state, local, or tribal governments in the aggregate, or on the private sector, of more than $130 million per year. They do not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Takings (Executive Order 12630)

These rate adjustments do not effect a taking of private property or otherwise have ''takings'' implications under Executive Order 12630. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, these rate adjustments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This notice complies with the requirements of Executive Order 12988. Specifically, in issuing this notice, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires June 30, 2019.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370(d), pursuant to 43 CFR 46.210(i). In addition, the rate adjustments do not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215.

Data Quality Act

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Dated: July 27, 2017.

Michael S. Black,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2017–16910 Filed 8–10–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/ A0A501010.999900 253G]

Land Acquisitions; The Cherokee Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Principal Deputy Assistant Secretary—Indian Affairs made a final agency determination to acquire 45.92 acres, more or less, located in Cherokee County, Oklahoma (Cherokee Springs Site) in trust for the Cherokee Nation for gaming and other purposes on January 19, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240, telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12 (c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

On January 19, 2017, the Principal Deputy Assistant Secretary—Indian Affairs issued a decision to accept the Cherokee Springs Site, consisting of approximately 45.92 acres, more or less, of land in trust for the Nation, under the authority of the Indian Reorganization Act, 25 U.S.C. 5108. The Principal Deputy Assistant Secretary—Indian Affairs determined that the Nation's request also meets the requirements of the Indian Gaming Regulatory Act's ''Oklahoma exception,'' 25 U.S.C. 2719(a)(2)(A)(i), to the general prohibition contained in 25 U.S.C. 2719(a) on gaming on lands acquired in trust after October 17, 1988.

The Principal Deputy Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the Cherokee Springs Site in the name of the United States of America in trust for the Nation upon fulfillment of Departmental requirements.

The 45.92 acres, more or less, are located in Cherokee County, Oklahoma, and are described as follows:

Indian Meridian, Oklahoma Township 16 North, Range 22 East

Section 9 A tract of land situated in the SE1/4 and in the S1/2 S1/2 NE1/4 of Section 9, Township 16 North, Range 22 East of the Indian Meridian, Cherokee County, Oklahoma, being a portion of that parcel of land conveyed to Cherokee Nation Property Management, LLC in Document No. I–2012–008705 filed December 28, 2012 in Book 1055 at Pages 778–779 in the official records of the Cherokee County Clerk, said tract being more particularly described as follows:

Commencing at the Southeast corner of said SE1/4, marked with a Mag Nail;

Thence, N. 89° 52′ 00″ W. along the South boundary of said Section 9, a distance of 1734.91 feet;

Thence, N. 0° 05′ 50″ W., a distance of 758.57 feet to a 3/8″ rebar capped Chaffin LS 1243 to the true POINT OF BEGINNING;

Thence, N. 0°05′50″ W., a distance of 2117.10 feet to a 3/8″ rebar capped Chaffin LS 1243;

Thence, N. 89°54′10″ E., a distance of 1083.04 feet to a 3/8″ rebar capped Chaffin LS 1243;

Thence, S. 0°04′58″ W., a distance of 1215.47 feet to a 3/8″ rebar capped Chaffin LS 1243.

Dated: June 12, 2017.

Michael S. Black,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2017–16906 Filed 8–10–17; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–582 and 731–TA–1377 (Preliminary)]

Ripe Olives From Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ripe olives from Spain, provided for in subheadings 2005.70.02, 2005.70.04, 2005.70.50, 2005.70.60, 2005.70.70, and 2005.70.75 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of Spain.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 22, 2017, the Coalition for Fair Trade in Ripe Olives, consisting of Bell-Carter Foods, Walnut Creek, CA, and Musco Family Olive Company, Tracy, CA, filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of ripe olives from Spain. Accordingly, effective June 22, 2017, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–582 and antidumping duty investigation No. 731–TA–1377 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 28, 2017 (82 FR 29327). The conference was held in Washington, DC, on July 12, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on August 7, 2017. The views of the Commission are contained in USITC Publication 4718 (August 2017), entitled *Ripe Olives from Spain: Investigation Nos. 701–TA–582 and 731–TA–1377 (Preliminary).*

By order of the Commission.

Issued: August 7, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–16911 Filed 8–10–17; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committees on the Federal Rules of Appellate, Bankruptcy, and Criminal Procedure, and the Federal Rules of Evidence; Hearings on Proposed Amendments to the Appellate, Bankruptcy, Criminal, and Evidence Rules, the Rules Governing Section 2254 Cases in the United States District Courts, and the Rules Governing Section 2255 Proceedings for the United States District Courts

AGENCY: Advisory Committees on the Federal Rules of Appellate, Bankruptcy, and Criminal Procedure, and the Federal Rules of Evidence, Judicial Conference of the United States.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committees on Appellate, Bankruptcy, Criminal, and Evidence Rules have proposed amendments to the following rules and forms:

Appellate Rules: 3, 13, 26.1, 28, and 32.

Bankruptcy Rules: 2002, 4001, 6007, 9036, 9037, and Official Form 410.

Criminal Rules: New Criminal Rule 16.1, Rule 5 of the Rules Governing Section 2254 Cases, and Rule 5 of the

Rules Governing Section 2255 Proceedings.

Rules of Evidence: 807.

The text of the proposed rules and form and the accompanying Committee Notes are posted on the Judiciary's Web site at: *http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment.*

All written comments and suggestions with respect to the proposed amendments may be submitted on or after the opening of the period for public comment on August 15, 2017, but no later than February 15, 2018. Written comments must be submitted electronically, following the instructions provided on the Web site. All comments submitted will be posted on the Web site and available to the public.

Public hearings are scheduled on the proposed amendments as follows:

- Appellate Rules in Washington, DC, on November 9, 2017, and in Phoenix, Arizona, on January 5, 2018;
- Bankruptcy Rules in Washington, DC, on January 17, 2018, and in Pasadena, California, on January 30, 2018;
- Criminal Rules in Chicago, Illinois, on October 24, 2017, and in Phoenix, Arizona, on January 5, 2018; and
- Evidence Rules in Boston, Massachusetts, on October 27, 2017, and in Phoenix, Arizona, on January 5, 2018.

Those wishing to testify must contact the Secretary by email at: *Rules_Support@ao.uscourts.gov*, with a copy mailed to the address below, at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE., Suite 7–240, Washington, DC 20544, Telephone (202) 502–1820.

Dated: August 7, 2017.

Rebecca A. Womeldorf,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2017–16916 Filed 8–10–17; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Luis C B Gomez, D.D.S. Decision and Order

On May 5, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Luis C B Gomez, D.D.S. (hereinafter, Registrant), the holder of Certificate of Registration No. AG1976971 in Chula Vista, California, pursuant to which he is authorized to prescribe controlled substances in Schedules II through IV.[1] GX 1 (Certification of Registration Status dated May 17, 2017). The Show Cause Order proposed the revocation of Registrant's Certificate of Registration and the denial of any pending application for renewal or modification of Registrant's registration on the ground that Registrant does not have authority to dispense controlled substances in California, the State in which he is registered. GX 3, at 1 (citing 21 U.S.C. 824(a)(3)).

As the jurisdictional basis for the proceeding, the Show Cause Order alleged that Registrant's registration expires on September 30, 2017. *Id.*

As the substantive grounds for the proceeding, the Show Cause Order alleged that Registrant currently lacks authority to ''handle controlled substances in California,'' voluntarily surrendered his California dental license ''on approximately September 8, 2016,'' and subsequently ''signed a Stipulated Surrender of License and Order before the Dental Board of California'' on November 7, 2016.[2] *Id.* at 2. The Government asserted that Registrant's ''lack of authority to handle controlled substances in the State of California constitutes grounds to revoke . . . [his] registration.'' *Id.*

Citing 21 CFR 1301.43, the Show Cause Order notified Registrant of his right to request a hearing on the allegation or to submit a written statement while waiving his right to a hearing, the procedure for electing each option, and the consequence for failing to elect either option. *Id.* at 2. Citing 21 U.S.C. 824(c)(2)(C), it notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3.

The lead DEA Diversion Investigator (hereinafter, DI) assigned to Registrant's matter executed a Declaration in which she stated that, on May 5, 2017, she personally served Registrant with a copy of the Order to Show Cause at his residence. GX 4, at 1. I find that the Government's service of the Show Cause Order on Registrant was legally sufficient.

The Government submitted a Request for Final Agency Action dated June 6, 2017 and an evidentiary record to support the Show Cause Order's allegations. In the RFAA, the Government represented that, ''Thirty days passed from the date of service and Respondent requested no hearing on the OTSC, nor has he filed a written statement in lieu of requesting a hearing.'' RFAA, at 1.

Based on the Government's representations and my review of the record, I find that more than 30 days have now passed since the date on which Registrant was served with the Show Cause Order and neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement while waiving his right to a hearing. Accordingly, I find that Registrant has waived his right to a hearing and his right to submit a written statement. 21 CFR 1301.43(d). I therefore issue this Decision and Order based on the record submitted by the Government. 21 CFR 1301.43(e).

Findings of Fact

Registrant's DEA Registration

Registrant currently holds DEA practitioner registration AG1976971 authorizing him to dispense controlled substances in Schedules II through IV. GX 1, GX 2. This registration expires on September 30, 2017. *Id.*

DEA practitioner registration AG1976971 is assigned to Registrant at ''232 Third Avenue, Ste A, 232 3rd Ave., Chula Vista, CA 91910.'' *Id.*

The Status of Registrant's State License

On November 15, 2016, the Dental Board of California ordered that Dental License No. 24551 was surrendered and accepted by the DBC. GX 4, Appendix A (Stipulated Surrender of License and Order). Pursuant to that Order, Registrant has lost ''all rights and privileges as a dentist in California.'' *Id.* at 2.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), ''upon a finding that the registrant . . . has had his State license . . . suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage

[1] The Order to Show Cause stated that Registrant was authorized to prescribe controlled substances in Schedule V.

[2] The Government submitted the Stipulated Surrender of License and Order before the Dental Board of California (hereinafter, DBC), the Accusation dated May 2, 2012, the Decision and Order of the DBC dated October 4, 2013, and the DBC Stipulated Settlement and Disciplinary Order dated July 31, 2013 with its Request for Final Agency Action (hereinafter, RFAA). GX 4 (Appendices).

in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton,* 43 FR 27,616 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term '' 'practitioner' [to] mean[ ] a . . . physician, dentist, . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice . . . .'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper,* 76 FR at 71,371–72; *Sheran Arden Yeates,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci,* 58 FR 51,104, 51,105 (1993); *Bobby Watts,* 53 FR 11,919, 11,920 (1988); *Blanton,* 43 FR at 27,616.

Under California law, section 1626 of the Business and Professions Code provides that ''[i]t is unlawful for any person to engage in the practice of dentistry in the state . . . unless the person has a valid, unexpired license or special permit from the Board.'' Cal. Bus. & Prof. Code § 1626 (2017).[3] Further, section 11210 of the California Health and Safety Code sets out who may lawfully prescribe controlled substances in California other than for the treatment of addicts. California licensed dentists are among those lawful prescribers.[4] *See* Cal. Bus. & Prof. Code § 11024 (2017).

In this case, pursuant to the DBC Stipulated Surrender of License and Order, Registrant has lost all rights and privileges as a dentist in California. *Supra.* Consequently, under California law, Registrant is not currently authorized to handle controlled substances in that State. *Supra.* I, therefore, conclude that the record supports the revocation of Registrant's registration because he does not possess authority to dispense controlled substances under the laws of California, the State in which he is registered. 21 U.S.C. 824(a)(3). Thus, I find that Registrant is not entitled to maintain his DEA registration. *Blanton, supra.* Accordingly, I will order that his registration be revoked and that any pending application for the renewal or modification of his registration be denied. *Id.*

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AG1976971 issued to Luis C B Gomez, D.D.S., be, and it hereby is, revoked. I further order that any pending application of Luis C B Gomez, D.D.S., to renew or modify this registration, as well as any other pending application by him for registration in the State of California, be, and it hereby is, denied. This order is effective September 11, 2017.

Dated: August 2, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–17011 Filed 8–10–17; 8:45 am]

BILLING CODE 4410–09–P

[3] Dentistry and the practice of dentistry are addressed in Cal. Bus & Prof. Code § 1625 which states, among other things, that dentistry is the diagnosis or treatment of diseases and may include the use of ''drugs.''

[4] A physician, surgeon, dentist, veterinarian, naturopathic doctor . . ., podiatrist, or pharmacist . . ., or registered nurse . . ., or physician assistant . . ., or an optometrist . . . may prescribe for, furnish to, or administer controlled substances to his or her patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance. Cal. Health & Safety Code § 11210 (2017).

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Existing Collection in Use Without OMB Control Number Address Verification/Change Request Form (1–797)

AGENCY: Criminal Justice Information Services Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: Department of Justice (DOJ), Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on March 16, 2017 allowing for a 60 day comment period.

DATES: Comments are encourages and will be accepted for an additional 30 day until September 11, 2017.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Gerry Lynn Brovey, Supervisory Information Liaison Specialist, Federal Bureau of Investigation, Criminal Justice Information Services Division, 1000 Custer Hollow Road; Clarksburg, WV 26306; phone: 304–625–4320 or email *glbrovey@ic.fbi.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: 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:* Existing collection in use without OMB approval.

(2) *Title of the Form/Collection:* Address Verification/Change Request Form (1–797).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: 1–797. Sponsoring component: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form can be used by any requester who wishes to correct or verify the address submitted on their Departmental Order 556–73 request.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 720 respondents will complete each form within approximately 2 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 24 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: August 8, 2017.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2017–16969 Filed 8–10–17; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0003]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection ARCOS Transaction Reporting; DEA Form 333

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 10, 2017.

FOR FURTHER INFORMATION CONTACT: If you have comments 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 Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:
—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; 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 forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* ARCOS Transaction Reporting.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 333. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public: Business or other for-profit.

Abstract: Section 307 of the Controlled Substances Act (21 U.S.C. 827) requires controlled substance manufacturers and distributors to make periodic reports to the DEA regarding the sale, delivery, and other disposal of certain controlled substances. These reports help ensure a closed system of distribution for controlled substances, and are used to comply with international treaty obligations.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses and associated burden hours.

	Number of annual respondents	Number of annual responses	Average time per response (hours)	Total annual hours
DEA–333 (paper)	70	379	1	379
DEA–333 (electronic)	1,552	11,777	0.1667 (10 minutes)	1,963
Total	1,622	12,156		2,342

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 2,342 annual burden hours. If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: August 8, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–16971 Filed 8–10–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0319]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: National Survey of Youth in Custody, 2017–2018

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on June 6, 2017, allowing a 60-day comment period. Following publication of the 60-day notice, the Bureau of Justice Statistics received one request for survey instruments and comments from two organizations. These comments will be addressed in the supporting statement.

DATES: Comments are encouraged and will be accepted for 30 days until September 11, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional 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 Jessica Stroop, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: *jessica.stroop@usdoj.gov;* telephone: 202–598–7610).

SUPPLEMENTARY INFORMATION: 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 Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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, with change, of a previously approved collection for which approval has expired.

2. *The Title of the Form/Collection:* National Survey of Youth in Custody, 2017–2018.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers not available at this time. The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice is the sponsor for the collection.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to develop and implement surveys to produce estimates for the incidence and prevalence of sexual assault within juvenile correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79). Juvenile facility points of contact will be asked to fill out an online survey gathering facility-level characteristics. Sampled youth in custody will be asked to complete an audio computer-assisted self-interview about their experiences inside the facility.

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 354 facility points of contact will spend approximately one hour filling out the facility characteristics questionnaire. It is estimated that 8,690 youth respondents will spend approximately 7 minutes going through the assent process and 35 minutes on average responding to the survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 12,533 total burden hours associated with this collection (including gathering facility-level information, obtaining parental consent, administrative records, and roster processing).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: August 8, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–16964 Filed 8–10–17; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Submission for Review: Electronic Submission Form for Requests for Corrective Action, Whistleblower Protection for Federal Bureau of Investigation Employees

AGENCY: Office of Attorney Recruitment and Management, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting this information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is a Request for Corrective Action Form, available on OARM's public Web site, for current and former employees of, or applicants for employment with, the Federal Bureau of

Investigation (FBI) who wish to file a claim of whistleblower reprisal. This proposed information collection was previously published in the **Federal Register** on June 6, 2017, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until September 11, 2017.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the U.S. Department of Justice, Office of Attorney Recruitment and Management, 450 5th Street NW., Suite 10200, Attn: Kelly Winship, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, 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:* Existing.

(2) *Title of Form/Collection:* Request for Corrective Action Form.

(3) *The agency form number, if any/ the applicable component of the department sponsoring the collection:* No form number/Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. The application form is submitted voluntarily by individuals who are current or former employees of, or applicants for employment with, the FBI who allege reprisal for their whistleblowing activities.

(5) *An estimate of the total number of respondents and the amount of time estimated to respond/reply:* An average of 10 respondents per year, and an average of three hours to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* About 30 hours.

If additional information is required, please contact: Melody Braswell, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405A, Washington, DC 20530.

Dated: August 8, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–16966 Filed 8–10–17; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0064]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: Annual Parole Survey, Annual Probation Survey, and Annual Probation Survey (Short Form)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on April 25, 2017, allowing a 60-day comment period. Following publication of the 60-day notice, the Bureau of Justice Statistics received one request for survey instruments and comments from two organizations. These comments will be addressed in the supporting statement.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 11, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional 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 Danielle Kaeble, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: *Danielle.kaeble@usdoj.gov;* telephone: 202–305–2017).

SUPPLEMENTARY INFORMATION: 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 Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Annual Parole Survey, Annual Probation Survey

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers for the questionnaire are CJ–7 Annual Parole Survey; CJ–8 Annual Probation Survey; CJ–8a Annual Probation Survey (Short Form). The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State departments of corrections or state probation and parole authorities. Others: The Federal Bureau of Prisons, city and county courts and probation offices for which a central reporting authority does not exist. For the CJ–7 form, the affected public

consists of 53 respondents including 51 central reporters (two state respondents in Pennsylvania, and one each from the remaining states), the District of Columbia, and the Federal Bureau of Prisons responsible for keeping records on parolees. For the CJ–8 form, the affected public includes 305 reporters including 35 state respondents, the District of Columbia, the Federal Bureau of Prisons, and 268 from local authorities responsible for keeping records on probationers. For the CJ–8A form, the affected public includes 151 reporters who are all local authorities responsible for keeping records on probationers. The Annual Parole Survey and Annual Probation surveys have been used since 1977 to collect annual yearend counts and yearly movements of community corrections populations; characteristics of the community supervision population, such as gender, racial composition, ethnicity, conviction status, offense, and supervision status.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 506 Respondents each taking an average of 1.20 hours to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 716 total burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: August 8, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–16965 Filed 8–10–17; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1742]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Public Safety Officer Medal of Valor Review Board, primarily intended to consider nominations for the 2016–2017 Medal of Valor, and to make a limited number of recommendations for submission to the U.S. Attorney General. Additional issues of importance to the Board will also be discussed, to include but not limited to a review and approval of updates to the Board's bylaws. The meeting/conference call date and time is listed below.

DATES: Wednesday, September 20, 2017, from 9:00 a.m. to 12:00 p.m. (EST)

ADDRESSES: The public may hear the proceedings of this meeting/conference call at the Office of Justice Programs, 810 7th Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Gregory Joy, Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, at (202) 514–1369, toll free (866) 859–2687, or by email at *Gregory.joy@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Public Safety Officer Medal of Valor Review Board carries out those advisory functions specified in 42 U.S.C. 15202. Pursuant to 42 U.S.C. 15201, the President of the United States is authorized to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer. This meeting is open to the public at the Office of Justice Programs. For security purposes, members of the public who wish to participate must register at least seven (7) days in advance of the meeting/conference call by contacting Mr. Joy. All interested participants will be required to meet at the Bureau of Justice Assistance, Office of Justice Programs; 810 7th Street NW., Washington, DC, and will be required to sign in at the front desk. **Note:** Photo identification will be required for admission. Additional identification documents may be required.

Access to the meeting will not be allowed without prior registration. Anyone requiring special accommodations should contact Mr. Joy at least seven (7) days in advance of the meeting. Please submit in writing, any comments or statements for consideration by the Review Board, at least seven (7) days in advance of the meeting date.

Gregory Joy,

Policy Advisor/Designated Federal Officer, Bureau of Justice Assistance.

[FR Doc. 2017–16978 Filed 8–10–17; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Computing and Communication Foundations; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Computing and Communication Foundations—Expeditions in Computing (EIC) Program (#1192) Site Visit.

Date and Time: October 27, 2017; 8:00 a.m.–6:30 p.m.

Place: Cornell University, Institute for Computational Sustainability/CompSustNet, 340 Gates Hall, Ithaca, NY 14850.

Type of Meeting: Part-Open.

Contact Person: Mitra Basu, National Science Foundation, 4201 Wilson Boulevard, Room 1115, Arlington, VA 22230; Telephone: (703) 292–8910.

Purpose of Meeting: Site visit to assess the progress of the EIC Award: CCF–1522054, ''Collaborative Research: CompSustNet: Expanding the Horizons of Computational Sustainability'', and to provide advice and recommendations concerning further NSF support for the project.

Agenda

Friday, Oct 27, 2017; 8:00 a.m.–6:30 p.m.

8:00 a.m. to 1:00 p.m.: OPEN; Presentations by Awardee Institution, faculty staff and students to Site Team and NSF Staff. Discussions and question and answer sessions.

1:30 p.m.–6:30 p.m.: CLOSED; Response and feedback to presentations by Site Team and NSF Staff. Discussions and question and answer sessions. Draft report on education and research activities. Complete written site visit report with preliminary recommendations.

Reason for Closing: The work being reviewed during closed portions of the site review include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 7, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017–16918 Filed 8–10–17; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On May 25, 2017, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on August 2, 2017 to: Dr. William R. Fraser, Permit No. 2018–002.

Nadene G. Kennedy,

Polar Coordination Specialist, Office of Polar Programs.

[FR Doc. 2017–16907 Filed 8–10–17; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0001]

Sunshine Act Meeting Notice

DATE: Weeks of August 14, 21, 28, September 4, 11, 18, 2017.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 14, 2017

Thursday, August 17, 2017

10:30 a.m. Affirmation Session (Public Meeting) (Tentative), Final Rule: Medical Use of Byproduct Material—Medical Event Definitions, Training and Experience, and Clarifying Amendments (RIN 3150–AI63; NRC–2008–0175) (Tentative)

Week of August 21, 2017—Tentative

There are no meetings scheduled for the week of August 21, 2017.

Week of August 28, 2017—Tentative

There are no meetings scheduled for the week of August 28, 2017.

Week of September 4, 2017—Tentative

Wednesday, September 6, 2017

1:30 p.m. NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852

Thursday, September 7, 2017

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of September 11, 2017—Tentative

There are no meetings scheduled for the week of September 11, 2017.

Week of September 18, 2017—Tentative

There are no meetings scheduled for the week of September 18, 2017.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: August 9, 2017.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2017–17158 Filed 8–9–17; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System Board of Actuaries Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Civil Service Retirement System Board of Actuaries plans to meet on Thursday, September 7, 2017. The meeting will start at 1:00 p.m. EDT and will be held at the U.S. Office of Personnel Management (OPM), 1900 E Street NW., Room 4332, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Gregory Kissel, Senior Actuary for Retirement Programs, U.S. Office of Personnel Management, 1900 E Street NW., Room 4316, Washington, DC 20415. Phone (202) 606–0722 or email at *actuary@opm.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Board to review the actuarial methods and assumptions used in the valuations of the Civil Service Retirement and Disability Fund (CSRDF), in the event of a change in applicable law or regulations governing the selection of actuarial assumptions.

The agenda is as follows:

1. Summary of changes established after June 1, 2017, in legislation or regulations
2. Review of actuarial assumptions if warranted by such changes:
   a. Demographic Assumptions
   b. Economic Assumptions

Persons desiring to attend this meeting of the Civil Service Retirement System Board of Actuaries, or to make a statement for consideration at the meeting, should contact OPM at least 5 business days in advance of the meeting date at the address shown below. The manner and time for any material presented to the Board may be limited.

For the Board of Actuaries.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–16972 Filed 8–10–17; 8:45 am]

BILLING CODE 6325–63–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017–257; CP2017–258; CP2017–259; MC2017–167; CP2017–260; MC2017–168; and CP2017–261]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 15, 2017 (Comment due date applies to CP2017–257; CP2017–258); August 16, 2017 (Comment due date applies to CP2017–259; MC2017–167; CP2017–260; MC2017–168; CP2017–261).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2017–257; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 4, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 15, 2017.

2. *Docket No(s).:* CP2017–258; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 4, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* August 15, 2017.

3. *Docket No(s).:* CP2017–259; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 4, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* August 16, 2017.

4. *Docket No(s).:* MC2017–167 and CP2017–260; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 339 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* August 4, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Matthew R. Ashford; *Comments Due:* August 16, 2017.

5. *Docket No(s).:* MC2017–168 and CP2017–261; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 21 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* August 4, 2017; *Filing Authority:* 39 CFR 3020.30; *Public Representative:* Matthew R. Ashford; *Comments Due:* August 16, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–16935 Filed 8–10–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81324; File No. SR–PEARL–2017–33]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MIAX PEARL Rules 504, Trading Halts, and 521, Nullification and Adjustment of Options Transactions Including Obvious Errors

August 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2017, MIAX PEARL, LLC ("MIAX PEARL" 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 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 Exchange Rules 504, Trading Halts, and 521, Nullification and Adjustment of Options Transactions including Obvious Errors.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange and other options exchanges recently adopted a new, harmonized rule related to the adjustment and nullification of erroneous options transactions, including a specific provision related to coordination in connection with large-scale events involving erroneous options transactions.[3] The Exchange believes that the changes the options exchanges implemented with the new, harmonized rule have led to increased transparency and finality with respect to the adjustment and nullification of erroneous options transactions. However, as part of the initial initiative, the Exchange and other options exchanges deferred a few specific matters for further discussion. Specifically, as described in the Initial Filing, the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. Because this initiative required additional exchange and industry discussion as well as additional time for development and implementation, the Exchange and the other options exchanges determined to proceed with the Initial Filing and to undergo a secondary initiative to complete any additional improvements to the applicable rule. In this filing, the Exchange proposes to adopt procedures that will lead to a more objective and uniform way to determine Theoretical Price in the event a reliable NBBO is not available. In addition to this change, the Exchange has proposed two additional minor changes to its rules. The Exchange's proposal mirrors that of Bats BZX, which the Commission approved on July 6, 2017,[4] and those that the other options exchanges intend to or have filed. Finally, the Exchange notes that options exchanges that offer complex orders on their options platforms either already have in place rules for handling the adjustment and nullification of erroneous complex order transactions in place or have filed proposals related to such rules, which proposals have recently been approved by the Commission or filed on an immediately effective basis.[5]

Calculation of Theoretical Price Using a Third Party Provider

Under the harmonized rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to Rule 521, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange uses this NBB or NBO as the Theoretical Price.

The Rule also contains various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Rule specifies situations in which there are no quotes or no valid quotes for comparison purposes, when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day. In each of these circumstances, in turn, because the NBB or NBO is not available or is deemed to be unreliable, the Exchange determines Theoretical Price. Under the current Rule, when determining Theoretical Price, Exchange personnel generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options. Although the Rule is administered by experienced personnel and the Exchange believes the process is currently appropriate, the Exchange recognizes that it is also subjective and could lead to disparate results for a transaction that spans multiple options exchanges.

The Exchange proposes to adopt Interpretation and Policy .03 to specify how the Exchange will determine Theoretical Price when required by sub-paragraphs (b)(1)–(3) of the Rule (*i.e.,* at the open, when there are no valid quotes or when there is a wide quote). In particular, the Exchange has been working with other options exchanges to identify and select a reliable third party vendor (''TP Provider'') that would provide Theoretical Price to the Exchange whenever one or more transactions is under review pursuant to Rule 521 and the NBBO is unavailable or deemed unreliable pursuant to Rule 521(b). The Exchange and other options exchanges have selected CBOE Livevol, LLC (''Livevol'') as the TP Provider, as described below. As further described below, proposed Interpretation and Policy .03 would codify the use of the TP Provider as well as limited exceptions where the Exchange would be able to deviate from the Theoretical Price given by the TP Provider.

Pursuant to proposed Interpretation and Policy .03, when the Exchange must determine Theoretical Price pursuant to the sub-paragraphs (b)(1)–(3) of the Rule, the Exchange will request Theoretical Price from the third party vendor to which the Exchange and all other options exchanges have subscribed. Thus, as set forth in this proposed language, Theoretical Price would be provided to the Exchange by the TP Provider on request and not through a streaming data feed.[6] This

[3] The Exchange's application for registration as a national securities exchange, as approved by the Commission, incorporated the changes made previously by the other options exchanges. *See* Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (the ''Initial Filing'').

[4] *See* Securities Exchange Act Release No. 81084 (July 6, 2017), 82 FR 32216 (July 12, 2017) (granting approval of Bats BZX proposal).

[5] *See e.g.,* Securities Exchange Act Release Nos. 80040 (February 14, 2017), 82 FR 11248 (February 21, 2017) (SR–CBOE–2016–088) (granting approval of CBOE proposal related to the nullification and adjustment of complex orders); 80298 (March 22, 2017), 82 FR 15393 (March 28, 2017) (SR–C2–2017–011) (notice of filing and immediate effectiveness of C2 proposal related to the nullification and adjustment of complex orders); 80284 (March 21, 2017), 82 FR 15251 (March 27, 2017) (SR–MIAX–2017–13) (notice of filing and immediate effectiveness of MIAX proposal related to the nullification and adjustment of complex orders).

[6] Though the Exchange and other options exchanges considered a streaming feed, it was determined that it would be more feasible to

Continued

language also makes clear that the Exchange and all other options exchanges will use the same TP Provider.

As noted above, the proposed TP Provider selected by the Exchange and other options exchanges is Livevol. The Exchange proposes to codify this selection in proposed paragraph (d) to Interpretation and Policy .03. As such, the Exchange would file a rule proposal and would provide notice to the options industry of any proposed change to the TP Provider.

The Exchange and other options exchanges have selected Livevol as the proposed TP Provider after diligence into various alternatives. Livevol has, since 2009, been the options industry leader in providing equity and index options market data and analytics services.[7] The Exchange believes that Livevol has established itself within the options industry as a trusted provider of such services and notes that it and all other options exchanges already subscribe to various Livevol services. In connection with this proposal, Livevol will develop a new tool based on its existing technology and services that will supply Theoretical Price to the Exchange and other options exchanges upon request. The Theoretical Price tool will leverage current market data and surrounding strikes to assist in a relative value pricing approach to generating a Theoretical Price. When relative value methods are incapable of generating a valid Theoretical Price, the Theoretical Price tool will utilize historical trade and quote data to calculate Theoretical Price.

Because the purpose of the proposal is to move away from a subjective determination by Exchange personnel when the NBBO is unavailable or unreliable, the Exchange intends to use the Theoretical Price provided by the TP Provider in all such circumstances. However, the Exchange believes it is necessary to retain the ability to contact the TP Provider if it believes that the Theoretical Price provided is fundamentally incorrect and to determine the Theoretical Price in the limited circumstance of a systems issue experienced by the TP Provider, as described below.

As proposed, to the extent an Official[8] of the Exchange believes that the Theoretical Price provided by the TP Provider is fundamentally incorrect and cannot be used consistent with the maintenance of a fair and orderly market, the Official shall contact the TP Provider to notify the TP Provider of the reason the Official believes such Theoretical Price is inaccurate and to request a review and correction of the calculated Theoretical Price. For example, if an Official received from the TP Provider a Theoretical Price of $80 in a series that the Official might expect to be instead in the range of $8 to $10 because of a recent corporate action in the underlying, the Official would request that the TP Provider review and confirm its calculation and determine whether it had appropriately accounted for the corporate action. In order to ensure that other options exchanges that may potentially be relying on the same Theoretical Price that, in turn, the Official believes to be fundamentally incorrect, the Exchange also proposes to promptly provide notice to other options exchanges that the TP Provider has been contacted to review and correct the calculated Theoretical Price at issue and to include a brief explanation of the reason for the request.[9] Although not directly addressed by the proposed Rule, the Exchange expects that all other options exchanges once in receipt of this notification would await the determination of the TP Provider and would use the corrected price as soon as it is available. The Exchange further notes that it expects the TP Provider to cooperate with, but to be independent of, the Exchange and other options exchanges.[10]

The Exchange believes that the proposed provision to allow an Official to contact the TP Provider if he or she believes the provided Theoretical Price is fundamentally incorrect is necessary, particularly because the Exchange and other options exchanges will be using the new process for the first time. Although the exchanges have conducted thorough diligence with respect to Livevol as the selected TP Provider and would do so with any potential replacement TP Provider, the Exchange is concerned that certain scenarios could arise where the Theoretical Price generated by the TP Provider does not take into account relevant factors and would result in an unfair result for market participants involved in a transaction. The Exchange notes that if such situations do indeed arise, to the extent practicable the Exchange will also work with the TP Provider and other options exchanges to improve the TP Provider's calculation of Theoretical Price in future situations. For instance, if the Exchange determines that a particular type of corporate action is not being appropriately captured by the TP Provider when such provider is generating Theoretical Price, while the Exchange believes that it needs the ability to request a review and correction of the Theoretical Price in connection with a specific review in order to provide a timely decision to market participants, the Exchange would share information regarding the specific situation with the TP Provider and other options exchanges in an effort to improve the Theoretical Price service for future use. The Exchange notes that it does not anticipate needing to rely on this provision frequently, if at all, but believes the provision is necessary nonetheless to best prepare for all potential circumstances. Further, the Theoretical Price used by the Exchange in connection with its rulings will always be that received from the TP Provider and the Exchange has not proposed the ability to deviate from such price.[11]

Pursuant to proposed paragraph (c) to Interpretation and Policy .03, an Official of the Exchange may determine the Theoretical Price if the TP Provider has experienced a systems issue that has rendered its services unavailable to accurately calculate Theoretical Price and such issue cannot be corrected in a timely manner. The Exchange notes that it does not anticipate needing to rely on this provision frequently, if at all, but believes the provision is necessary nonetheless to best prepare for all potential circumstances. Further, consistent with existing text in Rule 521(e)(4), the Exchange has not proposed a specific time by which the service must be available in order to be considered timely.[12] The Exchange

develop and implement an on demand service and that such a service would satisfy the goals of the initiative.

[7] The Exchange notes that in 2015, Livevol was acquired by CBOE Holdings, Inc., the ultimate parent company of the Chicago Board Options Exchange (''CBOE'') and C2 Options Exchange (''C2'').

[8] For purposes of the Rule, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of Rule 521.

[9] *See* proposed paragraph (b) to Interpretation and Policy .03.

[10] The Exchange expects any TP Provider selected by the Exchange and other options exchanges to act independently in its determination and calculation of Theoretical Price. With respect to Livevol specifically, the Exchange again notes that Livevol is a subsidiary of CBOE Holdings, Inc., which is also the ultimate parent company of multiple options exchanges. The Exchange expects Livevol to calculate Theoretical Price independent of its affiliated exchanges in the same way it will calculate Theoretical Price independent of non-affiliated exchanges.

[11] To the extent the TP Provider has been contacted by an Official of the Exchange, reviews the Theoretical Price provided but disagrees that there has been any error, then the Exchange would be bound to use the Theoretical Price provided by the TP Provider.

[12] In the context of a Significant Market Event, the Exchange may determine, ''in consultation with other options exchanges . . . that timely adjustment

expects that it would await the TP Provider's services becoming available again so long as the Exchange was able to obtain information regarding the issue and the TP Provider had a reasonable expectation of being able to resume normal operations within the next several hours based on communications with the TP Provider. More specifically with respect to Livevol, Livevol has business continuity and disaster recovery procedures that will help to ensure that the Theoretical Price tool remains available or, in the event of an outage, that service is restored in a timely manner.

The Exchange also notes that if a wide-scale event occurred, even if such event did not qualify as a ''Significant Market Event'' pursuant to Rule 521(e), and the TP Provider was unavailable or otherwise experiencing difficulty, the Exchange believes that it and other options exchanges would seek to coordinate to the extent possible. In particular, the Exchange and other options exchanges now have a process, administered by the Options Clearing Corporation, to invoke a discussion amongst all options exchanges in the event of any widespread or significant market events. The Exchange believes that this process could be used in the event necessary if there were an issue with the TP Provider.

The Exchange also proposes to adopt language in paragraph (d) of Interpretation and Policy .03 to Rule 521 to disclaim the liability of the Exchange and the TP Provider in connection with the proposed Rule, the TP Provider's calculation of Theoretical Price, and the Exchange's use of such Theoretical Price. Specifically, the proposed rule would state that neither the Exchange, the TP Provider, nor any affiliate of the TP Provider (the TP Provider and its affiliates are referred to collectively as the ''TP Provider''), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of the TP Provider pursuant to Interpretation .03. The proposed rule would further state that the TP Provider does not guarantee the accuracy or completeness of the calculated Theoretical Price and that the TP Provider disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such Theoretical Price. Finally, the proposed Rule would state that neither the Exchange nor the TP Provider shall have any liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the use of such Theoretical Price or arising out of any errors or delays in calculating such Theoretical Price. This proposed language is modeled after existing language in Exchange Rules regarding ''reporting authorities'' that calculate indices.[13]

In connection with the proposed change described above, the Exchange proposes to modify Rule 521 to state that the Exchange will rely on paragraph (b) and Interpretation and Policy .03 when determining Theoretical Price.

No Valid Quotes—Market Participant Quoting on Multiple Exchanges

As described above, one of the times where the NBB or NBO is deemed to be unreliable for purposes of Theoretical Price is when there are no quotes or no valid quotes for the affected series. In addition to when there are no quotes, the Exchange does not consider the following to be valid quotes: (i) All quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''); (ii) quotes published by the Exchange that were submitted by either party to the transaction in question; and (iii) quotes published by another options exchange against which the Exchange has declared self-help. In recognition of today's market structure where certain participants actively provide liquidity on multiple exchanges simultaneously, the Exchange proposes to add an additional category of invalid quotes. Specifically, in order to avoid a situation where a market participant has established the market at an erroneous price on multiple exchanges, the Exchange proposes to consider as invalid the quotes in a series published by another options exchange if either party to the transaction in question submitted the quotes in the series representing such options exchange's best bid or offer. Thus, similar to being able to ignore for purposes of the Rule the quotes published by the Exchange if submitted by either party to the transaction in question, the Exchange would be able to ignore for purposes of the rule quotations on other options exchanges by that same market participant.

In order to continue to apply the Rule in a timely and organized fashion, however, the Exchange proposes to initially limit the scope of this proposed provision in two ways. First, because the process will take considerable coordination with other options exchanges to confirm that the quotations in question on an away options exchange were indeed submitted by a party to a transaction on the Exchange, the Exchange proposes to limit this provision to apply to up to twenty-five (25) total options series (*i.e.,* whether such series all relate to the same underlying security or multiple underlying securities). Second, the Exchange proposes to require the party that believes it established the best bid or offer on one or more other options exchanges to identify to the Exchange the quotes which were submitted by such party and published by other options exchanges. In other words, as proposed, the burden will be on the party seeking that the Exchange disregard their quotations on other options exchanges to identify such quotations. In turn, the Exchange will verify with such other options exchanges that such quotations were indeed submitted by such party.

Below are examples of both the current rule and the rule as proposed to be amended.

Example 1—Current Rule, Member Erroneously Quotes on One Exchange

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange (and only the Exchange).
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange a timely request for review of the trades with Member A as potentially erroneous transactions to buy.

Result

- Based on the Exchange's current rules, the Exchange would identify

is not feasible due to the extraordinary nature of the situation.'' *See* Rule 521(e)(4).

[13] *See, e.g.,* MIAX PEARL Rule 526, which relates to index options potentially listed and traded on the Exchange and disclaims liability for a reporting authority and their affiliates.

Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations invalid pursuant to Rule 521(b)(2).

- As there were no other valid quotes to use as a reference price, the Exchange would then determine Theoretical Price.
- Assume the Exchange determines a Theoretical Price of $0.05.
  - The execution price of $1.00 exceeds the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $0.05 + $0.25 = $0.30) so any execution at or above this price is an obvious error.
  - Accordingly, the executions in all series would be adjusted by the Exchange to executions at $0.20 per contract (Theoretical Price of $0.05 plus $0.15) to the extent the incoming orders submitted by Member A were non-Customer orders.
  - The executions in all series would be nullified to the extent the incoming orders submitted by Member A were Customer orders.

Example 2—Current Rule, Member Erroneously Quotes on Multiple Exchanges

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange and on a second exchange (''Away Exchange'').
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes on both the Exchange and the Away Exchange in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange and the Away Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange and to the Away Exchange timely requests for review of the trades with Member A as potentially erroneous transactions to buy.

Result

- Based on the Exchange's current rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations on the Exchange invalid pursuant to Rule 521(b)(2). The Exchange, however, would view the Away Exchange's quotations as valid, and would thus determine Theoretical Price to be $1.05 (*i.e.,* the NBO in the case of a potentially erroneous buy transaction).
- The execution price of $1.00 does not exceed the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $1.05 + $0.25 = $1.30) so any execution at or above this price is an obvious error.
- The transactions on the Exchange would not be nullified or adjusted.
- As the Exchange and all other options exchanges have identical rules with respect to the process described above, the transactions on the Away Exchange would not be nullified or adjusted.

Example 3—Proposed Rule, Member Erroneously Quotes on Multiple Exchanges [14]

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange and on a second exchange (''Away Exchange'').[15]
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes on both the Exchange and the Away Exchange in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange and the Away Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange and to the Away Exchange timely requests for review of the trades with Member A as potentially erroneous transactions to buy. At the time of submitting the requests for review to the Exchange and the Away Exchange, Market Maker A identifies to the Exchange the quotes on the Away Exchange as quotes also represented by Market Maker A (and to the Away Exchange, the quotes on the Exchange as quotes also represented by Market Maker A).

Result

- Based on the proposed rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations on the Exchange invalid pursuant to Rule 521(b)(2).
- The Exchange and the Away Exchange would also coordinate to confirm that the quotations identified by Market Maker A on the other exchange were indeed Market Maker A's quotations. Once confirmed, each of the Exchange and the Away Exchange would also consider invalid the quotations published on the other exchange.
- As there were no other valid quotes to use as a reference price, the Exchange would then determine Theoretical Price.
- Assume the Exchange determines a Theoretical Price of $0.05.
  - The execution price of $1.00 exceeds the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $0.05 + $0.25 = $0.30) so any execution at or above this price is an obvious error.
  - Accordingly, the executions in all series would be adjusted by the Exchange to executions at $0.20 per contract (Theoretical Price of $0.05 plus $0.15) to the extent the incoming orders submitted by Member A were non-Customer orders.
  - The executions in all series would be nullified to the extent the incoming orders submitted by Member A were Customer orders.
- As the Exchange and all other options exchanges would have identical rules with respect to the process described above, as other options exchanges intend to adopt the same rule if the proposed rule is approved, the transactions on the Away Exchange would also be nullified or adjusted as set forth above.
- If this example was instead modified such that Market Maker A was quoting in 200 series rather than 20, the Exchange notes that Market Maker A could only request that the Exchange consider as invalid their quotations in 25 of those series on other exchanges. As noted above, the Exchange has proposed to limit the proposed rule to

[14] The Exchange notes that its proposed rule will not impact the proposed handling of a request for review where a market participant is quoting only on the Exchange, thus, the Exchange has not included a separate example for such a fact-pattern.

[15] The Exchange notes that the proposed rule would operate the same if Market Maker A was quoting on more than two exchanges. The Exchange has limited the example to two exchanges for simplicity.

25 series in order to continue to process requests for review in a timely and organized fashion in order to provide certainty to market participants. This is due to the amount of coordination that will be necessary in such a scenario to confirm that the quotations in question on an away options exchange were indeed submitted by a party to a transaction on the Exchange.

Trading Halts—Clarifying Change to Rules 504 and 521(f)

Exchange Rules 504 and 521(f) describe the Exchange's authority to declare trading halts in one or more options traded on the Exchange. Currently, Rule 521(f) and Interpretation and Policy .04 to Rule 504 both state that the Exchange shall nullify any transaction that occurs during a trading halt in the affected option on the Exchange or, with respect to equity options, during a *trading halt on the primary listing market* for the underlying security. The Exchange proposes to make clear with respect to equity options that it shall nullify any transaction that occurs during a *regulatory halt as declared by the primary listing market* for the underlying security. The Exchange believes this change is necessary to distinguish a declared regulatory halt, where the underlying security should not be actively trading on any venue, from an operational issue on the primary listing exchange where the security continues to safely trade on other trading venues.

Implementation Date

The Exchange proposes to delay the operative date of this proposal to a date within ninety (90) days after the Commission approved the Bats BZX proposal on July 6, 2017.[16] The Exchange will announce the operative date in a Regulatory Alert made available to its Members.

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.[17] Specifically, the proposal is consistent with Section 6(b)(5) of the Act[18] 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, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to further modify their harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the proposal to utilize a TP Provider in the event the NBBO is unavailable or unreliable will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Thus, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act[19] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange again reiterates that it has retained the standard of the current rule for most reviews of options transactions pursuant to Rule 521, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. The proposal to use a TP Provider when the NBBO is unavailable or unreliable is consistent with Section 6(b)(5) of the Act[20] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions by further reducing the possibility of disparate results between options exchanges and increasing the objectivity of the application of Rule 521. Further, the Exchange believes that the proposed Rule is transparent with respect to the limited circumstances under which the Exchange will request a review and correction of Theoretical Price from the TP Provider, and has sought to limit such circumstances as much as possible. The Exchange notes that under the current Rule, Exchange personnel are required to determine Theoretical Price in certain circumstances and yet rarely do so because such circumstances have already been significantly limited under the harmonized rule (for example, because the wide quote provision of the harmonized rule only applies if the quote was narrower and then gapped but does not apply if the quote had been persistently wide). Thus, the Exchange believes it will need to request Theoretical Price from the TP Provider only in very rare circumstances and in turn, the Exchange anticipates that the need to contact the TP Provider for additional review of the Theoretical Price provided by the TP Provider will be even rarer. Similarly, the Exchange believes it is unlikely that an Exchange Official will ever be required to determine Theoretical Price, as such circumstance would only be in the event of a systems issue that has rendered the TP Provider's services unavailable and such issue cannot be corrected in a timely manner.

The Exchange also believes its proposal to adopt language in paragraph (d) of Interpretation and Policy .03 to Rule 521 to disclaim the liability of the Exchange and the TP Provider in connection with the proposed Rule, the TP Provider's calculation of Theoretical Price, and the Exchange's use of such Theoretical Price is consistent with the Act. As noted above, this proposed language is modeled after existing language in Exchange Rules regarding ''reporting authorities'' that calculate indices,[21] and is consistent with Section 6(b)(5) of the Act[22] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

As described above, the Exchange proposes a modification to the valid quotes provision to also exclude quotes in a series published by another options exchange if either party to the transaction in question submitted the orders or quotes in the series representing such options exchange's best bid or offer. The Exchange believes this proposal is consistent with Section 6(b)(5) of the Act[23] because the application of the rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions by allowing the Exchange to coordinate with other options exchanges to determine whether a market participant that is party to a potentially erroneous transaction on the Exchange established the market in an option on other options exchanges; to the extent this can be established, the Exchange believes such participant's quotes should be excluded in the same way such quotes are excluded on the Exchange. The Exchange also believes it is reasonable to limit the scope of this provision to twenty-five (25) series and to require the party that believes it established the best bid or offer on one or more other options exchanges to identify to the Exchange the quotes which were submitted by that party and

[16] *See supra,* note 4.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] *Id.*

[21] *See supra,* note 13.

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(5).

published by other options exchanges. The Exchange believes these limitations are consistent with Section 6(b)(5) of the Act [24] because they will ensure that the Exchange is able to continue to apply the Rule in a timely and organized fashion, thus fostering cooperation and coordination with persons engaged in regulating and facilitating transactions and also removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, with respect to the proposed modification to the Exchange's trading halt rules, Rule 504 and Rule 521(f), the Exchange believes that this proposal is consistent with Section 6(b)(5) of the Act [25] because such proposal clarifies the provision by distinguishing between a trading halt in an underlying security where the security has halted trading across the industry (*i.e.,* a regulatory halt) from a situation where the primary exchange has experienced a technical issue but the underlying security continues to trade on other equities platforms. The Exchange notes that this distinction is already clear in the rules of certain other options exchanges, and thus, has been found to be consistent with the Act.[26]

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. The Exchange believes the entire proposal is consistent with Section 6(b)(8) of the Act [27] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange does not believe that the proposal will impose a burden on intermarket competition but rather that it will alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to further harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process in [sic] an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. To that end, the selection and implementation of a TP Provider utilized by all options exchanges will further reduce the possibility that participants with potentially erroneous transactions that span multiple options exchanges are handled differently on such exchanges. Similarly, the proposed ability to consider quotations invalid on another options exchange if ultimately originating from a party to a potentially erroneous transaction on the Exchange represents a proposal intended to further foster cooperation by the options exchanges with respect to market events. The Exchange understands that all other options exchanges either have or they intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the proposed provisions apply to all market participants equally.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [28] and Rule 19b–4(f)(6) [29] thereunder.

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. 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–PEARL–2017–33 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2017–33. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2017–33, and should be

[24] 15 U.S.C. 78f(b)(5).

[25] *Id.*

[26] *See, e.g.,* Interpretation and Policy .07 to CBOE Rule 6.3.

[27] 15 U.S.C. 78f(b)(8).

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 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, 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.

submitted on or before September 1, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–16927 Filed 8–10–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81325; File No. SR–NYSEARCA–2017–82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in Connection With the September 5, 2017 Compliance Date for the Shortening of the Standard Settlement Cycle From Three Business Days After the Trade Date to Two Business Days After the Trade Date

August 7, 2017.

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, on July 26, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 in connection with the September 5, 2017, compliance date for the shortening of the standard settlement cycle from three business days after the trade date (''T+3'') to two business days after the trade date (''T+2''), to (1) delete NYSE Arca Equities Rule 7.4 (Ex-Dividend or Ex-Right Dates); (2) delete the preamble and ''T'' modifier from NYSE Arca Equities Rule 7.4T (''Rule 7.4T''); and (3) establish the operative date of Rule 7.4T. The proposed rule change is available on the Exchange's Web site at *www.nyse.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the September 5, 2017, compliance date for shortening of the standard settlement cycle from T+3 to T+2, the Exchange proposes to (1) delete NYSE Arca Equities Rule 7.4 (''Rule 7.4''); (2) delete the preamble and ''T'' modifier from Rule 7.4T; and (3) establish the operative date of Rule 7.4T as September 5, 2017.

Background

On September 28, 2016, the Securities and Exchange Commission (''SEC'') proposed amendments to Rule 15c6–1(a) to shorten the standard settlement cycle from T+3 to T+2.[4] Following this action by the SEC, the Exchange adopted a new Rule 7.4 with the modifier ''T'' to reflect a T+2 settlement cycle.[5] Because the Exchange would not implement Rule 7.4T until after the final implementation of T+2, the Exchange retained the version of Rule 7.4 reflecting T+3 settlement on its books. In order to reduce the potential for confusion regarding which version of the rule governs, the Exchange added explanatory preambles to Rule 7.4 and Rule 7.4T.

In particular, the following preamble was added to Rule 7.4:

> This version of Rule 7.4 will remain operative until the Exchange files separate proposed rule changes as necessary to establish the operative date of ''Rule 7.4T. Ex-Dividend or Ex-Right Dates,'' to delete this version of Rule 7.4 and preamble, and to remove the preamble text from the version of Rule 7.4T. In addition to filing the necessary proposed rule changes, the Exchange will announce via Information Memo the operative date of the deletion of this Rule and implementation of ''Rule 7.4T. Ex-Dividend or Ex-Right Dates.''

The following preamble was added to Rule 7.4T:

> The Exchange will file separate proposed rule changes to establish the operative date of Rule 7.4T, to delete ''Rule 7.4. Ex-Dividend or Ex-Right Dates'' and the preamble text from Rule 7.4, and to remove the preamble text from the version of Rule 7.4T. Until such time, ''Rule 7.4. Ex-Dividend or Ex-Right Dates'' will remain operative. In addition to filing the necessary proposed rule changes, the Exchange will announce via Information Memo the implementation of this Rule and the operative date of the deletion of ''Rule 7.4. Ex-Dividend or Ex-Right Dates.''

On March 22, 2017, the SEC adopted the proposed amendment to Rule 15c6–1(a) under the Act[6] with a compliance date of September 5, 2017.[7]

Proposed Rule Change

In order to comply with the September 5, 2017, transition to T+2 settlement, the Exchange proposes to:

• Delete Rule 7.4, including the preamble, in its entirety;

• delete the preamble to Rule 7.4T; and

• delete the ''T'' modifier in Rule 7.4T, which distinguished it from Rule 7.4.

The Exchange proposes that the changes described herein would take effect on September 5, 2017, to coincide with the transition to T+2. The Exchange will announce via Information Memo the implementation of Rule 7.4T and the operative date of the deletion of Rule 7.4.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and further the objectives of Section 6(b)(5) of the Act,[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposed changes remove impediments to and perfect the mechanism of a free and open market by

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (File No. S7–22–16).

[5] *See* Securities Exchange Act Release No. 79732 (January 4, 2017), 82 FR 3042 (January 10, 2017) (SR–NYSEArca–2016–145).

[6] *See* 17 CFR 240.15c6–1(a).

[7] *See* Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (File No. S7–22–16).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

adding clarity as to which rules are operative and when, thereby reducing potential confusion, and making the Exchange's rules easier to navigate. The Exchange also believes that eliminating obsolete material from its rulebook also removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having obsolete material in the Exchange's rulebook. The Exchange believes that eliminating such obsolete material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather facilitate the industry's transition to a T+2 regular-way settlement cycle. The Exchange also believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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 [10] and Rule 19b–4(f)(6) thereunder.[11]

[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 its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change 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–NYSEARCA–2017–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2017–82. 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 10:00 a.m. and 3:00 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–2017–82 and should be submitted on or before September 1, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–16928 Filed 8–10–17; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Tuesday, August 15, 2017 at 1:00 p.m., in the Auditorium (L–002) at the Commission's headquarters building, to hear oral argument in an appeal from an initial decision of an administrative law judge by respondents Frank H. Chiappone, Andrew G. Guzzetti, William F. Lex, Thomas E. Livingston, Brian T. Mayer, and Philip S. Rabinovich, formerly registered representatives associated with former broker-dealer McGinn, Smith & Co., Inc.

On February 25, 2015, the ALJ found that Chiappone, Lex, Livington, Mayer, and Rabinovich violated antifraud provisions of the federal securities laws by recommending that customers purchase securities without conducting a reasonable investigation into the offerings as well as provisions of the securities laws prohibiting unregistered offers and sales of securities. The ALJ barred or suspended these respondents from certain associations in the securities industry and ordered them to pay third-tier civil money penalties, to pay disgorgement of commissions received for their sales in violation of the antifraud provisions plus prejudgment interest, and to cease and desist from further violations of the securities laws. The ALJ found that Guzzetti failed reasonably to supervise the other respondents, ordered him to pay a third-tier civil money penalty, and suspended him from association in certain capacities in the securities industry.

Respondents appealed the ALJ's findings of liability and the sanctions imposed to the Commission. The issues likely to be considered at oral argument include, among other things, whether the findings of liability should be sustained, and what sanctions, if any, are appropriate in the public interest, as well as respondents' arguments that the proceeding violated various Constitutional, statutory, and regulatory requirements.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 8, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–17070 Filed 8–9–17; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81322; File No. SR–ISE–2017–76]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 720, Nullification and Adjustment of Options Transactions Including Obvious Errors

August 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 2017, Nasdaq ISE, LLC (''ISE'' 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 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 Rule 720, Nullification and Adjustment of Options Transactions including Obvious Errors.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on a date that is within ninety (90) days after the Commission approved a similar proposal filed by Bats BZX on July 6, 2017.

The text of the proposed rule change is available on the Exchange's Web site at *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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange and other options exchanges recently adopted a new, harmonized rule related to the adjustment and nullification of erroneous options transactions, including a specific provision related to coordination in connection with large-scale events involving erroneous options transactions.[3] The Exchange believes that the changes the options exchanges implemented with the new, harmonized rule have led to increased transparency and finality with respect to the adjustment and nullification of erroneous options transactions. However, as part of the initial initiative, the Exchange and other options exchanges deferred a few specific matters for further discussion. Specifically, as described in the Initial Filing, the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. Because this initiative required additional exchange and industry discussion as well as additional time for development and implementation, the Exchange and the other options exchanges determined to proceed with the Initial Filing and to undergo a secondary initiative to complete any additional improvements to the applicable rule. In this filing, the Exchange proposes to adopt procedures that will lead to a more objective and uniform way to determine Theoretical Price in the event a reliable NBBO is not available. In addition to this change, the Exchange has proposed two additional minor changes to its rules. The Exchange's proposal mirrors that of Bats BZX, which the Exchange [sic] approved on July 6, 2017,[4] and those that the other options exchanges intend to file, except that it omits the section of the proposal that pertains to trading halts due to the fact that the Supplementary Material to Exchange Rule 702 already includes the applicable language.

Calculation of Theoretical Price Using a Third Party Provider

Under the harmonized rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to Rule 720, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange uses this NBB or NBO as the Theoretical Price.

The Rule also contains various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Rule specifies situations in which there are no quotes or no valid quotes for comparison purposes, when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day. In each of these circumstances, in turn, because the NBB or NBO is not available or is deemed to be unreliable, the Exchange determines Theoretical Price. Under the current Rule, when determining Theoretical Price, Exchange personnel generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–74896 (May 7, 2015); 80 FR 27373 (May 13, 2015) (SR–ISE–2015–18) (the ''Initial Filing'').

[4] *See* Securities Exchange Act Release No. 34–81084 (July 6, 2017) (granting approval of Bats BZX proposal), 82 FR 32216 (July 12, 2017); 82 FR 23684 (May 23, 2017) (SR–BatsBZX–2017–035) (notice of filing of Bats BZX proposal).

account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options. Although the Rule is administered by experienced personnel and the Exchange believes the process is currently appropriate, the Exchange recognizes that it is also subjective and could lead to disparate results for a transaction that spans multiple options exchanges.

The Exchange proposes to adopt Supplementary Material to Rule 720, Item .06 to specify how the Exchange will determine Theoretical Price when required by sub-paragraphs (b)(1)–(3) of the Rule (*i.e.,* at the open, when there are no valid quotes or when there is a wide quote). In particular, the Exchange has been working with other options exchanges to identify and select a reliable third party vendor (''TP Provider'') that would provide Theoretical Price to the Exchange whenever one or more transactions is under review pursuant to Rule 720 and the NBBO is unavailable or deemed unreliable pursuant to Rule 720(b). The Exchange and other options exchanges have selected CBOE Livevol, LLC (''Livevol'') as the TP Provider, as described below. As further described below, proposed Supplementary Material to Rule 720, Item .06 would codify the use of the TP Provider as well as limited exceptions where the Exchange would be able to deviate from the Theoretical Price given by the TP Provider.

Pursuant to proposed Supplementary Material to Rule 720, Item .06, when the Exchange must determine Theoretical Price pursuant to the sub-paragraphs (b)(1)–(3) of the Rule, the Exchange will request Theoretical Price from the third party vendor to which the Exchange and all other options exchanges have subscribed. Thus, as set forth in this proposed language, Theoretical Price would be provided to the Exchange by the TP Provider on request and not through a streaming data feed.[5] This language also makes clear that the Exchange and all other options exchanges will use the same TP Provider.

As noted above, the proposed TP Provider selected by the Exchange and other options exchanges is Livevol. The Exchange proposes to codify this selection in proposed paragraph (d) to Supplementary Material to Rule 720, Item .06. As such, the Exchange would file a rule proposal and would provide notice to the options industry of any proposed change to the TP Provider.

The Exchange and other options exchanges have selected Livevol as the proposed TP Provider after diligence into various alternatives. Livevol has, since 2009, been the options industry leader in providing equity and index options market data and analytics services.[6] The Exchange believes that Livevol has established itself within the options industry as a trusted provider of such services and notes that it and all other options exchanges already subscribe to various Livevol services. In connection with this proposal, Livevol will develop a new tool based on its existing technology and services that will supply Theoretical Price to the Exchange and other options exchanges upon request. The Theoretical Price tool will leverage current market data and surrounding strikes to assist in a relative value pricing approach to generating a Theoretical Price. When relative value methods are incapable of generating a valid Theoretical Price, the Theoretical Price tool will utilize historical trade and quote data to calculate Theoretical Price.

Because the purpose of the proposal is to move away from a subjective determination by Exchange personnel when the NBBO is unavailable or unreliable, the Exchange intends to use the Theoretical Price provided by the TP Provider in all such circumstances. However, the Exchange believes it is necessary to retain the ability to contact the TP Provider if it believes that the Theoretical Price provided is fundamentally incorrect and to determine the Theoretical Price in the limited circumstance of a systems issue experienced by the TP Provider, as described below.

As proposed, to the extent an Official [7] of the Exchange believes that the Theoretical Price provided by the TP Provider is fundamentally incorrect and cannot be used consistent with the maintenance of a fair and orderly market, the Official shall contact the TP Provider to notify the TP Provider of the reason the Official believes such Theoretical Price is inaccurate and to request a review and correction of the calculated Theoretical Price. For example, if an Official received from the TP Provider a Theoretical Price of $80 in a series that the Official might expect to be instead in the range of $8 to $10 because of a recent corporate action in the underlying, the Official would request that the TP Provider review and confirm its calculation and determine whether it had appropriately accounted for the corporate action. In order to ensure that other options exchanges that may potentially be relying on the same Theoretical Price that, in turn, the Official believes to be fundamentally incorrect, the Exchange also proposes to promptly provide notice to other options exchanges that the TP Provider has been contacted to review and correct the calculated Theoretical Price at issue and to include a brief explanation of the reason for the request.[8] Although not directly addressed by the proposed Rule, the Exchange expects that all other options exchanges once in receipt of this notification would await the determination of the TP Provider and would use the corrected price as soon as it is available. The Exchange further notes that it expects the TP Provider to cooperate with, but to be independent of, the Exchange and other options exchanges.[9]

The Exchange believes that the proposed provision to allow an Official to contact the TP Provider if he or she believes the provided Theoretical Price is fundamentally incorrect is necessary, particularly because the Exchange and other options exchanges will be using the new process for the first time. Although the exchanges have conducted thorough diligence with respect to Livevol as the selected TP Provider and would do so with any potential replacement TP Provider, the Exchange is concerned that certain scenarios could arise where the Theoretical Price generated by the TP Provider does not take into account relevant factors and would result in an unfair result for market participants involved in a transaction. The Exchange notes that if such situations do indeed arise, to the extent practicable the Exchange will also work with the TP Provider and

[5] Though the Exchange and other options exchanges considered a streaming feed, it was determined that it would be more feasible to develop and implement an on demand service and that such a service would satisfy the goals of the initiative.

[6] The Exchange notes that in 2015, Livevol was acquired by CBOE Holdings, Inc., the ultimate parent company of the Chicago Board Options Exchange (''CBOE'') and C2 Options Exchange (''C2'').

[7] For purposes of the Rule, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of this Rule. *See* Rule 720(a)(3).

[8] *See* proposed paragraph (b) to Supplementary Material to Rule 720, Item .06.

[9] The Exchange expects any TP Provider selected by the Exchange and other options exchanges to act independently in its determination and calculation of Theoretical Price. With respect to Livevol specifically, the Exchange again notes that Livevol is a subsidiary of CBOE Holdings, Inc., which is also the ultimate parent company of multiple options exchanges. The Exchange expects Livevol to calculate Theoretical Price independent of its affiliated exchanges in the same way it will calculate Theoretical Price independent of non-affiliated exchanges.

other options exchanges to improve the TP Provider's calculation of Theoretical Price in future situations. For instance, if the Exchange determines that a particular type of corporate action is not being appropriately captured by the TP Provider when such provider is generating Theoretical Price, while the Exchange believes that it needs the ability to request a review and correction of the Theoretical Price in connection with a specific review in order to provide a timely decision to market participants, the Exchange would share information regarding the specific situation with the TP Provider and other options exchanges in an effort to improve the Theoretical Price service for future use. The Exchange notes that it does not anticipate needing to rely on this provision frequently, if at all, but believes the provision is necessary nonetheless to best prepare for all potential circumstances. Further, the Theoretical Price used by the Exchange in connection with its rulings will always be that received from the TP Provider and the Exchange has not proposed the ability to deviate from such price.[10]

Pursuant to proposed paragraph (c) to Supplementary Material to Rule 720, Item .06, an Official of the Exchange may determine the Theoretical Price if the TP Provider has experienced a systems issue that has rendered its services unavailable to accurately calculate Theoretical Price and such issue cannot be corrected in a timely manner. The Exchange notes that it does not anticipate needing to rely on this provision frequently, if at all, but believes the provision is necessary nonetheless to best prepare for all potential circumstances. Further, consistent with existing text in Rule 720(e)(4), the Exchange has not proposed a specific time by which the service must be available in order to be considered timely.[11] The Exchange expects that it would await the TP Provider's services becoming available again so long as the Exchange was able to obtain information regarding the issue and the TP Provider had a reasonable expectation of being able to resume normal operations within the next several hours based on communications with the TP Provider. More specifically with respect to Livevol, Livevol has business continuity and disaster recovery procedures that will help to ensure that the Theoretical Price tool remains available or, in the event of an outage, that service is restored in a timely manner.

The Exchange also notes that if a wide-scale event occurred, even if such event did not qualify as a ''Significant Market Event'' pursuant to Rule 720(e), and the TP Provider was unavailable or otherwise experiencing difficulty, the Exchange believes that it and other options exchanges would seek to coordinate to the extent possible. In particular, the Exchange and other options exchanges now have a process, administered by the Options Clearing Corporation, to invoke a discussion amongst all options exchanges in the event of any widespread or significant market events. The Exchange believes that this process could be used in the event necessary if there were an issue with the TP Provider.

The Exchange also proposes to adopt language in paragraph (d) of Supplementary Material to Rule 720, Item .06 to Rule 720 to disclaim the liability of the Exchange and the TP Provider in connection with the proposed Rule, the TP Provider's calculation of Theoretical Price, and the Exchange's use of such Theoretical Price. Specifically, the proposed rule would state that neither the Exchange, the TP Provider, nor any affiliate of the TP Provider (the TP Provider and its affiliates are referred to collectively as the ''TP Provider''), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of the TP Provider pursuant to Supplementary Material to Rule 720, Item .06. The proposed rule would further state that the TP Provider does not guarantee the accuracy or completeness of the calculated Theoretical Price and that the TP Provider disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such Theoretical Price. Finally, the proposed Rule would state that neither the Exchange nor the TP Provider shall have any liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the use of such Theoretical Price or arising out of any errors or delays in calculating such Theoretical Price. This proposed language is modeled after existing language in Exchange Rules regarding ''reporting authorities'' that calculate indices.[12]

In connection with the proposed change described above, the Exchange proposes to modify Rule 720 to state that the Exchange will rely on paragraph (b) and Supplementary Material to Rule 720, Item .06 when determining Theoretical Price.

No Valid Quotes—Market Participant Quoting on Multiple Exchanges

As described above, one of the times where the NBB or NBO is deemed to be unreliable for purposes of Theoretical Price is when there are no quotes or no valid quotes for the affected series. In addition to when there are no quotes, the Exchange does not consider the following to be valid quotes: (i) All quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''); (ii) quotes published by the Exchange that were submitted by either party to the transaction in question; and (iii) quotes published by another options exchange against which the Exchange has declared self-help. In recognition of today's market structure where certain participants actively provide liquidity on multiple exchanges simultaneously, the Exchange proposes to add an additional category of invalid quotes. Specifically, in order to avoid a situation where a market participant has established the market at an erroneous price on multiple exchanges, the Exchange proposes to consider as invalid the quotes in a series published by another options exchange if either party to the transaction in question submitted the quotes in the series representing such options exchange's best bid or offer. Thus, similar to being able to ignore for purposes of the Rule the quotes published by the Exchange if submitted by either party to the transaction in question, the Exchange would be able to ignore for purposes of the rule quotations on other options exchanges by that same market participant.

In order to continue to apply the Rule in a timely and organized fashion, however, the Exchange proposes to initially limit the scope of this proposed provision in two ways. First, because the process will take considerable coordination with other options exchanges to confirm that the quotations in question on an away options exchange were indeed submitted by a

[10] To the extent the TP Provider has been contacted by an Official of the Exchange, reviews the Theoretical Price provided but disagrees that there has been any error, then the Exchange would be bound to use the Theoretical Price provided by the TP Provider.

[11] In the context of a Significant Market Event, the Exchange may determine, ''in consultation with other options exchanges . . . that timely adjustment is not feasible due to the extraordinary nature of the situation.'' *See* Rule 720(e)(4).

[12] *See, e.g.,* Rule 2011, which relates to index options potentially listed and traded on the Exchange and disclaims liability for a reporting authority and their affiliates.

party to a transaction on the Exchange, the Exchange proposes to limit this provision to apply to up to twenty-five (25) total options series (*i.e.,* whether such series all relate to the same underlying security or multiple underlying securities). Second, the Exchange proposes to require the party that believes it established the best bid or offer on one or more other options exchanges to identify to the Exchange the quotes which were submitted by such party and published by other options exchanges. In other words, as proposed, the burden will be on the party seeking that the Exchange disregard their quotations on other options exchanges to identify such quotations. In turn, the Exchange will verify with such other options exchanges that such quotations were indeed submitted by such party.

Below are examples of both the current rule and the rule as proposed to be amended.

Example 1—Current Rule, Member Erroneously Quotes on One Exchange

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange (and only the Exchange).
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange a timely request for review of the trades with Member A as potentially erroneous transactions to buy.

Result

- Based on the Exchange's current rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations invalid pursuant to Rule 720(b)(2).
- As there were no other valid quotes to use as a reference price, the Exchange would then determine Theoretical Price.
- Assume the Exchange determines a Theoretical Price of $0.05.
- The execution price of $1.00 exceeds the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $0.05 + $0.25 = $0.30) so any execution at or above this price is an obvious error.
- Accordingly, the executions in all series would be adjusted by the Exchange to executions at $0.20 per contract (Theoretical Price of $0.05 plus $0.15) to the extent the incoming orders submitted by Member A were non-Customer orders.
- The executions in all series would be nullified to the extent the incoming orders submitted by Member A were Customer orders.

Example 2—Current Rule, Member Erroneously Quotes on Multiple Exchanges

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange and on a second exchange (''Away Exchange'').
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes on both the Exchange and the Away Exchange in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange and the Away Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange and to the Away Exchange timely requests for review of the trades with Member A as potentially erroneous transactions to buy.

Result

- Based on the Exchange's current rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations on the Exchange invalid pursuant to Rule 720(b)(2). The Exchange, however, would view the Away Exchange's quotations as valid, and would thus determine Theoretical Price to be $1.05 (*i.e.,* the NBO in the case of a potentially erroneous buy transaction).
- The execution price of $1.00 does not exceed the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $1.05 + $0.25 = $1.30) so any execution at or above this price is an obvious error.
- The transactions on the Exchange would not be nullified or adjusted.
- As the Exchange and all other options exchanges have identical rules with respect to the process described above, the transactions on the Away Exchange would not be nullified or adjusted.

Example 3—Proposed Rule, Member Erroneously Quotes on Multiple Exchanges [13]

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange and on a second exchange (''Away Exchange'').[14]
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes on both the Exchange and the Away Exchange in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange and the Away Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange and to the Away Exchange timely requests for review of the trades with Member A as potentially erroneous transactions to buy. At the time of submitting the requests for review to the Exchange and the Away Exchange, Market Maker A identifies to the Exchange the quotes on the Away Exchange as quotes also represented by Market Maker A (and to the Away

[13] The Exchange notes that its proposed rule will not impact the proposed handling of a request for review where a market participant is quoting only on the Exchange, thus, the Exchange has not included a separate example for such a fact pattern.

[14] The Exchange notes that the proposed rule would operate the same if Market Maker A was quoting on more than two exchanges. The Exchange has limited the example to two exchanges for simplicity.

Exchange, the quotes on the Exchange as quotes also represented by Market Maker A).

Result

- Based on the proposed rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations on the Exchange invalid pursuant to Rule 720(b)(2).
- The Exchange and the Away Exchange would also coordinate to confirm that the quotations identified by Market Maker A on the other exchange were indeed Market Maker A's quotations. Once confirmed, each of the Exchange and the Away Exchange would also consider invalid the quotations published on the other exchange.
- As there were no other valid quotes to use as a reference price, the Exchange would then determine Theoretical Price.
- Assume the Exchange determines a Theoretical Price of $0.05.
- The execution price of $1.00 exceeds the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $0.05 + $0.25 = $0.30) so any execution at or above this price is an obvious error.
- Accordingly, the executions in all series would be adjusted by the Exchange to executions at $0.20 per contract (Theoretical Price of $0.05 plus $0.15) to the extent the incoming orders submitted by Member A were non-Customer orders.
- The executions in all series would be nullified to the extent the incoming orders submitted by Member A were Customer orders.
- As the Exchange and all other options exchanges would have identical rules with respect to the process described above, as other options exchanges intend to adopt the same rule if the proposed rule is approved, the transactions on the Away Exchange would also be nullified or adjusted as set forth above.
- If this example was instead modified such that Market Maker A was quoting in 200 series rather than 20, the Exchange notes that Market Maker A could only request that the Exchange consider as invalid their quotations in 25 of those series on other exchanges. As noted above, the Exchange has proposed to limit the proposed rule to 25 series in order to continue to process requests for review in a timely and organized fashion in order to provide certainty to market participants. This is due to the amount of coordination that will be necessary in such a scenario to confirm that the quotations in question on an away options exchange were indeed submitted by a party to a transaction on the Exchange.

Implementation Date

The Exchange proposes to delay the operative date of this proposal to a date within ninety (90) days after the Commission approved the Bats BZX proposal on July 6, 2017. The Exchange will announce the operative date in a Regulatory Alert made available to its Members.

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.[15] Specifically, the proposal is consistent with Section 6(b)(5) of the Act[16] 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, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to further modify their harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the proposal to utilize a TP Provider in the event the NBBO is unavailable or unreliable will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Thus, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act[17] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange again reiterates that it has retained the standard of the current rule for most reviews of options transactions pursuant to Rule 720, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. The proposal to use a TP Provider when the NBBO is unavailable or unreliable is consistent with Section 6(b)(5) of the Act[18] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions by further reducing the possibility of disparate results between options exchanges and increasing the objectivity of the application of Rule 720. Further, the Exchange believes that the proposed Rule is transparent with respect to the limited circumstances under which the Exchange will request a review and correction of Theoretical Price from the TP Provider, and has sought to limit such circumstances as much as possible. The Exchange notes that under the current Rule, Exchange personnel are required to determine Theoretical Price in certain circumstances and yet rarely do so because such circumstances have already been significantly limited under the harmonized rule (for example, because the wide quote provision of the harmonized rule only applies if the quote was narrower and then gapped but does not apply if the quote had been persistently wide). Thus, the Exchange believes it will need to request Theoretical Price from the TP Provider only in very rare circumstances and in turn, the Exchange anticipates that the need to contact the TP Provider for additional review of the Theoretical Price provided by the TP Provider will be even rarer. Similarly, the Exchange believes it is unlikely that an Exchange Official will ever be required to determine Theoretical Price, as such circumstance would only be in the event of a systems issue that has rendered the TP Provider's services unavailable and such issue cannot be corrected in a timely manner.

The Exchange also believes its proposal to adopt language in paragraph (d) of Supplementary Material to Rule 720, Item .06 to Rule 720 to disclaim the liability of the Exchange and the TP Provider in connection with the proposed Rule, the TP Provider's calculation of Theoretical Price, and the Exchange's use of such Theoretical Price is consistent with the Act. As noted above, this proposed language is modeled after existing language in Exchange Rules regarding ''reporting authorities'' that calculate indices,[19] and is consistent with Section 6(b)(5) of the Act[20] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

As described above, the Exchange proposes a modification to the valid quotes provision to also exclude quotes

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] *Id.*

[19] *See supra,* note 12.

[20] 15 U.S.C. 78f(b)(5).

in a series published by another options exchange if either party to the transaction in question submitted the orders or quotes in the series representing such options exchange's best bid or offer. The Exchange believes this proposal is consistent with Section 6(b)(5) of the Act [21] because the application of the rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions by allowing the Exchange to coordinate with other options exchanges to determine whether a market participant that is party to a potentially erroneous transaction on the Exchange established the market in an option on other options exchanges; to the extent this can be established, the Exchange believes such participant's quotes should be excluded in the same way such quotes are excluded on the Exchange. The Exchange also believes it is reasonable to limit the scope of this provision to twenty-five (25) series and to require the party that believes it established the best bid or offer on one or more other options exchanges to identify to the Exchange the quotes which were submitted by that party and published by other options exchanges. The Exchange believes these limitations are consistent with Section 6(b)(5) of the Act [22] because they will ensure that the Exchange is able to continue to apply the Rule in a timely and organized fashion, thus fostering cooperation and coordination with persons engaged in regulating and facilitating transactions and also removing impediments to and perfecting the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the entire proposal is consistent with Section 6(b)(8) of the Act [23] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange does not believe that the proposal will impose a burden on intermarket competition but rather that it will alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to further harmonize and improve the process related to the adjustment and nullification o [sic] erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. To that end, the selection and implementation of a TP Provider utilized by all options exchanges will further reduce the possibility that participants with potentially erroneous transactions that span multiple options exchanges are handled differently on such exchanges. Similarly, the proposed ability to consider quotations invalid on another options exchange if ultimately originating from a party to a potentially erroneous transaction on the Exchange represents a proposal intended to further foster cooperation by the options exchanges with respect to market events. The Exchange understands that all other options exchanges either have or they intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the proposed provisions apply to all market participants equally.

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)(iii) of the Act [24] and subparagraph (f)(6) of Rule 19b–4 thereunder.[25]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the 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–2017–76 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2017–76. 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 10:00 a.m. and 3:00 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

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] 15 U.S.C. 78f(b)(8).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 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, 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.

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2017–76, and should be submitted on or before September 1, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81321; File No. SR–MIAX–2017–38]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MIAX Options Rules 504, Trading Halts, and 521, Nullification and Adjustment of Options Transactions Including Obvious Errors

August 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2017, Miami International Securities Exchange, LLC (''MIAX Options'' 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 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 Exchange Rules 504, Trading Halts, and 521, Nullification and Adjustment of Options Transactions including Obvious Errors.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange and other options exchanges recently adopted a new, harmonized rule related to the adjustment and nullification of erroneous options transactions, including a specific provision related to coordination in connection with large-scale events involving erroneous options transactions.[3] The Exchange believes that the changes the options exchanges implemented with the new, harmonized rule have led to increased transparency and finality with respect to the adjustment and nullification of erroneous options transactions. However, as part of the initial initiative, the Exchange and other options exchanges deferred a few specific matters for further discussion. Specifically, as described in the Initial Filing, the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. Because this initiative required additional exchange and industry discussion as well as additional time for development and implementation, the Exchange and the other options exchanges determined to proceed with the Initial Filing and to undergo a secondary initiative to complete any additional improvements to the applicable rule. In this filing, the Exchange proposes to adopt procedures that will lead to a more objective and uniform way to determine Theoretical Price in the event a reliable NBBO is not available. In addition to this change, the Exchange has proposed two additional minor changes to its rules. The Exchange's proposal mirrors that of Bats BZX, which the Commission approved on July 6, 2017,[4] and those that the other options exchanges intend to or have filed. Finally, the Exchange notes that options exchanges that offer complex orders on their options platforms either already have in place rules for handling the adjustment and nullification of erroneous complex order transactions in place or have filed proposals related to such rules, which proposals have recently been approved by the Commission or filed on an immediately effective basis.[5]

Calculation of Theoretical Price Using a Third Party Provider

Under the harmonized rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to Rule 521, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange uses this NBB or NBO as the Theoretical Price. The Rule also contains various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Rule specifies situations in which there are no quotes or no valid quotes for comparison purposes, when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable,

[26] 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. 74918 (May 8, 2015), 80 FR 27781 (May 14, 2015) (SR–MIAX–2015–35); *see also* Securities Exchange Act Release No. 73884 (December 18, 2014), 79 FR 77557 (December 24, 2014) (the ''Initial Filing'').

[4] *See* Securities Exchange Act Release No. 81084 (July 6, 2017), 82 FR 32216 (July 12, 2017) (granting approval of Bats BZX proposal).

[5] *See e.g.,* Securities Exchange Act Release Nos. 80040 (February 14, 2017), 82 FR 11248 (February 21, 2017) (SR–CBOE–2016–088) (granting approval of CBOE proposal related to the nullification and adjustment of complex orders); 80298 (March 22, 2017), 82 FR 15393 (March 28, 2017) (SR–C2–2017–011) (notice of filing and immediate effectiveness of C2 proposal related to the nullification and adjustment of complex orders); 80284 (March 21, 2017), 82 FR 15251 (March 27, 2017) (SR–MIAX–2017–13) (notice of filing and immediate effectiveness of MIAX proposal related to the nullification and adjustment of complex orders).

and at the open of trading on each trading day. In each of these circumstances, in turn, because the NBB or NBO is not available or is deemed to be unreliable, the Exchange determines Theoretical Price. Under the current Rule, when determining Theoretical Price, Exchange personnel generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options. Although the Rule is administered by experienced personnel and the Exchange believes the process is currently appropriate, the Exchange recognizes that it is also subjective and could lead to disparate results for a transaction that spans multiple options exchanges.

The Exchange proposes to adopt Interpretation and Policy .04 to specify how the Exchange will determine Theoretical Price when required by sub-paragraphs (b)(1)–(3) of the Rule (*i.e.,* at the open, when there are no valid quotes or when there is a wide quote). In particular, the Exchange has been working with other options exchanges to identify and select a reliable third party vendor (''TP Provider'') that would provide Theoretical Price to the Exchange whenever one or more transactions is under review pursuant to Rule 521 and the NBBO is unavailable or deemed unreliable pursuant to Rule 521(b). The Exchange and other options exchanges have selected CBOE Livevol, LLC (''Livevol'') as the TP Provider, as described below. As further described below, proposed Interpretation and Policy .04 would codify the use of the TP Provider as well as limited exceptions where the Exchange would be able to deviate from the Theoretical Price given by the TP Provider.

Pursuant to proposed Interpretation and Policy .04, when the Exchange must determine Theoretical Price pursuant to the sub-paragraphs (b)(1)–(3) of the Rule, the Exchange will request Theoretical Price from the third party vendor to which the Exchange and all other options exchanges have subscribed. Thus, as set forth in this proposed language, Theoretical Price would be provided to the Exchange by the TP Provider on request and not through a streaming data feed.[6] This language also makes clear that the Exchange and all other options exchanges will use the same TP Provider.

As noted above, the proposed TP Provider selected by the Exchange and other options exchanges is Livevol. The Exchange proposes to codify this selection in proposed paragraph (d) to Interpretation and Policy .04. As such, the Exchange would file a rule proposal and would provide notice to the options industry of any proposed change to the TP Provider. The Exchange and other options exchanges have selected Livevol as the proposed TP Provider after diligence into various alternatives. Livevol has, since 2009, been the options industry leader in providing equity and index options market data and analytics services.[7] The Exchange believes that Livevol has established itself within the options industry as a trusted provider of such services and notes that it and all other options exchanges already subscribe to various Livevol services. In connection with this proposal, Livevol will develop a new tool based on its existing technology and services that will supply Theoretical Price to the Exchange and other options exchanges upon request. The Theoretical Price tool will leverage current market data and surrounding strikes to assist in a relative value pricing approach to generating a Theoretical Price. When relative value methods are incapable of generating a valid Theoretical Price, the Theoretical Price tool will utilize historical trade and quote data to calculate Theoretical Price. Because the purpose of the proposal is to move away from a subjective determination by Exchange personnel when the NBBO is unavailable or unreliable, the Exchange intends to use the Theoretical Price provided by the TP Provider in all such circumstances. However, the Exchange believes it is necessary to retain the ability to contact the TP Provider if it believes that the Theoretical Price provided is fundamentally incorrect and to determine the Theoretical Price in the limited circumstance of a systems issue experienced by the TP Provider, as described below.

As proposed, to the extent an Official[8] of the Exchange believes that the Theoretical Price provided by the TP Provider is fundamentally incorrect and cannot be used consistent with the maintenance of a fair and orderly market, the Official shall contact the TP Provider to notify the TP Provider of the reason the Official believes such Theoretical Price is inaccurate and to request a review and correction of the calculated Theoretical Price. For example, if an Official received from the TP Provider a Theoretical Price of $80 in a series that the Official might expect to be instead in the range of $8 to $10 because of a recent corporate action in the underlying, the Official would request that the TP Provider review and confirm its calculation and determine whether it had appropriately accounted for the corporate action. In order to ensure that other options exchanges that may potentially be relying on the same Theoretical Price that, in turn, the Official believes to be fundamentally incorrect, the Exchange also proposes to promptly provide notice to other options exchanges that the TP Provider has been contacted to review and correct the calculated Theoretical Price at issue and to include a brief explanation of the reason for the request.[9] Although not directly addressed by the proposed Rule, the Exchange expects that all other options exchanges once in receipt of this notification would await the determination of the TP Provider and would use the corrected price as soon as it is available. The Exchange further notes that it expects the TP Provider to cooperate with, but to be independent of, the Exchange and other options exchanges.[10]

The Exchange believes that the proposed provision to allow an Official to contact the TP Provider if he or she believes the provided Theoretical Price is fundamentally incorrect is necessary, particularly because the Exchange and other options exchanges will be using the new process for the first time. Although the exchanges have conducted thorough diligence with respect to Livevol as the selected TP Provider and would do so with any potential replacement TP Provider, the Exchange is concerned that certain scenarios

[6] Though the Exchange and other options exchanges considered a streaming feed, it was determined that it would be more feasible to develop and implement an on demand service and that such a service would satisfy the goals of the initiative.

[7] The Exchange notes that in 2015, Livevol was acquired by CBOE Holdings, Inc., the ultimate parent company of the Chicago Board Options Exchange (''CBOE'') and C2 Options Exchange (''C2'').

[8] For purposes of the Rule, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of Rule 521.

[9] *See* proposed paragraph (b) to Interpretation and Policy .04.

[10] The Exchange expects any TP Provider selected by the Exchange and other options exchanges to act independently in its determination and calculation of Theoretical Price. With respect to Livevol specifically, the Exchange again notes that Livevol is a subsidiary of CBOE Holdings, Inc., which is also the ultimate parent company of multiple options exchanges. The Exchange expects Livevol to calculate Theoretical Price independent of its affiliated exchanges in the same way it will calculate Theoretical Price independent of non-affiliated exchanges.

could arise where the Theoretical Price generated by the TP Provider does not take into account relevant factors and would result in an unfair result for market participants involved in a transaction. The Exchange notes that if such situations do indeed arise, to the extent practicable the Exchange will also work with the TP Provider and other options exchanges to improve the TP Provider's calculation of Theoretical Price in future situations. For instance, if the Exchange determines that a particular type of corporate action is not being appropriately captured by the TP Provider when such provider is generating Theoretical Price, while the Exchange believes that it needs the ability to request a review and correction of the Theoretical Price in connection with a specific review in order to provide a timely decision to market participants, the Exchange would share information regarding the specific situation with the TP Provider and other options exchanges in an effort to improve the Theoretical Price service for future use. The Exchange notes that it does not anticipate needing to rely on this provision frequently, if at all, but believes the provision is necessary nonetheless to best prepare for all potential circumstances. Further, the Theoretical Price used by the Exchange in connection with its rulings will always be that received from the TP Provider and the Exchange has not proposed the ability to deviate from such price.[11]

Pursuant to proposed paragraph (c) to Interpretation and Policy .04, an Official of the Exchange may determine the Theoretical Price if the TP Provider has experienced a systems issue that has rendered its services unavailable to accurately calculate Theoretical Price and such issue cannot be corrected in a timely manner. The Exchange notes that it does not anticipate needing to rely on this provision frequently, if at all, but believes the provision is necessary nonetheless to best prepare for all potential circumstances. Further, consistent with existing text in Rule 521(e)(4), the Exchange has not proposed a specific time by which the service must be available in order to be considered timely.[12] The Exchange expects that it would await the TP Provider's services becoming available again so long as the Exchange was able to obtain information regarding the issue and the TP Provider had a reasonable expectation of being able to resume normal operations within the next several hours based on communications with the TP Provider. More specifically with respect to Livevol, Livevol has business continuity and disaster recovery procedures that will help to ensure that the Theoretical Price tool remains available or, in the event of an outage, that service is restored in a timely manner.

The Exchange also notes that if a wide-scale event occurred, even if such event did not qualify as a ''Significant Market Event'' pursuant to Rule 521(e), and the TP Provider was unavailable or otherwise experiencing difficulty, the Exchange believes that it and other options exchanges would seek to coordinate to the extent possible. In particular, the Exchange and other options exchanges now have a process, administered by the Options Clearing Corporation, to invoke a discussion amongst all options exchanges in the event of any widespread or significant market events. The Exchange believes that this process could be used in the event necessary if there were an issue with the TP Provider.

The Exchange also proposes to adopt language in paragraph (d) of Interpretation and Policy .04 to Rule 521 to disclaim the liability of the Exchange and the TP Provider in connection with the proposed Rule, the TP Provider's calculation of Theoretical Price, and the Exchange's use of such Theoretical Price. Specifically, the proposed rule would state that neither the Exchange, the TP Provider, nor any affiliate of the TP Provider (the TP Provider and its affiliates are referred to collectively as the ''TP Provider''), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of the TP Provider pursuant to Interpretation .04. The proposed rule would further state that the TP Provider does not guarantee the accuracy or completeness of the calculated Theoretical Price and that the TP Provider disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such Theoretical Price. Finally, the proposed Rule would state that neither the Exchange nor the TP Provider shall have any liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the use of such Theoretical Price or arising out of any errors or delays in calculating such Theoretical Price. This proposed language is modeled after existing language in Exchange Rules regarding ''reporting authorities'' that calculate indices.[13]

In connection with the proposed change described above, the Exchange proposes to modify Rule 521 to state that the Exchange will rely on paragraph (b) and Interpretation and Policy .04 when determining Theoretical Price.

No Valid Quotes—Market Participant Quoting on Multiple Exchanges

As described above, one of the times where the NBB or NBO is deemed to be unreliable for purposes of Theoretical Price is when there are no quotes or no valid quotes for the affected series. In addition to when there are no quotes, the Exchange does not consider the following to be valid quotes: (i) All quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''); (ii) quotes published by the Exchange that were submitted by either party to the transaction in question; and (iii) quotes published by another options exchange against which the Exchange has declared self-help. In recognition of today's market structure where certain participants actively provide liquidity on multiple exchanges simultaneously, the Exchange proposes to add an additional category of invalid quotes. Specifically, in order to avoid a situation where a market participant has established the market at an erroneous price on multiple exchanges, the Exchange proposes to consider as invalid the quotes in a series published by another options exchange if either party to the transaction in question submitted the quotes in the series representing such options exchange's best bid or offer. Thus, similar to being able to ignore for purposes of the Rule the quotes published by the Exchange if submitted by either party to the transaction in question, the Exchange would be able to ignore for purposes of the rule quotations on other options exchanges by that same market participant.

In order to continue to apply the Rule in a timely and organized fashion, however, the Exchange proposes to initially limit the scope of this proposed provision in two ways. First, because the process will take considerable

[11] To the extent the TP Provider has been contacted by an Official of the Exchange, reviews the Theoretical Price provided but disagrees that there has been any error, then the Exchange would be bound to use the Theoretical Price provided by the TP Provider.

[12] In the context of a Significant Market Event, the Exchange may determine, ''in consultation with other options exchanges . . . that timely adjustment is not feasible due to the extraordinary nature of the situation.'' *See* Rule 521(e)(4).

[13] *See, e.g.,* MIAX Rule 526, which relates to index options potentially listed and traded on the Exchange and disclaims liability for a reporting authority and their affiliates.

coordination with other options exchanges to confirm that the quotations in question on an away options exchange were indeed submitted by a party to a transaction on the Exchange, the Exchange proposes to limit this provision to apply to up to twenty-five (25) total options series (*i.e.,* whether such series all relate to the same underlying security or multiple underlying securities). Second, the Exchange proposes to require the party that believes it established the best bid or offer on one or more other options exchanges to identify to the Exchange the quotes which were submitted by such party and published by other options exchanges. In other words, as proposed, the burden will be on the party seeking that the Exchange disregard their quotations on other options exchanges to identify such quotations. In turn, the Exchange will verify with such other options exchanges that such quotations were indeed submitted by such party.

Below are examples of both the current rule and the rule as proposed to be amended.

Example 1—Current Rule, Member Erroneously Quotes on One Exchange

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange (and only the Exchange).
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange a timely request for review of the trades with Member A as potentially erroneous transactions to buy.

Result

- Based on the Exchange's current rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations invalid pursuant to Rule 521(b)(2).
- As there were no other valid quotes to use as a reference price, the Exchange would then determine Theoretical Price.
- Assume the Exchange determines a Theoretical Price of $0.05.
  - The execution price of $1.00 exceeds the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $0.05 + $0.25 = $0.30) so any execution at or above this price is an obvious error.
  - Accordingly, the executions in all series would be adjusted by the Exchange to executions at $0.20 per contract (Theoretical Price of $0.05 plus $0.15) to the extent the incoming orders submitted by Member A were non-Customer orders.
  - The executions in all series would be nullified to the extent the incoming orders submitted by Member A were Customer orders.

Example 2—Current Rule, Member Erroneously Quotes on Multiple Exchanges

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange and on a second exchange (''Away Exchange'').
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes on both the Exchange and the Away Exchange in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange and the Away Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange and to the Away Exchange timely requests for review of the trades with Member A as potentially erroneous transactions to buy.

Result

- Based on the Exchange's current rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations on the Exchange invalid pursuant to Rule 521(b)(2). The Exchange, however, would view the Away Exchange's quotations as valid, and would thus determine Theoretical Price to be $1.05 (*i.e.,* the NBO in the case of a potentially erroneous buy transaction).
- The execution price of $1.00 does not exceed the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $1.05 + $0.25 = $1.30) so any execution at or above this price is an obvious error.
- The transactions on the Exchange would not be nullified or adjusted.
- As the Exchange and all other options exchanges have identical rules with respect to the process described above, the transactions on the Away Exchange would not be nullified or adjusted.

Example 3—Proposed Rule, Member Erroneously Quotes on Multiple Exchanges [14]

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange and on a second exchange (''Away Exchange'').[15]
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes on both the Exchange and the Away Exchange in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange and the Away Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange and to the Away Exchange timely requests for review of the trades with Member A as potentially erroneous transactions to buy. At the time of submitting the requests for review to the Exchange and the Away Exchange, Market Maker A identifies to the

[14] The Exchange notes that its proposed rule will not impact the proposed handling of a request for review where a market participant is quoting only on the Exchange, thus, the Exchange has not included a separate example for such a fact-pattern.

[15] The Exchange notes that the proposed rule would operate the same if Market Maker A was quoting on more than two exchanges. The Exchange has limited the example to two exchanges for simplicity.

Exchange the quotes on the Away Exchange as quotes also represented by Market Maker A (and to the Away Exchange, the quotes on the Exchange as quotes also represented by Market Maker A).

Result

- Based on the proposed rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations on the Exchange invalid pursuant to Rule 521(b)(2).
- The Exchange and the Away Exchange would also coordinate to confirm that the quotations identified by Market Maker A on the other exchange were indeed Market Maker A's quotations. Once confirmed, each of the Exchange and the Away Exchange would also consider invalid the quotations published on the other exchange.
- As there were no other valid quotes to use as a reference price, the Exchange would then determine Theoretical Price.
- Assume the Exchange determines a Theoretical Price of $0.05.
  - The execution price of $1.00 exceeds the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $0.05 + $0.25 = $0.30) so any execution at or above this price is an obvious error.
  - Accordingly, the executions in all series would be adjusted by the Exchange to executions at $0.20 per contract (Theoretical Price of $0.05 plus $0.15) to the extent the incoming orders submitted by Member A were non-Customer orders.
  - The executions in all series would be nullified to the extent the incoming orders submitted by Member A were Customer orders.
- As the Exchange and all other options exchanges would have identical rules with respect to the process described above, as other options exchanges intend to adopt the same rule if the proposed rule is approved, the transactions on the Away Exchange would also be nullified or adjusted as set forth above.
- If this example was instead modified such that Market Maker A was quoting in 200 series rather than 20, the Exchange notes that Market Maker A could only request that the Exchange consider as invalid their quotations in 25 of those series on other exchanges. As noted above, the Exchange has proposed to limit the proposed rule to 25 series in order to continue to process requests for review in a timely and organized fashion in order to provide certainty to market participants. This is due to the amount of coordination that will be necessary in such a scenario to confirm that the quotations in question on an away options exchange were indeed submitted by a party to a transaction on the Exchange.

Trading Halts—Clarifying Change to Rules 504 and 521(f)

Exchange Rules 504 and 521(f) describe the Exchange's authority to declare trading halts in one or more options traded on the Exchange. Currently, Rule 521(f) and Interpretation and Policy .04 to Rule 504 both state that the Exchange shall nullify any transaction that occurs during a trading halt in the affected option on the Exchange or, with respect to equity options, during a *trading halt on the primary listing market* for the underlying security. The Exchange proposes to make clear with respect to equity options that it shall nullify any transaction that occurs during a *regulatory halt as declared by the primary listing market* for the underlying security. The Exchange believes this change is necessary to distinguish a declared regulatory halt, where the underlying security should not be actively trading on any venue, from an operational issue on the primary listing exchange where the security continues to safely trade on other trading venues.

Implementation Date

The Exchange proposes to delay the operative date of this proposal to a date within ninety (90) days after the Commission approved the Bats BZX proposal on July 6, 2017.[16] The Exchange will announce the operative date in a Regulatory Alert made available to its Members.

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.[17] Specifically, the proposal is consistent with Section 6(b)(5) of the Act[18] 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, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to further modify their harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the proposal to utilize a TP Provider in the event the NBBO is unavailable or unreliable will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Thus, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act[19] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange again reiterates that it has retained the standard of the current rule for most reviews of options transactions pursuant to Rule 521, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. The proposal to use a TP Provider when the NBBO is unavailable or unreliable is consistent with Section 6(b)(5) of the Act[20] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions by further reducing the possibility of disparate results between options exchanges and increasing the objectivity of the application of Rule 521. Further, the Exchange believes that the proposed Rule is transparent with respect to the limited circumstances under which the Exchange will request a review and correction of Theoretical Price from the TP Provider, and has sought to limit such circumstances as much as possible. The Exchange notes that under the current Rule, Exchange personnel are required to determine Theoretical Price in certain circumstances and yet rarely do so because such circumstances have already been significantly limited under the harmonized rule (for example, because the wide quote provision of the harmonized rule only applies if the quote was narrower and then gapped but does not apply if the quote had been persistently wide). Thus, the Exchange believes it will need to request Theoretical Price from the TP Provider only in very rare circumstances and in turn, the Exchange anticipates that the need to contact the TP Provider for

[16] *See supra,* note 4.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] *Id.*

additional review of the Theoretical Price provided by the TP Provider will be even rarer. Similarly, the Exchange believes it is unlikely that an Exchange Official will ever be required to determine Theoretical Price, as such circumstance would only be in the event of a systems issue that has rendered the TP Provider's services unavailable and such issue cannot be corrected in a timely manner.

The Exchange also believes its proposal to adopt language in paragraph (d) of Interpretation and Policy .04 to Rule 521 to disclaim the liability of the Exchange and the TP Provider in connection with the proposed Rule, the TP Provider's calculation of Theoretical Price, and the Exchange's use of such Theoretical Price is consistent with the Act. As noted above, this proposed language is modeled after existing language in Exchange Rules regarding ''reporting authorities'' that calculate indices,[21] and is consistent with Section 6(b)(5) of the Act [22] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

As described above, the Exchange proposes a modification to the valid quotes provision to also exclude quotes in a series published by another options exchange if either party to the transaction in question submitted the orders or quotes in the series representing such options exchange's best bid or offer. The Exchange believes this proposal is consistent with Section 6(b)(5) of the Act [23] because the application of the rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions by allowing the Exchange to coordinate with other options exchanges to determine whether a market participant that is party to a potentially erroneous transaction on the Exchange established the market in an option on other options exchanges; to the extent this can be established, the Exchange believes such participant's quotes should be excluded in the same way such quotes are excluded on the Exchange. The Exchange also believes it is reasonable to limit the scope of this provision to twenty-five (25) series and to require the party that believes it established the best bid or offer on one or more other options exchanges to identify to the Exchange the quotes which were submitted by that party and published by other options exchanges. The Exchange believes these limitations are consistent with Section 6(b)(5) of the Act [24] because they will ensure that the Exchange is able to continue to apply the Rule in a timely and organized fashion, thus fostering cooperation and coordination with persons engaged in regulating and facilitating transactions and also removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, with respect to the proposed modification to the Exchange's trading halt rules, Rule 504 and Rule 521(f), the Exchange believes that this proposal is consistent with Section 6(b)(5) of the Act [25] because such proposal clarifies the provision by distinguishing between a trading halt in an underlying security where the security has halted trading across the industry (*i.e.,* a regulatory halt) from a situation where the primary exchange has experienced a technical issue but the underlying security continues to trade on other equities platforms. The Exchange notes that this distinction is already clear in the rules of certain other options exchanges, and thus, has been found to be consistent with the Act.[26]

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. The Exchange believes the entire proposal is consistent with Section 6(b)(8) of the Act [27] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange does not believe that the proposal will impose a burden on intermarket competition but rather that it will alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to further harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process in [sic] an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. To that end, the selection and implementation of a TP Provider utilized by all options exchanges will further reduce the possibility that participants with potentially erroneous transactions that span multiple options exchanges are handled differently on such exchanges. Similarly, the proposed ability to consider quotations invalid on another options exchange if ultimately originating from a party to a potentially erroneous transaction on the Exchange represents a proposal intended to further foster cooperation by the options exchanges with respect to market events. The Exchange understands that all other options exchanges either have or they intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the proposed provisions apply to all market participants equally.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [28] and Rule 19b–4(f)(6) [29] thereunder.

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. If the

[21] *See supra,* note 13.

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(5).

[25] *Id.*

[26] *See, e.g.,* Interpretation and Policy .07 to CBOE Rule 6.3.

[27] 15 U.S.C. 78f(b)(8).

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 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, 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.

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–MIAX–2017–38 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2017–38. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2017–38, and should be submitted on or before September 1, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–16924 Filed 8–10–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81323; File No. SR–NASDAQ–2017–078]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter V, Section 6, Nullification and Adjustment of Options Transactions Including Obvious Errors

August 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' 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 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 6 of the Exchange's Options Rules (the ''Rules''), entitled ''Nullification and Adjustment of Options Transactions including Obvious Errors.''

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on a date that is within ninety (90) days after the Commission approved a similar proposal filed by Bats BZX on July 6, 2017.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.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. 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 and other options exchanges recently adopted a new, harmonized rule related to the adjustment and nullification of erroneous options transactions, including a specific provision related to coordination in connection with large-scale events involving erroneous options transactions.[3] The Exchange believes that the changes the options exchanges implemented with the new, harmonized rule have led to increased transparency and finality with respect to the adjustment and nullification of erroneous options transactions. However, as part of the initial initiative, the Exchange and other options exchanges deferred a few specific matters for further discussion. Specifically, as described in the Initial Filing, the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. Because this initiative required additional exchange and industry discussion as well as additional time for development and implementation, the Exchange and the other options exchanges determined to proceed with the Initial Filing and to undergo a secondary initiative to complete any additional improvements to the applicable rule. In this filing, the Exchange proposes to adopt procedures that will lead to a more objective and uniform way to determine Theoretical Price in the event a reliable NBBO is not

[30] 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. 34–74915 (May 8, 2015); 80 FR 27801 (May 14, 2015) (SR–NASDAQ–2015–054) (the ''Initial Filing'').

available. In addition to this change, the Exchange has proposed two additional minor changes to its rules. The Exchange's proposal mirrors that of Bats BZX, which the Exchange [sic] approved on July 6, 2017,[4] and those that the other options exchanges intend to file.

Calculation of Theoretical Price Using a Third Party Provider

Under the harmonized rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to Chapter V, Section 6 of the Rules, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange uses this NBB or NBO as the Theoretical Price.

The Rule also contains various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Rule specifies situations in which there are no quotes or no valid quotes for comparison purposes, when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day. In each of these circumstances, in turn, because the NBB or NBO is not available or is deemed to be unreliable, the Exchange determines Theoretical Price. Under the current Rule, when determining Theoretical Price, Exchange personnel generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options. Although the Rule is administered by experienced personnel and the Exchange believes the process is currently appropriate, the Exchange recognizes that it is also subjective and could lead to disparate results for a transaction that spans multiple options exchanges.

The Exchange proposes to adopt Commentary .04 to specify how the Exchange will determine Theoretical Price when required by sub-paragraphs (b)(1)–(3) of the Rule (*i.e.,* at the open, when there are no valid quotes or when there is a wide quote). In particular, the Exchange has been working with other options exchanges to identify and select a reliable third party vendor (''TP Provider'') that would provide Theoretical Price to the Exchange whenever one or more transactions is under review pursuant to Chapter V, Section 6 of the Rules and the NBBO is unavailable or deemed unreliable pursuant to Chapter V, Section 6(b) of the Rules. The Exchange and other options exchanges have selected CBOE Livevol, LLC (''Livevol'') as the TP Provider, as described below. As further described below, proposed Commentary .04 would codify the use of the TP Provider as well as limited exceptions where the Exchange would be able to deviate from the Theoretical Price given by the TP Provider.

Pursuant to proposed Commentary .04, when the Exchange must determine Theoretical Price pursuant to the sub-paragraphs (b)(1)–(3) of the Rule, the Exchange will request Theoretical Price from the third party vendor to which the Exchange and all other options exchanges have subscribed. Thus, as set forth in this proposed language, Theoretical Price would be provided to the Exchange by the TP Provider on request and not through a streaming data feed.[5] This language also makes clear that the Exchange and all other options exchanges will use the same TP Provider.

As noted above, the proposed TP Provider selected by the Exchange and other options exchanges is Livevol. The Exchange proposes to codify this selection in proposed paragraph (d) to Commentary .04. As such, the Exchange would file a rule proposal and would provide notice to the options industry of any proposed change to the TP Provider.

The Exchange and other options exchanges have selected Livevol as the proposed TP Provider after diligence into various alternatives. Livevol has, since 2009, been the options industry leader in providing equity and index options market data and analytics services.[6] The Exchange believes that Livevol has established itself within the options industry as a trusted provider of such services and notes that it and all other options exchanges already subscribe to various Livevol services. In connection with this proposal, Livevol will develop a new tool based on its existing technology and services that will supply Theoretical Price to the Exchange and other options exchanges upon request. The Theoretical Price tool will leverage current market data and surrounding strikes to assist in a relative value pricing approach to generating a Theoretical Price. When relative value methods are incapable of generating a valid Theoretical Price, the Theoretical Price tool will utilize historical trade and quote data to calculate Theoretical Price.

Because the purpose of the proposal is to move away from a subjective determination by Exchange personnel when the NBBO is unavailable or unreliable, the Exchange intends to use the Theoretical Price provided by the TP Provider in all such circumstances. However, the Exchange believes it is necessary to retain the ability to contact the TP Provider if it believes that the Theoretical Price provided is fundamentally incorrect and to determine the Theoretical Price in the limited circumstance of a systems issue experienced by the TP Provider, as described below.

As proposed, to the extent an Official[7] of the Exchange believes that the Theoretical Price provided by the TP Provider is fundamentally incorrect and cannot be used consistent with the maintenance of a fair and orderly market, the Official shall contact the TP Provider to notify the TP Provider of the reason the Official believes such Theoretical Price is inaccurate and to request a review and correction of the calculated Theoretical Price. For example, if an Official received from the TP Provider a Theoretical Price of $80 in a series that the Official might expect to be instead in the range of $8 to $10 because of a recent corporate action in the underlying, the Official would request that the TP Provider review and confirm its calculation and determine whether it had appropriately accounted for the corporate action. In order to ensure that other options exchanges that

[4] *See* Securities Exchange Act Release No. 34–81084 (July 6, 2017) (granting approval of Bats BZX proposal), 82 FR 32216 (July 12, 2017); 82 FR 23684 (May 23, 2017) (SR–BatsBZX–2017–035) (notice of filing of Bats BZX proposal).

[5] Though the Exchange and other options exchanges considered a streaming feed, it was determined that it would be more feasible to develop and implement an on demand service and that such a service would satisfy the goals of the initiative.

[6] The Exchange notes that in 2015, Livevol was acquired by CBOE Holdings, Inc., the ultimate parent company of the Chicago Board Options Exchange (''CBOE'') and C2 Options Exchange (''C2'').

[7] For purposes of the Rule, an Official is an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. *See* NOM Rules, Chapter V, Sec. 6(a)(3).

may potentially be relying on the same Theoretical Price that, in turn, the Official believes to be fundamentally incorrect, the Exchange also proposes to promptly provide notice to other options exchanges that the TP Provider has been contacted to review and correct the calculated Theoretical Price at issue and to include a brief explanation of the reason for the request.[8] Although not directly addressed by the proposed Rule, the Exchange expects that all other options exchanges once in receipt of this notification would await the determination of the TP Provider and would use the corrected price as soon as it is available. The Exchange further notes that it expects the TP Provider to cooperate with, but to be independent of, the Exchange and other options exchanges.[9]

The Exchange believes that the proposed provision to allow an Official to contact the TP Provider if he or she believes the provided Theoretical Price is fundamentally incorrect is necessary, particularly because the Exchange and other options exchanges will be using the new process for the first time. Although the exchanges have conducted thorough diligence with respect to Livevol as the selected TP Provider and would do so with any potential replacement TP Provider, the Exchange is concerned that certain scenarios could arise where the Theoretical Price generated by the TP Provider does not take into account relevant factors and would result in an unfair result for market participants involved in a transaction. The Exchange notes that if such situations do indeed arise, to the extent practicable the Exchange will also work with the TP Provider and other options exchanges to improve the TP Provider's calculation of Theoretical Price in future situations. For instance, if the Exchange determines that a particular type of corporate action is not being appropriately captured by the TP Provider when such provider is generating Theoretical Price, while the Exchange believes that it needs the ability to request a review and correction of the Theoretical Price in connection with a specific review in order to provide a timely decision to market participants, the Exchange would share information regarding the specific situation with the TP Provider and other options exchanges in an effort to improve the Theoretical Price service for future use. The Exchange notes that it does not anticipate needing to rely on this provision frequently, if at all, but believes the provision is necessary nonetheless to best prepare for all potential circumstances. Further, the Theoretical Price used by the Exchange in connection with its rulings will always be that received from the TP Provider and the Exchange has not proposed the ability to deviate from such price.[10]

Pursuant to proposed paragraph (c) to Commentary .04, an Official of the Exchange may determine the Theoretical Price if the TP Provider has experienced a systems issue that has rendered its services unavailable to accurately calculate Theoretical Price and such issue cannot be corrected in a timely manner. The Exchange notes that it does not anticipate needing to rely on this provision frequently, if at all, but believes the provision is necessary nonetheless to best prepare for all potential circumstances. Further, consistent with existing text in Chapter V, Section 6(e)(4) of the Rules, the Exchange has not proposed a specific time by which the service must be available in order to be considered timely.[11] The Exchange expects that it would await the TP Provider's services becoming available again so long as the Exchange was able to obtain information regarding the issue and the TP Provider had a reasonable expectation of being able to resume normal operations within the next several hours based on communications with the TP Provider. More specifically with respect to Livevol, Livevol has business continuity and disaster recovery procedures that will help to ensure that the Theoretical Price tool remains available or, in the event of an outage, that service is restored in a timely manner.

The Exchange also notes that if a wide-scale event occurred, even if such event did not qualify as a ''Significant Market Event'' pursuant to Chapter V, Section 6(e) of the Rules, and the TP Provider was unavailable or otherwise experiencing difficulty, the Exchange believes that it and other options exchanges would seek to coordinate to the extent possible. In particular, the Exchange and other options exchanges now have a process, administered by the Options Clearing Corporation, to invoke a discussion amongst all options exchanges in the event of any widespread or significant market events. The Exchange believes that this process could be used in the event necessary if there were an issue with the TP Provider.

The Exchange also proposes to adopt language in paragraph (d) of Commentary .04 to Chapter V, Section 6 of the Rules to disclaim the liability of the Exchange and the TP Provider in connection with the proposed Rule, the TP Provider's calculation of Theoretical Price, and the Exchange's use of such Theoretical Price. Specifically, the proposed rule would state that neither the Exchange, the TP Provider, nor any affiliate of the TP Provider (the TP Provider and its affiliates are referred to collectively as the ''TP Provider''), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of the TP Provider pursuant to Commentary .04. The proposed rule would further state that the TP Provider does not guarantee the accuracy or completeness of the calculated Theoretical Price and that the TP Provider disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such Theoretical Price. Finally, the proposed Rule would state that neither the Exchange nor the TP Provider shall have any liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the use of such Theoretical Price or arising out of any errors or delays in calculating such Theoretical Price. This proposed language is modeled after existing language in Exchange Rules regarding ''reporting authorities'' that calculate indices.[12]

In connection with the proposed change described above, the Exchange proposes to modify Chapter V, Section 6 of the Rules to state that the Exchange will rely on paragraph (b) and Commentary .04 when determining Theoretical Price.

[8] *See* proposed paragraph (b) to Commentary .04.

[9] The Exchange expects any TP Provider selected by the Exchange and other options exchanges to act independently in its determination and calculation of Theoretical Price. With respect to Livevol specifically, the Exchange again notes that Livevol is a subsidiary of CBOE Holdings, Inc., which is also the ultimate parent company of multiple options exchanges. The Exchange expects Livevol to calculate Theoretical Price independent of its affiliated exchanges in the same way it will calculate Theoretical Price independent of non-affiliated exchanges.

[10] To the extent the TP Provider has been contacted by an Official of the Exchange, reviews the Theoretical Price provided but disagrees that there has been any error, then the Exchange would be bound to use the Theoretical Price provided by the TP Provider.

[11] In the context of a Significant Market Event, the Exchange may determine, ''in consultation with other options exchanges . . . that timely adjustment is not feasible due to the extraordinary nature of the situation.'' *See* NOM Rules, Chapter V, Sec. 6(e)(4).

[12] *See, e.g.,* NOM Rules, Chapter XIV, Sec. 13, which relates to index options potentially listed and traded on the Exchange and disclaims liability for a reporting authority and their affiliates.

No Valid Quotes—Market Participant Quoting on Multiple Exchanges

As described above, one of the times where the NBB or NBO is deemed to be unreliable for purposes of Theoretical Price is when there are no quotes or no valid quotes for the affected series. In addition to when there are no quotes, the Exchange does not consider the following to be valid quotes: (i) All quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''); (ii) quotes published by the Exchange that were submitted by either party to the transaction in question; and (iii) quotes published by another options exchange against which the Exchange has declared self-help. In recognition of today's market structure where certain participants actively provide liquidity on multiple exchanges simultaneously, the Exchange proposes to add an additional category of invalid quotes. Specifically, in order to avoid a situation where a market participant has established the market at an erroneous price on multiple exchanges, the Exchange proposes to consider as invalid the quotes in a series published by another options exchange if either party to the transaction in question submitted the quotes in the series representing such options exchange's best bid or offer. Thus, similar to being able to ignore for purposes of the Rule the quotes published by the Exchange if submitted by either party to the transaction in question, the Exchange would be able to ignore for purposes of the rule quotations on other options exchanges by that same market participant.

In order to continue to apply the Rule in a timely and organized fashion, however, the Exchange proposes to initially limit the scope of this proposed provision in two ways. First, because the process will take considerable coordination with other options exchanges to confirm that the quotations in question on an away options exchange were indeed submitted by a party to a transaction on the Exchange, the Exchange proposes to limit this provision to apply to up to twenty-five (25) total options series (*i.e.,* whether such series all relate to the same underlying security or multiple underlying securities). Second, the Exchange proposes to require the party that believes it established the best bid or offer on one or more other options exchanges to identify to the Exchange the quotes which were submitted by such party and published by other options exchanges. In other words, as proposed, the burden will be on the party seeking that the Exchange disregard their quotations on other options exchanges to identify such quotations. In turn, the Exchange will verify with such other options exchanges that such quotations were indeed submitted by such party.

Below are examples of both the current rule and the rule as proposed to be amended.

Example 1—Current Rule, Member Erroneously Quotes on One Exchange

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange (and only the Exchange).
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange a timely request for review of the trades with Member A as potentially erroneous transactions to buy.

Result

- Based on the Exchange's current rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations invalid pursuant to Chapter V, Section 6(b)(2) of the Rules.
- As there were no other valid quotes to use as a reference price, the Exchange would then determine Theoretical Price.
- Assume the Exchange determines a Theoretical Price of $0.05.
- The execution price of $1.00 exceeds the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $0.05 + $0.25 = $0.30) so any execution at or above this price is an obvious error.
- Accordingly, the executions in all series would be adjusted by the Exchange to executions at $0.20 per contract (Theoretical Price of $0.05 plus $0.15) to the extent the incoming orders submitted by Member A were non-Customer orders.
- The executions in all series would be nullified to the extent the incoming orders submitted by Member A were Customer orders.

Example 2—Current Rule, Member Erroneously Quotes on Multiple Exchanges

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange and on a second exchange (''Away Exchange'').
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes on both the Exchange and the Away Exchange in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange and the Away Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange and to the Away Exchange timely requests for review of the trades with Member A as potentially erroneous transactions to buy.

Result

- Based on the Exchange's current rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations on the Exchange invalid pursuant to Chapter V, Section 6(b)(2) of the Rules. The Exchange, however, would view the Away Exchange's quotations as valid, and would thus determine Theoretical Price to be $1.05 (*i.e.,* the NBO in the case of a potentially erroneous buy transaction).
- The execution price of $1.00 does not exceed the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $1.05 + $0.25 = $1.30) so any execution at or above this price is an obvious error.
- The transactions on the Exchange would not be nullified or adjusted.
- As the Exchange and all other options exchanges have identical rules

with respect to the process described above, the transactions on the Away Exchange would not be nullified or adjusted.

Example 3—Proposed Rule, Member Erroneously Quotes on Multiple Exchanges [13]

Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (''Market Maker A'') is quoting in twenty series of options underlying security ABCD on the Exchange and on a second exchange (''Away Exchange'').[14]
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes on both the Exchange and the Away Exchange in all twenty series to buy options at $1.00 and to sell options at $1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is $1.00 × $1.05 (with the Exchange and the Away Exchange representing the NBBO based on Market Maker A's quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A's quotes at $1.00.
- Assume Market Maker A submits to the Exchange and to the Away Exchange timely requests for review of the trades with Member A as potentially erroneous transactions to buy. At the time of submitting the requests for review to the Exchange and the Away Exchange, Market Maker A identifies to the Exchange the quotes on the Away Exchange as quotes also represented by Market Maker A (and to the Away Exchange, the quotes on the Exchange as quotes also represented by Market Maker A).

Result

- Based on the proposed rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A's quotations on the Exchange invalid pursuant to Chapter V, Section 6(b)(2) of the Rules.
- The Exchange and the Away Exchange would also coordinate to confirm that the quotations identified by Market Maker A on the other exchange were indeed Market Maker A's quotations. Once confirmed, each of the Exchange and the Away Exchange would also consider invalid the quotations published on the other exchange.
- As there were no other valid quotes to use as a reference price, the Exchange would then determine Theoretical Price.
- Assume the Exchange determines a Theoretical Price of $0.05.
- The execution price of $1.00 exceeds the $0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.,* $0.05 + $0.25 = $0.30) so any execution at or above this price is an obvious error.
- Accordingly, the executions in all series would be adjusted by the Exchange to executions at $0.20 per contract (Theoretical Price of $0.05 plus $0.15) to the extent the incoming orders submitted by Member A were non-Customer orders.
- The executions in all series would be nullified to the extent the incoming orders submitted by Member A were Customer orders.
- As the Exchange and all other options exchanges would have identical rules with respect to the process described above, as other options exchanges intend to adopt the same rule if the proposed rule is approved, the transactions on the Away Exchange would also be nullified or adjusted as set forth above.
- If this example was instead modified such that Market Maker A was quoting in 200 series rather than 20, the Exchange notes that Market Maker A could only request that the Exchange consider as invalid their quotations in 25 of those series on other exchanges. As noted above, the Exchange has proposed to limit the proposed rule to 25 series in order to continue to process requests for review in a timely and organized fashion in order to provide certainty to market participants. This is due to the amount of coordination that will be necessary in such a scenario to confirm that the quotations in question on an away options exchange were indeed submitted by a party to a transaction on the Exchange.

Trading Halts—Clarifying Change to Chapter V, Section 3

Chapter V, Section 3 of the Rules describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to add to this provision Commentary .01 to provide that, with respect to equity options, the Exchange shall nullify any transaction that occurs during a regulatory halt as declared by the primary listing market for the underlying security. The Exchange believes this change is necessary to distinguish a declared regulatory halt, where the underlying security should not be actively trading on any venue, from an operational issue on the primary listing exchange where the security continues to safely trade on other trading venues.

Implementation Date

The Exchange proposes to delay the operative date of this proposal to a date within ninety (90) days after the Commission approved the Bats BZX proposal on July 6, 2017. The Exchange will announce the operative date in a Regulatory Alert made available to its Members.

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.[15] Specifically, the proposal is consistent with Section 6(b)(5) of the Act [16] 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, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to further modify their harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the proposal to utilize a TP Provider in the event the NBBO is unavailable or unreliable will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Thus, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act [17] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

[13] The Exchange notes that its proposed rule will not impact the proposed handling of a request for review where a market participant is quoting only on the Exchange, thus, the Exchange has not included a separate example for such a fact pattern.

[14] The Exchange notes that the proposed rule would operate the same if Market Maker A was quoting on more than two exchanges. The Exchange has limited the example to two exchanges for simplicity.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

The Exchange again reiterates that it has retained the standard of the current rule for most reviews of options transactions pursuant to Chapter V, Section 6 of the Rules, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. The proposal to use a TP Provider when the NBBO is unavailable or unreliable is consistent with Section 6(b)(5) of the Act [18] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions by further reducing the possibility of disparate results between options exchanges and increasing the objectivity of the application of Chapter V, Section 6 of the Rules. Further, the Exchange believes that the proposed Rule is transparent with respect to the limited circumstances under which the Exchange will request a review and correction of Theoretical Price from the TP Provider, and has sought to limit such circumstances as much as possible. The Exchange notes that under the current Rule, Exchange personnel are required to determine Theoretical Price in certain circumstances and yet rarely do so because such circumstances have already been significantly limited under the harmonized rule (for example, because the wide quote provision of the harmonized rule only applies if the quote was narrower and then gapped but does not apply if the quote had been persistently wide). Thus, the Exchange believes it will need to request Theoretical Price from the TP Provider only in very rare circumstances and in turn, the Exchange anticipates that the need to contact the TP Provider for additional review of the Theoretical Price provided by the TP Provider will be even rarer. Similarly, the Exchange believes it is unlikely that an Exchange Official will ever be required to determine Theoretical Price, as such circumstance would only be in the event of a systems issue that has rendered the TP Provider's services unavailable and such issue cannot be corrected in a timely manner.

The Exchange also believes its proposal to adopt language in paragraph (d) of Commentary .04 to Chapter V, Section 6 of the Rules to disclaim the liability of the Exchange and the TP Provider in connection with the proposed Rule, the TP Provider's calculation of Theoretical Price, and the Exchange's use of such Theoretical Price is consistent with the Act. As noted above, this proposed language is modeled after existing language in Exchange Rules regarding ''reporting authorities'' that calculate indices,[19] and is consistent with Section 6(b)(5) of the Act [20] in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

As described above, the Exchange proposes a modification to the valid quotes provision to also exclude quotes in a series published by another options exchange if either party to the transaction in question submitted the orders or quotes in the series representing such options exchange's best bid or offer. The Exchange believes this proposal is consistent with Section 6(b)(5) of the Act [21] because the application of the rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions by allowing the Exchange to coordinate with other options exchanges to determine whether a market participant that is party to a potentially erroneous transaction on the Exchange established the market in an option on other options exchanges; to the extent this can be established, the Exchange believes such participant's quotes should be excluded in the same way such quotes are excluded on the Exchange. The Exchange also believes it is reasonable to limit the scope of this provision to twenty-five (25) series and to require the party that believes it established the best bid or offer on one or more other options exchanges to identify to the Exchange the quotes which were submitted by that party and published by other options exchanges. The Exchange believes these limitations are consistent with Section 6(b)(5) of the Act [22] because they will ensure that the Exchange is able to continue to apply the Rule in a timely and organized fashion, thus fostering cooperation and coordination with persons engaged in regulating and facilitating transactions and also removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, with respect to the proposed addition of Commentary .01 to the Exchange's trading halt rule, Chapter V, Section 3, the Exchange believes that this proposal is consistent with Section 6(b)(5) of the Act [23] because it specifically provides for nullification where a trading half exists with respect to an underling security across the industry (*i.e.,* a regulatory halt) as distinguished from a situation where the primary exchange has experienced a technical issue but the underlying security continues to trade on other equities platforms. The Exchange notes that a similar provision already exists in the rules of certain other options exchanges, and thus, has been found to be consistent with the Act.[24]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the entire proposal is consistent with Section 6(b)(8) of the Act [25] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange does not believe that the proposal will impose a burden on intermarket competition but rather that it will alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to further harmonize and improve the process related to the adjustment and nullification o [sic] erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. To that end, the selection and implementation of a TP Provider utilized by all options exchanges will further reduce the possibility that participants with potentially erroneous transactions that span multiple options exchanges are handled differently on such exchanges. Similarly, the proposed ability to consider quotations invalid on another options exchange if ultimately originating from a party to a potentially erroneous transaction on the Exchange represents a proposal intended to further foster cooperation by the options exchanges with respect to market events. The Exchange understands that all other options exchanges either have or they intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition

[18] *Id.*

[19] *See supra,* note 12.

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] *Id.*

[24] *See, e.g.,* Interpretation and Policy .07 to CBOE Rule 6.3.

[25] 15 U.S.C. 78f(b)(8).

because the proposed provisions apply to all market participants equally.

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)(iii) of the Act [26] and subparagraph (f)(6) of Rule 19b–4 thereunder.[27]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the 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–NASDAQ–2017–078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–078. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–078, and should be submitted on or before September 1, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–16926 Filed 8–10–17; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(3)(A)(iii).

[27] 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, 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.

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81326; File No. SR–BatsBYX–2017–17]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Bats BYX Exchange, Inc.

August 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2017, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-Members of the Exchange pursuant to BYX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.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 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 amend its fee schedule to modify existing Tier 3 and add a new tier under footnote 1, Add/Remove Volume Tiers. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

Exchange currently offers five tiers under footnote 1 that offer reduced fees for displayed orders that yield fee codes B,[6] V[7] and Y,[8] and an enhanced rebate for orders that remove liquidity yielding fee codes BB,[9] N[10] and W.[11] The Exchange proposes to amend the criteria necessary to receive the enhanced rebate under Tier 3 under footnote 1. Tier 3 provides a rebate of $0.0015 [sic] per share for orders where that Member has an ADAV[12] equal to or greater than 0.55% of the TCV.[13] The Exchange proposes to increase the tier's requirements to now require the Member to have an ADAV equal to or greater than 0.80% of the TCV. The Exchange does not propose to amend the tier's rebate.

The Exchange also proposes to add a new tier under footnote 1, to be known as Tier 5,[14] under which a Member would be charged a reduced fee of $0.0012 per share on orders that yield fee codes B, V and Y, where that Member's Market Participant Identifier (''MPID'') has an ADAV equal to or greater than 0.55% of the TCV.

The Exchange proposes to implement the above changes to its fee schedule on August 1, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[15] in general, and furthers the objectives of Section 6(b)(4),[16] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that the proposed tier under footnote 1is [sic] equitable and reasonable because such pricing programs reward a Member's growth pattern on the Exchange and such increased volume will allow the Exchange to continue to provide and potentially expand the its incentive programs. The Exchange believes that providing the same reduced rate to Members under Tiers 3 and 5 while requiring more stringent requirements under Tier 3 than Tier 5 is equitable and reasonable as the proposed criteria reasonable [sic] reflect the segment of the Member's order flow that is to be measured. Under Tier 3, the Member as a whole must meet a higher standard than their individual MPID under Tier 5. The Exchange believes this is equitable and reasonable because a Member may have multiple MPIDs that it may aggregate volume across to meet Tier 3's criteria, while Tier 5 is limited to the individual MPID. The Exchange further believes that the proposed tier and modifications are reasonable, fair and equitable because the liquidity from the proposed changes would benefit all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. These pricing programs are also not unfairly discriminatory in that it is available to all Members.

In addition, volume-based fees such as that proposed herein have been widely adopted by exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and rebates, because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

(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. The Exchange does not believe that this change represents a significant departure from previous pricing offered by the Exchange or from pricing offered by the Exchange's competitors. The proposed rates would apply uniformly to all Members, and Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Further, excessive fees would serve to impair an exchange's ability to compete for order flow and members rather than burdening competition. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

(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) of the Act[17] and paragraph (f) of Rule 19b–4 thereunder.[18] 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

[6] Fee code B is appended to displayed orders that add liquidity to BYX (Tape B) and is assessed a fee of $0.0018 per share. *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.*

[7] Fee code V is appended to displayed orders that add liquidity to BYX (Tape A) and is assessed a fee of $0.0018 per share. *Id.*

[8] Fee code Y is appended to displayed orders that add liquidity to BYX (Tape C) and is assessed a fee of $0.0018 per share. *Id.*

[9] Fee code BB is appended to orders that remove liquidity from BYX (Tape B) and is assessed a rebate of $0.0010 per share. *Id.*

[10] Fee code N is appended to orders that remove liquidity from BYX (Tape C) and is assessed a rebate of $0.0010 per share. *Id.*

[11] Fee code W is appended to orders that remove liquidity from BYX (Tape A) and is assessed a rebate of $0.0010 per share. *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.*

[12] ''ADAV'' means average daily volume calculated as the number of shares added per day on a monthly basis. *Id.*

[13] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *Id.*

[14] With the addition of proposed Tier 5 under footnote 1, the Exchange proposes to renumber current Tier 5 as Tier 6.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBYX–2017–17 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBYX–2017–17. 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 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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–BatsBYX–2017–17 and shouldbe submitted on or before September 1, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81327; File No. SR–C2–2017–023]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 6.49, C2 Trade Match System

August 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 4, 2017, C2 Options Exchange, Incorporated (the "Exchange" or "C2") 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 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

The Exchange is proposing to adopt new Rule 6.49 related to its existing C2 Trade Match System ("CTM") functionality.

The text of the proposed rule change is also 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's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt new Rule 6.49 related to its existing C2 Trade Match System ("CTM") functionality. CTM is a systems user interface provided by the Exchange in which authorized Trading Permit Holders ("TPHs") may receive copies of trade records and add and/or update their trade records. Although references to CTM exist within Regulatory Circulars, the functionality is not currently described in Exchange rules. The Exchange believes it would be beneficial to address and provide further detail in its rules regarding the CTM functionality and permitted uses.

Post-trade modifications may be effected via the CTM system. A rule explicitly detailing the modification process and defining what permitted modifications are allowed does not currently exist in the Exchange's rules. The Exchange believes it would be useful to explicitly reference within the rule text the term "CTM" and codify what post trade modifications via CTM are permitted to reduce confusion and add additional transparency to the rules regarding C2's systems.

First, the Exchange proposes to explicitly reference and describe "CTM." Specifically, CTM is a system in which authorized TPHs may enter and report transactions that have been effected on the Exchange in accordance with Exchange rules or to correct bona fide errors (*e.g.,* a situation in which a transaction was incorrectly reported as an opening transaction). Documentation requirements related to changes made through the use of CTM will be announced via a Regulatory Circular.

By way of background, C2 Rule 6.38 requires that for all transactions made on the Exchange, TPHs must file with the Exchange certain trade information[5] in order to allow the Exchange to properly match and clear trades. This information is used to provide the comparison of the two sides (*i.e.,* buy and sell) of a transaction. When the two sides match, the trade is successfully compared and will move on to the Options Clearing Corporation ("OCC") for clearance. For trades that do not match (*i.e.,* trade information from each side do not match) TPHs and their respective representatives typically make reasonable efforts to resolve unmatched trades on trade day. The Exchange notes that CTM may be used

[5] *See* C2 Rule 6.38.

by TPHs to change certain fields on a trade record for which it has authority to correct, in order to update a trade record or correct an unmatched field to resolve an out-trade. The Exchange proposes to codify what post trade modifications via CTM are permitted and further specify which changes will require notification to the Exchange.

The Exchange first seeks to specify which fields may be changed by TPHs through the use of CTM without notice to the Exchange. Those fields are: (1) Executing Firm and Contra Firm; (2) Executing Broker and Contra Broker; (3) CMTA;[6] (4) Market-Maker Account and Sub Account; (5) Customer ID; (6) Position Effect (open/close); (7) Optional Data; and/or (8) Origin Code (provided the change is not from a customer origin code to any other origin code). The Exchange notes that the information contained in these fields does not affect the terms of a contract or the Consolidated Tape. Rather, the Exchange views these changes to be non-critical back office changes and as such, the Exchange does not believe it needs notice from the TPH making the change. The Exchange also notes that such changes would be captured in the Exchange's audit trail.

Next, the Exchange proposes to specify which fields may be changed by TPHs through the use of CTM that require TPHs to give notice to the Exchange in a form and manner determined by the Exchange. Specifically, those fields are: (1) Series; (2) Quantity; (3) Buy or Sell; (4) Premium Price; and/or (5) Origin Code (if changing origin code from customer (C) to any other origin code). The Exchange notes that these fields, with the exception of origin code, do change the terms of the contract and additionally affect the Consolidated Tape. As such, the Exchange proposes to require notice and further documentation as to why such a change is being made in order to monitor such changes, as well as take the necessary steps to ensure that any such changes are properly reflected in the Consolidated Tape. As to changes from a Customer (C) origin code to any other origin code, the Exchange notes that while such change does not affect the Consolidated Tape or terms of a contract, such changes may affect other substantive aspects of how a trade was processed, including whether a trade should have been given order priority. Accordingly, the Exchange believes that TPHs making changes to these fields should be required to provide the Exchange notice and documentation relating to the change. The Exchange proposes to require that notification of the change be made as soon as practicable, but, no later than fifteen (15) minutes after the change has been made. The Exchange notes that it will not be authorizing any changes prior to the TPH making changes to any of the above-mentioned fields (*i.e.,* the Exchange will not expressly indicate whether or not a change identified in a TPH's notice is in conformity with Exchange rules prior to the change being made). Rather, due to inherent time constraints, such changes will be reviewed by Exchange personnel after the fact, and a TPH that is found to have made an improper modification may be subject to appropriate disciplinary action in accordance with the Rules of the Exchange as described more fully below.

The Exchange lastly proposes to adopt Interpretation and Policy .01 to provide that any action taken by the Exchange pursuant to proposed Rule 6.49(b) and (c) does not constitute a determination by the Exchange that the transaction was effected in conformity with Exchange Rules.[7] As noted above, any improper change made through CTM shall be processed and given effect, but the TPH may be subject to appropriate disciplinary action in accordance with Exchange rules. Additionally, the Exchange notes that nothing in proposed Rule 6.49 is intended to define or limit the ability of the Exchange to sanction or take other remedial action pursuant to other Exchange rules for rule violations or other activity for which remedial measures may be proposed. The Exchange notes that given the inherent time constraints in making various changes to exchange transactions, the Exchange would not be able to adequately consider the above-mentioned requirements and make a determination within the time required as to whether a change was improper or not. As such the Exchange will not prevent any changes from being processed and given effect, but will review such changes after the fact to ensure compliance with Exchange rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange views CTM as an important tool that allows TPHs to receive copies of trade records and add and/or update trade records. The Exchange believes CTM provides TPHs an effective mechanism to make such changes and reconcile out-trades due to bona fide errors, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and protecting investors and the public interest.

The Exchange also believes that clearly defining in the rules existing system functionality (*i.e.,* CTM) provides additional transparency in the rules and provides market participants an additional avenue to easily understand the system and processes C2 offers. The Exchange believes additional transparency removes a potential impediment to and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest. Additionally, the Exchange believes that requiring certain changes made through the CTM system allows the Exchange to receive from TPHs information in a uniform format, which aids the Exchange's efforts to monitor and regulate C2 and TPHs and helps prevent fraudulent and manipulative practices.

[6] Under a Clearing Member Trade Agreement ("CMTA"), an Options Clearing Corporation ("OCC") clearing member ("carrying clearing member") authorizes another clearing member ("executing clearing member") to give up the name of the carrying clearing member with respect to any trade executed on a specific exchange (*i.e.,* the re-assignment of a trade to a different Clearing firm occurs post-trade at the OCC).

[7] For example, if the Exchange provides a TPH the ability to make a change via CTM, such action should not be construed as a determination by the Exchange that the transaction proposed is in conformity with Exchange Rules.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

Finally, the Exchange believes that the proposed rule changes are designed to not permit unfair discrimination among market participants. For example all TPHs may request access to CTM. Additionally, all TPHs will be subject to the same limitations as to the permitted uses of CTM functionality.

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. The Exchange believes that proposed Rule 6.49 will promote competition by making the CTM functionality more understandable to users and the general public. The Exchange believes that by better explaining its CTM functionality to TPHs and codifying the permitted uses of CTM, TPHs will better understand the Exchange's systems. The Exchange believes that additional clarity and transparency in the Rules will make it easier for market participants to compete with one another on equal footing in the markets and ultimately benefits all investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange 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 [11] and Rule 19b–4(f)(6) [12] thereunder.

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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). 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.

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–C2–2017–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2017–023. 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 10:00 a.m. and 3:00 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–C2–2017–023 and should be submitted on or before September 1, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–16930 Filed 8–10–17; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15232 and #15233; IOWA Disaster Number IA–00071]

Administrative Declaration of a Disaster for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Iowa dated 08/03/2017.

DATES: Issued on 08/03/2017.

Physical Loan Application Deadline Date: 10/02/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 05/03/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

Incident: Severe Weather, Tornadoes, High Winds, Heavy Rains, Flash Flooding and Riverine Flooding.

Incident Period: 07/19/2017 through 07/23/2017.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bremer

Contiguous Counties:

Iowa: Black Hawk, Buchanan, Butler, Chickasaw, Fayette, Floyd

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.500
Homeowners without Credit Available Elsewhere	1.750

	Percent
Businesses with Credit Available Elsewhere	6.610
Businesses without Credit Available Elsewhere	3.305
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.305
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15232 6 and for economic injury is 15233 0.

The State which received an EIDL Declaration # is Iowa.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: August 3, 2017.

Linda E. McMahon,

Administrator.

[FR Doc. 2017–16955 Filed 8–10–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before September 11, 2017.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION:

Summary of Information Collections

SBA's Intermediary Lending Pilot Program (ILPP) makes direct loans to lending intermediaries for the purpose of making loans to startup, newly established, and growing small business concerns. These intermediaries provide information to SBA, which is used to monitor disbursement of ILPP loan proceeds, assess financial condition of the intermediaries, and monitor program effectiveness while minimizing risk to the federal taxpayer.

(1) *Title:* Intermediary Lending Pilot Program Reporting Requirements.

Description of Respondents: Lending Intermediaries.

Form Numbers: 2418, 2419.

Estimated Annual Responses: 432.

Estimated Annual Hour Burden: 3,168.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2017–16989 Filed 8–10–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Centers Advisory Board

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the September meeting of the Federal Advisory Committee for the Small Business Development Centers Program. The meetings will be open to the public; however, advance notice of attendance is required.

DATES: Thursday, September 7, 2017, at 1:45 p.m. CST—In person.

ADDRESSES: Gaylord Opryland Resort & Convention Center, 2800 Opryland Drive Nashville, Tennessee 37214.

FOR FURTHER INFORMATION CONTACT: Monika Nixon, Office of Small Business Development Center, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416; *monika.nixon@.sba.gov.*

If anyone wishes to be a listening participant or would like to request accommodations, please contact Monika Nixon at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section l0(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of the meetings is to discuss the following issues pertaining to the SBDC Program:

SBA Update
Annual Meetings
Board Assignments
Member Roundtable

Richard Kingan,

Acting White House Liaison.

[FR Doc. 2017–16954 Filed 8–10–17; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day Notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before September 11, 2017.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: In recognition of the small business community's contributions to the nation's economy, the President of the United States designates one week each year as Small Business Week. As part of that week's activities the Small Business Administration (SBA) issues recognition awards to various small business owners, entrepreneurs and advocates. Award nominees and nominators submit this information to SBA for use in evaluating their eligibility for an award, verifying accuracy of information submitted, and determining whether there are any actual or potential conflicts of interest.

Summary of Information Collections:

Title: Small Business Administration Award Nomination.

Description of Respondents: Small Business Owners and Advocates who have been nominated for an SBA recognition award.

Form Number: 3300–3314.

Estimated Annual Responses: 600.

Estimated Annual Hour Burden: 900.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2017–16991 Filed 8–10–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15230 and #15231; ARIZONA Disaster Number AZ–00050]

Administrative Declaration of a Disaster for the State of Arizona

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Arizona dated 08/03/2017.

Incident: Post-fire Flooding from Monsoon Storms.

Incident Period: 07/19/2017 and continuing.

DATES: Issued on 08/03/2017.

Physical Loan Application Deadline Date: 10/02/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 05/03/2018.

ADDRESS: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Yavapai

Contiguous Counties:

Arizona: Coconino, Gila, La Paz, Maricopa, Mohave.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.500
Homeowners without Credit Available Elsewhere	1.750
Businesses with Credit Available Elsewhere	6.610
Businesses without Credit Available Elsewhere	3.305
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.305
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15230 6 and for economic injury is 15231 0.

The State which received an EIDL Declaration # is Arizona.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: August 3, 2017.

Linda E. McMahon,

Administrator.

[FR Doc. 2017–16956 Filed 8–10–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15238 and #15239; WYOMING Disaster Number WY–00039]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Wyoming

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Wyoming (FEMA–4327–DR), dated 08/05/2017.

DATES: Issued on 08/05/2017.

Physical Loan Application Deadline Date: 10/04/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 05/07/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/05/2017, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

Incident: Flooding.

Incident Period: 06/07/2017 through 06/22/2017.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: Fremont and Park Counties and the Wind River Reservation within Fremont County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 152386 and for economic injury is 152390.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–16913 Filed 8–10–17; 8:45 am]

BILLING CODE 8025–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1095 (Sub-No. 2X)]

SMS Rail Service, Inc.—Abandonment Exemption—in Gloucester County, N.J.

SMS Rail Service, Inc. (SMS), has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon approximately 5.8 miles of rail line (the Line) within the 970-acre refinery owned by Paulsboro Refining Company, LLC (PRC), in Paulsboro, Gloucester

County, N.J.[1] The Line traverses United States Postal Service Zip Code 08066.

SMS has certified that: (1) No overhead traffic has moved over the Line for at least two years and overhead traffic, if there were any, could be rerouted over other lines; (2) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (3) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[2]

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 10, 2017, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 21, 2017. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 31, 2017, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to Robert A. Klein, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355–1530.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Combined environmental and historic reports that addressed the effects, if any, of abandonment of the Line on the environment and historic resources were prepared and submitted to the Board as part of PRC's adverse abandonment application for the Line in Docket No. AB 1095 (Sub-No. 1). The Board's Office of Environmental Analysis (OEA) issued an Environmental Assessment (EA) in that proceeding on February 12, 2014, concluding that the proposed abandonment would not significantly impact the quality of the human environment and recommending no environmental mitigation conditions. Following the public comment period, OEA issued a final EA in which it recommended no environmental mitigation conditions. In its decision granting PRC's adverse abandonment application, the Board adopted OEA's analysis and found that the proposed abandonment, if implemented, would not significantly affect the quality of the human environment and that no environmental conditions were needed. *See Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cty., N.J.,* AB 1095 (Sub-No. 1), slip op. at 6 (STB served Dec. 2, 2014). In the *July Decision,* the Board found that the environmental review conducted in Docket No. AB 1095 (Sub-No. 1) satisfies the agency's obligations under the National Environmental Policy Act, 42 U.S.C. 4321, and the National Historic Preservation Act, 54 U.S.C. 300101 *et seq.,* in this case and therefore waived the environmental and historic reporting requirements under 49 CFR 1105.7 and 1105.8 for this proceeding.

Public use or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SMS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by SMS's filing of a notice of consummation by August 13, 2017, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*WWW.STB.GOV.*"

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2017–17007 Filed 8–10–17; 8:45 am]

BILLING CODE 4915–01–P

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[1] The Line is the same line as to which the Board granted PRC's application for adverse abandonment against SMS in December 2014. *See Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cty., N.J.,* AB 1095 (Sub-No. 1) (STB served Dec. 2, 2014). That decision later was vacated at the parties' joint request due to settlement. *Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cty., N.J.,* AB 1095 (Sub-No. 1) (STB served June 19, 2015).

[2] To qualify for the two-year out-of-service class exemption, a carrier must also certify that "no local traffic has moved over the line for at least 2 years," 49 CFR 1152.50(b). Here, SMS certifies that "no rail traffic has been transported *by SMS* over [the Line] . . . for at least two years." (Notice, App. 1 at 1 (emphasis added).) In light of the unique circumstances of this case (including, among other things, the recent adverse abandonment proceeding pertaining to the Line), the Board has waived 1152.50(b) to the extent, if any, that SMS's certification could be deemed not to meet the requirement of that regulation. *SMS Rail Serv., Inc.—Aban. Exemption—in Gloucester Cty., N.J.* (*July Decision*), AB 1095 (Sub-No. 2X), slip op. at 1 (STB served July 13, 2017).

[3] The Board will grant a stay if an informed decision on any environmental issues raised cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,700. *See* 49 CFR 1002.2(f)(25). Effective September 1, 2017, the fee will become $1,800. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2017 Update,* EP 542 (Sub-No. 25), slip op. App. C at 20 (STB served July 28, 2017).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2017–0014]

Generalized System of Preferences (GSP): Initiation of the 2017 Annual GSP Product and Country Practices Review; Deadlines for Filing Petitions; Notice of Change in Country Practices Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearing and request for petitions and comments.

SUMMARY: The Office of the United States Trade Representative (USTR) will consider petitions to modify the list of articles that are eligible for duty-free treatment under the Generalized System of Preferences (GSP) program, and to modify the GSP status of certain GSP beneficiary developing countries because of country practices.

USTR is extending the previously announced hearing on Bolivia's country practices to include a second day to provide interested parties with an opportunity to submit testimony on the following country practice petitions accepted in previous years that continue to be under review: Argentina, Ecuador, Georgia, Indonesia, Iraq, Laos, Thailand, Ukraine, and Uzbekistan.

USTR will announce the procedures to receive petitions requesting waivers of competitive need limitations (CNLs) and the schedule for a public hearing on the product review petitions and any

new country practice petitions in the **Federal Register** at a later date.

DATES:

September 12, 2017 at midnight EST: Deadline for submission of comments, pre-hearing briefs and requests to appear at the September 26–27, 2017, public hearing.

September 26–27, 2017: The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) will convene a public hearing on the GSP country practice review of Bolivia in Rooms 1 and 2, 1724 F Street NW., Washington DC 20508, beginning at 10:00 a.m. The GSP Subcommittee is extending the hearing to September 27th to provide interested parties with an opportunity to submit testimony on all country practice petitions accepted in previous years that continue to be under review. Any interested party, including foreign governments, may submit testimony or ask to testify at the September 26–27, 2017 country practices hearing.

October 17, 2017 at midnight EST: Deadline for submission of post-hearing briefs.

October 17, 2017 at midnight EST: Deadline for submission of petitions to modify the list of articles eligible for duty-free treatment under the GSP and new petitions to review the GSP status of any beneficiary developing country. USTR will announce decisions on the petitions accepted for review, a schedule for any related public hearings, and the opportunity to provide comments, at a later date.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov.* The docket number for the 2017 Annual GSP Review is USTR–2017–0014. The current country practice case docket numbers are listed in section B.3 below. Follow the instructions for submitting comments in section C below. For alternatives to on-line submissions, please contact Naomi Freeman at (202) 395–2974.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman at (202) 395–2974 or *GSP@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The GSP program provides for the duty-free treatment of designated articles when imported from beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended, and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

B. The 2017 Annual GSP Review Petitions

1. GSP Product Review Petitions

Any interested party, including foreign governments, may submit petitions to:

1. Designate additional articles as eligible for GSP benefits, if the articles are imported from countries designated as least-developed beneficiary developing countries, or as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA).

2. Withdraw, suspend or limit the application of duty-free treatment accorded under the GSP with respect to any article.

3. Otherwise modify GSP coverage.

Petitioners seeking to add products to eligibility for GSP benefits should note that, as provided in section 503(b) of the Trade Act (19 U.S.C. 2463(b)), certain articles may not be designated as eligible articles under GSP. As specified in 15 CFR 2007.1, all petitions must include a detailed description of the product and the eight-digit subheading of the Harmonized Tariff Schedule of the United States (HTSUS) under which the product is classified.

2. Country Practices Review Petitions

Any interested party may submit a petition to review the GSP eligibility of any beneficiary developing country with respect to any of the designation criteria listed in sections 502(b) and 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c)).

3. Notice of Change to Country Practices Public Hearing

The GSP Subcommittee of the TPSC will hold a hearing on September 26–27, 2017, for the following country practice cases:

Country	Basis for petition	Petitioner	Docket No.
• Argentina	Request for GSP Benefits	Argentina	USTR–2016–0023
• Bolivia	Worker Rights+Child Labor	USTR	USTR–2017–0009
• Ecuador	Arbitral Awards	Chevron Corporation	USTR–2013–0013
• Georgia	Worker Rights	AFL–CIO	USTR–2013–0009
• Indonesia	Intellectual Property Rights	International Intellectual Property Alliance (IIPA)	USTR–2013–0011
• Iraq	Worker Rights	AFL–CIO	USTR–2013–0004
• Laos	Request for GSP Benefits	Laos	USTR–2013–0021
• Thailand	Worker Rights	AFL–CIO	USTR–2015–0018
• Ukraine	Intellectual Property Rights	IIPA	USTR–2013–0010
• Uzbekistan	Worker Rights+Child Labor	International Labor Rights Forum (ILRF)	USTR–2013–0007
• Uzbekistan	Intellectual Property Rights	IIPA	USTR–2013–0014

The hearing will be held in Rooms 1 and 2, 1724 F Street NW., Washington DC 20508 and will be open to the public and to the press. We will make a transcript of the hearing available on *https://www.regulations.gov* within approximately two weeks after the date of the hearing.

All interested parties wishing to make an oral presentation at the hearing must submit, following the ''Requirements for Submissions'' set out below, the name, address, telephone number, and email address, if available, of the witness(es) representing their organization by midnight on September 12, 2017. Requests to present oral testimony must be accompanied by a written brief or summary statement, in English. The GSP Subcommittee will limit oral testimony to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. The GSP Subcommittee will accept post-hearing briefs or statements if they conform with the requirements set out below and are submitted, in English, by midnight on October 17, 2017. Parties not wishing to appear at the public hearing may submit pre-hearing and post-hearing briefs or comments by these deadlines.

In order to be assured of consideration, you must submit all post-hearing briefs or statements by the October 17, 2017 deadline to docket number USTR–2017–0014 via *www.regulations.gov.* However, if there are new developments or information that parties wish to share with the GSP Subcommittee after this date, the regulations.gov docket will remain open until a final decision is made. Post all comments, letters, or other submissions related to country practice reviews to the appropriate docket listed above via *www.regulations.gov.*

C. Requirements for Submissions

All submissions in response to this notice must conform to the GSP regulations set forth at 15 CFR part 2007—*https://www.ecfr.gov/cgi-bin/text-idx?SID=271bd12a5ef9cae0c4c178d1131ac292&mc=true&node=pt15.3.2007&rgn=div5*—except as modified below.

The GSP Subcommittee strongly encourages on-line submissions, using the *https://www.regulations.gov* Web site. All submissions must be in English and must be transmitted electronically via *www.regulations.gov* using docket number USTR–2017–0014 for the 2017 GSP Annual Review (for products or new country practice petitions), and the docket numbers listed above for testimony at the country practice public hearing for current country practice cases. To make a submission via *www.regulations.gov,* enter the appropriate docket number on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use Regulations.gov'' on the bottom of the home page.

USTR will not accept hand-delivered submissions. USTR will not accept submissions for review that do not provide the information required by sections 2007.0 and 2007.1 of the GSP regulations, except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required.

The *https://www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. The GSP Subcommittee prefers that you provide submissions as an attached document. If you attach a document, it is sufficient to type ''See attached'' in the ''Type Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the ''Type Comment'' field. At the beginning of the submission or on the first page (if an attachment), include the following text (in bold and underlined): (1) ''2017 GSP Annual Review'' and (2) the eight-digit HTSUS subheading number in which the product is classified (for product petitions) or the name of the country (for country practice or requests for new GSP country benefits petitions). Interested parties submitting petitions that request action with respect to specific products also should list at the beginning of the submission, or on the first page (if an attachment) the following information: (1) The requested action; and (2) if applicable, the beneficiary developing country. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments.

Please do not attach separate cover letters or data attachments to electronic submissions; rather, include any such information in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any electronic submissions that contain business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter. Filers of submissions containing business confidential information also must submit a public version of their comments that we will place in the docket for public inspection. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

You will receive a submission tracking number upon completion of the submissions procedure at *https://www.regulations.gov.* The tracking number is your confirmation that the submission was received into *https://www.regulations.gov.* The GSP Subcommittee is not able to provide technical assistance for the Web site. The GSP Subcommittee may not consider documents that are not submitted in accordance with these instructions

As noted, the GSP Subcommittee strongly urges submitters to file comments through *www.regulations.gov.* You must make any alternative arrangements with Naomi Freeman in advance of transmitting a comment. You can contact Ms. Freeman at (202) 395–2974.

We will post comments in the docket for public inspection, except business confidential information. You can view comments on the *https://www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Erland Herfindahl,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences and Chair of the GSP Subcommittee of the Trade Policy Staff Committee Office of the U.S. Trade Representative.

[FR Doc. 2017–16967 Filed 8–10–17; 8:45 am]

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Part II

Bureau of Consumer Financial Protection

12 CFR Part 1206

Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z); Final Rule and Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2016–0038]

RIN 3170–AA61

Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is modifying the Federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act and the Truth in Lending Act that are implemented in Regulation Z. This rule memorializes the Bureau's informal guidance on various issues and makes additional clarifications and technical amendments. This rule also creates tolerances for the total of payments, adjusts a partial exemption mainly affecting housing finance agencies and nonprofits, extends coverage of the TILA–RESPA integrated disclosure (integrated disclosure) requirements to all cooperative units, and provides guidance on sharing the integrated disclosures with various parties involved in the mortgage origination process.

DATES: The final rule is effective October 10, 2017. However, the mandatory compliance date is October 1, 2018. For additional discussion of these dates, see part VI of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Jeffrey Haywood, Paralegal Specialist, Dania Ayoubi, Pedro De Oliveira, Angela Fox, Jaclyn Maier, Alexandra Reimelt, and Shelley Thompson, Counsels, and Krista Ayoub, David Friend, Nicholas Hluchyj, and Priscilla Walton-Fein, Senior Counsels, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at 202–435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

For more than 30 years, Federal law required lenders to issue two overlapping sets of disclosures to consumers applying for a mortgage. In October 2015, integrated disclosures issued by the Consumer Financial Protection Bureau, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, took effect.[1] The Bureau has worked actively to support implementation both before and after the effective date by providing compliance guides, webinars, and other implementation aids. To further these ongoing efforts, on July 28, 2016, the Bureau proposed amendments to the integrated disclosure requirements in Regulation Z (the proposal).[2]

The Bureau is now issuing this final rule to memorialize certain past informal guidance, whether provided through webinar, compliance guide, or otherwise, and make additional clarifications and technical amendments. This final rule also makes a limited number of additional substantive changes where the Bureau has identified discrete solutions to specific implementation challenges. Specifically, among other changes, the final rule:

- *Creates tolerances for the total of payments.* The Truth in Lending Act (TILA) establishes certain tolerances for accuracy in calculating the finance charge and disclosures affected by the finance charge. In light of prior changes to certain underlying regulatory definitions, the final rule establishes express tolerances for the total of payments to parallel the existing provisions regarding the finance charge.
- *Adjusts a partial exemption that mainly affects housing finance agencies and nonprofits.* The existing rule provides a partial exemption from the integrated disclosure requirements for certain non-interest bearing subordinate lien transactions that provide down payment and other homeowner assistance (housing assistance loans). The Bureau has learned that the exemption may not be operating as intended. The final rule includes two amendments to expand the scope of the partial exemption and provide additional flexibility when loans satisfy the partial exemption.
- *Provides a uniform rule regarding application of the integrated disclosure requirements to cooperative units.* Under the existing rule, coverage of cooperative units depends on whether cooperatives are classified as real property under State law. Because State law sometimes treats cooperatives differently for different purposes, there may be uncertainty and potential inconsistency among market actors regarding coverage of the integrated disclosure requirements. The final rule requires provision of the integrated disclosures in transactions involving cooperative units, whether or not cooperatives are classified under State law as real property.
- *Provides guidance on sharing disclosures with various parties involved in the mortgage origination process.* The Bureau has received a number of requests for guidance concerning the sharing of the integrated disclosures with sellers and various other parties involved in the origination process, including real estate agents, in light of privacy concerns. The final rule incorporates and expands upon previous webinar guidance in the Official Interpretations (commentary) to the regulation to provide greater clarity.

The clarifications and technical corrections in this final rule address a variety of topics, including: Affiliate charges; the calculating cash to close table; construction loans; decimal places and rounding; escrow account disclosures; escrow cancellation notices; expiration dates for the closing costs disclosed on the Loan Estimate; gift funds; the ''In 5 Years'' calculation; lender and seller credits; lenders' and settlement agents' respective responsibilities; the list of service providers; non-obligor consumers; partial payment policy disclosures; payment ranges on the projected payments table; the payoffs and payments table; payoffs with a purchase loan; post-consummation fees; principal reduction (principal curtailment); disclosure and good-faith determination of property taxes and property value; rate locks; recording fees; simultaneous second lien loans; the summaries of transactions table; the total interest percentage calculation; trusts; and informational updates to the Loan Estimate. This final rule will generally benefit consumers and industry alike by providing greater clarity for implementation going forward. As stated in the proposal, the Bureau did not reopen any major policy decisions with this rulemaking.

For the reasons discussed in the section-by-section analysis of § 1026.19(e)(4)(ii) below, the Bureau is not finalizing proposed comment 19(e)(4)(ii)–2, which related to comparing charges paid by or imposed on the consumer to charges disclosed on a corrected Closing Disclosure to determine if an estimated charge was disclosed in good faith. The Bureau is issuing a new proposal, concurrent with

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 2007, 2103–04, 2107–09 (2010); Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 79730 (Dec. 31, 2013).

[2] The proposal was published in the **Federal Register** on August 15, 2016. See 81 FR 54317 (Aug. 15, 2016).

this final rule, that would address this issue.

II. Background

A. The TILA–RESPA Integrated Disclosures Rulemaking

For more than 30 years, TILA required creditors to give consumers who applied for consumer credit, including mortgage loans, one set of disclosures, while the Real Estate Settlement Procedures Act (RESPA) required settlement agents to give borrowers who obtained federally related mortgage loans a different, overlapping, set of disclosures. This duplication was long recognized as inefficient and unduly complex for both consumers and industry and fueled more than one effort over the years to develop combined disclosure forms. In 1998, the Board of Governors of the Federal Reserve System (the Board) and the Department of Housing and Urban Development (HUD) prepared a joint report as to how the two sets of disclosures could be streamlined and simplified.[3]

In Dodd-Frank Act sections 1032(f), 1098, and 1100A, Congress directed the Bureau to integrate the mortgage loan disclosures under TILA and RESPA.[4] The Bureau issued proposed integrated disclosure forms and rules for comment on July 9, 2012 (the 2012 TILA–RESPA Proposal),[5] and on November 20, 2013, the Bureau issued a final rule titled ''Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)'' (TILA–RESPA Final Rule).[6] The rule included a number of model forms, 13 samples illustrating the use of those forms for different types of loans, and extensive Official Interpretations, which provided authoritative guidance explaining the new disclosures. The Bureau used its discretion to establish an initial effective date of August 1, 2015, slightly more than 20 months after the rule itself was issued.[7] The Bureau ultimately extended that effective date another two months, to October 3, 2015, in a subsequent rulemaking.[8] The Bureau has reaffirmed continuously its commitment to support a smooth transition for the mortgage market, including its commitment to be sensitive to the good faith efforts made by institutions to come into compliance.[9]

The Bureau has made technical corrections to the TILA–RESPA Final Rule. On January 20, 2015, the Bureau issued the ''Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)'' final rule (January 2015 Amendments).[10] On July 21, 2015, the Bureau issued the ''2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments; Delay of Effective Date'' final rule (July 2015 Amendments), which made certain technical amendments as well as extending the effective date.[11] The TILA–RESPA Final Rule, January 2015 Amendments, and July 2015 Amendments are collectively referred to as the TILA–RESPA Rule in this final rule.

B. Implementation Support

The Bureau has engaged in extensive efforts to support industry implementation of the TILA–RESPA Rule. Information regarding the Bureau's implementation support initiative and available implementation resources can be found on the Bureau's regulatory implementation Web site at *www.consumerfinance.gov/regulatory-implementation/tila-respa.* The Bureau's ongoing efforts in this area include: (1) The publication of a small entity compliance guide and a guide to forms to help industry understand the new rules, including updates to the guides, as needed; (2) the publication of a readiness guide for institutions to evaluate their readiness and facilitate compliance with the new rules; (3) the publication of a disclosure timeline that illustrates the process and timing requirements of the new disclosure rules; (4) the publication of the Bureau's own examination procedures, incorporating the Federal Financial Institutions Examination Council's exam procedures; (5) the publication of Loan Estimate and Closing Disclosure forms with fields annotated to show certain TILA disclosure citations; (6) a series of webinars to address common interpretive questions, including an index of questions answered during those webinars; (7) the issuance of the January 2015 and July 2015 Amendments, as well as a February 2016 **Federal Register** erratum notice; (8) the creation of Web pages targeted to real estate professionals and settlements service providers and their questions; (9) roundtable meetings with industry, including creditors, settlement service providers, technology vendors, and secondary market participants, to discuss their challenges and support their implementation efforts; (10) participation in numerous conferences and forums throughout the entire implementation period; (11) close collaboration with State and Federal regulators on implementation of the TILA–RESPA Final Rule, including coordination on consistent examination procedures; and (12) extensive informal guidance to support implementation of the TILA–RESPA Rule.

C. Purpose and Scope of Final Rule

This final rule memorializes some of the Bureau's existing informal guidance, whether provided through webinar, compliance guide, or otherwise, and makes additional clarifications and technical amendments. This final rule also makes a limited number of additional substantive changes where the Bureau has identified discrete solutions to specific implementation challenges.

The Bureau's focus in this rulemaking is providing additional clarity to facilitate compliance. The Bureau did not reopen any major policy decisions with this rulemaking. As stated in the proposal, the Bureau was reluctant to entertain major changes that could involve substantial reprogramming of

[3] Bd. of Governors of the Fed. Reserve Sys. & U.S. Dep't. of Housing and Urban Dev., Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act (1998), available at *https://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf.* The report was prepared at Congress's direction in the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Public Law 104–208, 2101, 110 Stat. 3009.

[4] Public Law 111–203, 124 Stat. 1376, 2007, 2103–04, 2107–09 (2010).

[5] 77 FR 51116 (Aug. 23, 2012).

[6] 78 FR 79730 (Dec. 31, 2013).

[7] Most commenters supported an implementation period between 18 and 24 months. 78 FR 79730, 80071 (Dec. 31, 2013).

[8] 80 FR 43911 (July 24, 2015). An administrative error on the Bureau's part required the Bureau to extend the effective date to August 15, 2015, at the earliest. The Bureau extended the effective date an additional six weeks to minimize costs from the delay to both consumers and industry.

[9] *See, e.g.,* Letter from Director Richard Cordray, CFPB, to Industry Trades (April 28, 2015); Letter from Director Richard Cordray, CFPB, to Representatives Andy Barr and Carolyn B. Maloney, U.S. House of Representatives (June 3, 2015). Both Fannie Mae and Freddie Mac have issued statements indicating that they are not conducting routine post-purchase reviews during the transitional period after the effective date. *See, e.g.,* Fannie Mae, Lender Letter LL–2015–06 (Oct. 6, 2015), *available at https://www.fanniemae.com/content/announcement/ll1506.pdf;* Freddie Mac, Industry Letter (Oct. 6, 2015), *available at http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr100615.pdf.*

[10] 80 FR 8767 (Feb. 19, 2015). The January 2015 Amendments finalized a proposal the Bureau had issued on October 10, 2014, 79 FR 64336 (Oct. 29, 2014).

[11] 80 FR 43911 (July 24, 2015). The July 2015 Amendments finalized a proposal the Bureau had issued on June 24, 2015, 80 FR 36727 (June 26, 2015).

systems so soon after the TILA–RESPA Final Rule's October 2015 effective date or to otherwise distract from industry's efforts to resolve outstanding implementation issues.

Accordingly, the final rule does not and cannot address every concern that has been raised to the Bureau. The Bureau believes that industry has made substantial implementation progress. The Bureau is prioritizing its resources to further facilitate industry's implementation progress. This final rule does not contain any revisions that implicate fundamental policy choices, such as the disclosure of simultaneous issuance title insurance premiums, made in the TILA–RESPA Final Rule. This final rule also does not include additional cure provisions.

As stated in the proposal, the Bureau has spent substantial time considering industry requests to define further procedures for curing errors made in Loan Estimates or Closing Disclosures. The Bureau has worked steadily with industry to explain the cure provisions adopted in the TILA–RESPA Final Rule as well as TILA's existing provisions for cure. The Bureau is concerned that further definition of cure provisions would not be practicable without substantially undermining incentives for compliance with the rule. The Bureau believes that further defining cure provisions would be extraordinarily complex. Accordingly, the Bureau focused this rulemaking process on facilitating compliance with the TILA–RESPA Rule so that industry is able to provide all consumers with disclosures that conform to the requirements of the rule.

III. Comments

The Bureau issued the proposal on July 28, 2016, and it was published in the **Federal Register** on August 15, 2016.[12] The comment period closed on October 18, 2016. In response to the proposal, the Bureau received more than 1,600 comments from trade associations, creditors, technology vendors, and other industry representatives, as well as consumer groups, government sponsored enterprises (GSEs), and others. As discussed in more detail below, the Bureau has considered comments in adopting this final rule.

IV. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act, including the authorities discussed below. In general, the provisions this final rule amends were previously adopted by the Bureau in the TILA–RESPA Rule. In doing so, the Bureau relied on one or more of the authorities discussed below, as well as other authority. Except as otherwise noted in the section-by-section analysis in part V below, the Bureau is issuing this final rule in reliance on the same authority and for the same reasons relied on in adopting the relevant provisions of the TILA–RESPA Rule, as discussed in detail in the Legal Authority and Section-by-Section Analysis parts of the TILA–RESPA Final Rule and January 2015 Amendments, respectively.[13]

A. The Integrated Disclosure Mandate

Section 1032(f) of the Dodd-Frank Act required the Bureau to propose, for public comment, rules and model disclosures combining the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determined that any proposal issued by the Board and HUD carried out the same purpose.[14] In addition, the Dodd-Frank Act amended section 105(b) of TILA and section 4(a) of RESPA to require the integration of the TILA disclosures and the disclosures required by sections 4 and 5 of RESPA.[15] The purpose of the integrated disclosure is to facilitate compliance with the disclosure requirements of TILA and RESPA and to improve borrower understanding of the transaction.

Although Congress imposed the requirement to integrate the disclosures, it did not harmonize the underlying statutes. TILA and RESPA establish different timing requirements for disclosing mortgage credit terms and costs to consumers and require that those disclosures be provided by different parties. TILA section 128(b)(2)(A) generally requires that, within three business days of receiving the consumer's application and at least seven business days before consummation of certain mortgage transactions, creditors must provide consumers a good faith estimate of the costs of credit.[16] If the annual percentage rate that was initially disclosed becomes inaccurate, TILA section 128(b)(2)(D) requires creditors to redisclose the information at least three business days before consummation.[17] Pursuant to TILA section 128(b)(2)(B)(ii), the disclosures must be provided in final form at consummation.[18] RESPA section 5(c) also requires that the lender or broker provide borrowers with a good faith estimate of settlement charges no later than three business days after receiving their applications.[19] However, unlike TILA, RESPA section 4(b) requires that, at or before settlement, the person conducting the settlement (which may or may not be the creditor) provide the borrower with a statement that records all charges imposed upon the borrower in connection with the settlement.[20]

B. Other Rulemaking and Exception Authorities

Truth in Lending Act

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a),[21] directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various available credit terms and avoid the uninformed use of credit.[22] In enacting TILA, Congress found that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in

[12] 81 FR 54317 (Aug. 15, 2016).

[13] 78 FR 79730, 79753–56 (Dec. 31, 2013); 80 FR 8767, 8768–70 (Feb. 19, 2015).

[14] Public Law 111–203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(f)).

[15] Section 1100A of the Dodd-Frank Act amended TILA section 105(b) to provide that the ''Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law.'' Public Law 111–203, 124 Stat. 1376, 2108 (2010) (codified at 15 U.S.C. 1604(b)). Section 1098 of the Dodd-Frank amended RESPA section 4(a) to require the Bureau to publish a ''single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law.'' Public Law 111–203, 124 Stat. 1376, 2103 (2010) (codified at 12 U.S.C. 2603(a)).

[16] 15 U.S.C. 1638(b)(2)(A). This requirement applies to extensions of credit that are both secured by a dwelling and subject to RESPA. *Id.*

[17] 15 U.S.C. 1638(b)(2)(D).

[18] 15 U.S.C. 1638(b)(2)(B)(ii).

[19] 12 U.S.C. 2604(c).

[20] 12 U.S.C. 2603(b).

[21] 15 U.S.C. 1604(a).

[22] 15 U.S.C. 1601(a).

the extension of consumer credit would be strengthened by the informed use of credit.[23] Strengthened competition among financial institutions is a goal of TILA, achieved through the meaningful disclosure of credit terms.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A amended TILA section 105(a) to provide the Bureau express authority to prescribe regulations that contain additional requirements that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the Bureau's authority under TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute. The Dodd-Frank Act also clarified the Bureau's rulemaking authority over certain high-cost mortgages pursuant to section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, including the high-cost mortgages referred to in TILA section 103(bb), except with respect to the provisions of TILA section 129 that apply uniquely to such high-cost mortgages.[24]

TILA section 129B(e). Dodd-Frank Act section 1405(a) amended TILA to add new section 129B(e).[25] That section authorizes the Bureau to prohibit or condition terms, acts, or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary, or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of sections 129B and 129C of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower. In developing rules under TILA section 129B(e), the Bureau has considered whether the rules are in the interest of the borrower, as required by the statute. The Bureau is issuing portions of this final rule pursuant to its authority under TILA section 129B(e).

Real Estate Settlement Procedures Act

RESPA section 19(a). Section 19(a) of RESPA authorizes the Bureau to prescribe such rules and regulations and to make such interpretations and grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA.[26] One purpose of RESPA is to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs.[27] In addition, in enacting RESPA, Congress found that consumers are entitled to greater and more timely information on the nature and costs of the settlement process and to be protected from unnecessarily high settlement charges caused by certain abusive practices in some areas of the country.[28] In the past, RESPA section 19(a) has served as a broad source of authority to prescribe disclosures and substantive requirements to carry out the purposes of RESPA.

In developing rules under RESPA section 19(a), the Bureau has considered the purposes of RESPA, including to effect certain changes in the settlement process that will result in more effective advance disclosure of settlement costs. The Bureau is issuing portions of this final rule pursuant to its authority under RESPA section 19(a).

Dodd-Frank Act

Dodd-Frank Act section 1022(b). Under Dodd-Frank Act section 1022(b)(1), the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof.[29] TILA and RESPA are Federal consumer financial laws.[30] Accordingly, in issuing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA, RESPA, and title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).[31]

Dodd-Frank Act section 1032. Section 1032(a) of the Dodd-Frank Act provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.[32] The authority granted to the Bureau in section 1032(a) is broad and empowers the Bureau to prescribe rules regarding the disclosure of the features of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.[33] Accordingly, in developing the TILA–RESPA Rule under Dodd-Frank Act section 1032(a), the Bureau considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. Moreover, the Bureau has considered the evidence developed through its consumer testing of the integrated disclosures as well as prior testing done by the Board and HUD regarding TILA and RESPA disclosures. See part III of the TILA–RESPA Final Rule for a discussion of the Bureau's consumer testing.[34] The Bureau is issuing portions of this final rule pursuant to its authority under Dodd-Frank Act section 1032(a).

Dodd-Frank Act section 1405(b). Section 1405(b) of the Dodd-Frank Act provides that, notwithstanding any other provision of title XIV of the Dodd-Frank Act, in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Bureau may exempt from or modify disclosure requirements, in whole or in part, for any class of

[23] *Id.*

[24] 15 U.S.C. 1639. TILA section 129 contains requirements for certain high-cost mortgages, established by the Home Ownership and Equity Protection Act (HOEPA), which are commonly called HOEPA loans.

[25] Public Law 111–203, 124 Stat. 1376, 2141 (2010) (codified at 15 U.S.C. 1639B(e)).

[26] 12 U.S.C. 2617(a).

[27] 12 U.S.C. 2601(b).

[28] 12 U.S.C. 2601(a).

[29] Public Law 111–203, 124 Stat. 1376, 1980 (2010) (codified at 15 U.S.C. 5512(b)(1)).

[30] 12 U.S.C. 5481(12) and (14).

[31] Public Law 111–203, 124 Stat. 1376, 1980 (2010) (codified at 12 U.S.C. 5512(b)(2)).

[32] Public Law 111–203, 124 Stat. 1376, 2006–07 (2010) (codified at 12 U.S.C. 5532(a)).

[33] Public Law 111–203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(c)).

[34] 78 FR 79730, 79743–50 (Dec. 31, 2013).

residential mortgage loans if the Bureau determines that such exemption or modification is in the interest of consumers and in the public interest.[35] Section 1401 of the Dodd-Frank Act, which amends TILA section 103(cc)(5), generally defines a residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling, other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan.[36] Notably, the authority granted by section 1405(b) applies to disclosure requirements generally and is not limited to a specific statute or statutes. Accordingly, Dodd-Frank Act section 1405(b) is a broad source of authority to exempt from or modify the disclosure requirements of TILA and RESPA.

In developing rules for residential mortgage loans under Dodd-Frank Act section 1405(b), the Bureau has considered the purposes of improving consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures and the interests of consumers and the public. The Bureau is issuing portions of this final rule pursuant to its authority under Dodd-Frank Act section 1405(b).

V. Section-by-Section Analysis

Section 1026.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability

1(d) Organization

1(d)(5)

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to § 1026.1(d)(5) and comment 1(d)(5)–1 to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

Current comment 1(d)(5)–1 provides in relevant part that the Bureau's revisions to Regulation X and Regulation Z in the TILA–RESPA Final Rule apply to covered loans for which the creditor or mortgage broker receives an application on or after October 3, 2015 (the ''effective date''), except that § 1026.19(e)(2), § 1026.28(a)(1), and the commentary to § 1026.29 became effective on October 3, 2015, without respect to whether an application was received. In addition to the proposed revision noted above, the Bureau proposed to restructure comment 1(d)(5)–1 and make other technical revisions to enhance clarity. The Bureau also proposed revisions to require a creditor, servicer, or covered person to provide the applicable disclosures required under § 1026.20(e) or § 1026.39(d)(5) as of October 1, 2017, regardless of when the application for a covered mortgage transaction was received. The proposed amendments to the comment also would set forth an illustrative example.

Section 1026.20(e) requires the creditor or servicer to issue an ''Escrow Closing Notice'' when an escrow account subject to § 1026.20(e) will be canceled. Section 1026.39(d)(5) requires a covered person[37] to disclose the lender's partial payment policy. The obligation to provide these disclosures may occur after consummation. In the proposal, the Bureau acknowledged that there is uncertainty within industry as to whether the disclosures under §§ 1026.20(e) and 1026.39(d)(5) (together, the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5)) apply to all covered transactions as of the effective date of October 3, 2015, or only to covered transactions for which the creditor or mortgage broker received an application on or after October 3, 2015, and explained that it considers either approach compliant under existing comment 1(d)(5)–1. The Bureau proposed to clarify that the post-consummation disclosure requirements under §§ 1026.20(e) and 1026.39(d)(5) apply to all covered transactions regardless of the date an application was received. In light of current uncertainty that may exist regarding compliance under existing comment 1(d)(5)–1, however, the Bureau proposed to provide that the requirement to issue the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) applies to all covered transactions, regardless of the date an application was received, as of the proposed effective date of October 1, 2017.

The October 1, 2017, effective date in proposed comment 1(d)(5)–1 was based on the Bureau's working assumption that a final rule would be promulgated on or before April 1, 2017. The Bureau proposed this tentative date in accordance with TILA section 105(d), which provides that any regulation of the Bureau that requires a disclosure that differs from the previously required disclosure generally shall take effect on that October 1 which follows, by at least six months, the date of promulgation. Accordingly, the Bureau noted that the effective date recited for the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) in the proposal may differ in the final rule, depending on when the final rule is promulgated. As noted in the effective date discussion in part VI, below, the effective date of this final rule is 60 days from publication in the **Federal Register** but the amendments will not yet be mandatory. In general, compliance with the amendments in the final rule will only be mandatory with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018. Nonetheless, on and after October 1, 2018, the requirement to provide the post-consummation disclosures §§ 1026.20(e) and 1026.39(d)(5) will be mandatory for all transactions regardless of the date a corresponding loan application was received.

As stated in the proposal, the Bureau believes that consumers with covered mortgage loans would benefit from the receipt of the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) without regard to when a corresponding application was received. Information about an escrow account closure or the partial payment policy contained in the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) is beneficial to consumers regardless of when the consumer applied for the loan. Moreover, there is no necessary relationship between the disclosures made under § 1026.19(e) and (f) and the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5); consumers should be able to understand the latter even if they have not received the former.

The Bureau also noted in its proposal that requiring the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) for covered accounts without regard to the application date would simplify compliance. For example, under the final rule, creditors or servicers would not have to track the application date for certain covered transactions under §§ 1026.20(e) and 1026.39(d)(5) and, thus, requiring the disclosures under these provisions for all covered accounts regardless of application date may simplify servicers' compliance. Similarly, the post-consummation partial payment

[35] Public Law 111–203, 124 Stat. 1376, 2142 (2010) (codified at 15 U.S.C. 1601 note).

[36] Public Law 111–203, 124 Stat. 1376, 2138 (2010) (codified at 15 U.S.C. 1602(cc)(5)).

[37] ''A 'covered person' means any person, as defined in § 1026.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment or other transfer, and who acquires more than one mortgage loan in any twelve-month period.'' § 1026.39(a)(1).

disclosure required by § 1026.39(d)(5) is incorporated into the mortgage transfer disclosures that are provided upon transfer of ownership of any covered loan, without regard to application date. If § 1026.39(d)(5) is effective without regard to application date, covered persons under § 1026.39 can provide a standard disclosure for all mortgage loans rather than two distinct disclosures, depending on the loan's application date.

The Bureau sought comment on whether applying the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) to all covered transactions regardless of when an application was received is appropriate. The Bureau also sought any information about current industry practice and whether these notices are provided on all transactions that met the conditions set forth in §§ 1026.20(e) and 1026.39(d), respectively, or only on transactions for which the application was received on or after October 3, 2015. The Bureau further sought comment on how often escrow accounts are canceled post-consummation, whether the rate of escrow cancelations is expected to remain static or change, and on the burden of tracking the application date for the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5).

The Bureau received three comments regarding the proposed revision to comment 1(d)(5)–1 to clarify that the post-consummation disclosure requirements under §§ 1026.20(e) and 1026.39(d)(5) apply to all covered accounts regardless of the date an application was received. All the commenters supported this proposed revision. The Bureau did not receive comments regarding the restructuring of comment 1(d)(5)–1 or the conforming amendments to § 1026.1(d)(5) and comment 1(d)(5)–1 to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law. For the reasons discussed above the Bureau is finalizing comment 1(d)(5)–1 substantially as proposed, but with revisions to reflect the date of October 1, 2018, instead of October 1, 2017, and to make other clarifying edits.

In addition, as discussed above and in more detail in the effective date discussion in part VI, below, the Bureau is establishing an effective date, optional compliance period, and mandatory compliance date for this final rule. The Bureau is adding new comment 1(d)(5)–2 in order to memorialize the effective date, the optional compliance period, and the mandatory compliance date.

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(11) Consumer

Comments 2(a)(11)–3 and 3(a)–10 discuss when the extension of credit to trusts is covered by TILA. The Bureau proposed to amend comment 2(a)(11)–3 to clarify that, in addition to credit extended to land trusts, credit extended to trusts established for taxation or estate planning purposes would also be considered to be extended to a natural person for purposes of the definition of consumer in § 1026.2(a)(11), consistent with comment 3(a)–10.

Several industry commenters supported the clarification in proposed comment 2(a)(11)–3. Industry commenters also requested clarification as to who should receive disclosures and how consumers' names should be disclosed, including on the optional signature lines under §§ 1026.37(n) and 1026.38(s), where credit is extended to trusts established for tax or estate planning purposes. A title insurance underwriter recommended that proposed comment 2(a)(11)–3 become effective as soon as possible or even retroactively, while a vendor group stated that reprogramming for some vendors could take up to six months.

The Bureau is adopting comment 2(a)(11)–3 substantially as proposed but with a minor change. Specifically, comment 2(a)(11)–3, as finalized, uses the phrase ''tax or estate planning purposes'' (rather than the phrase ''taxation or estate planning purposes'') for consistency with comment 3(a)–10.

Guidance as to who should receive disclosures where credit is extended to trusts established for tax or estate planning purposes can be found in current §§ 1026.2(a)(22) and 1026.17(d) and their associated commentary. Comment 2(a)(22)–3 provides that a trust and its trustee are considered to be the same person for purposes of Regulation Z, and comment 17(d)–2 provides that disclosures must be given to the principal debtor and, if two consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. Thus, where credit is extended to trusts established for tax or estate planning purposes, the disclosures may simply be provided to the trustee on behalf of the trust. In rescindable transactions, however, comment 17(d)–2 provides that the disclosures required by § 1026.19(f) must be given separately to each consumer who has the right to rescind under § 1026.23.

Current comment 37(a)(5)–1 provides guidance on how consumers' names should be disclosed on the Loan Estimate. If there is more than one consumer applying for the credit, § 1026.37(a)(5) requires disclosure of the name and the mailing address of each consumer to whom the Loan Estimate will be delivered. Pursuant to current comment 17(d)–2, as noted above, where credit is extended to trusts established for tax or estate planning purposes, the disclosures may simply be provided to the trustee on behalf of the trust. Therefore, to comply with § 1026.37(a)(5), a creditor may opt to disclose the name and mailing address of the trust only, although nothing prohibits the creditor from additionally disclosing, pursuant to § 1026.37(a)(5), the names of the trustee or of other consumers applying for the credit. Regarding the Closing Disclosure, current § 1026.38(a)(4) and its associated commentary provide that creditors must disclose the name and address of each consumer and seller in the transaction. The section-by-section analysis of § 1026.38(a)(4) below includes a discussion of the definition of consumer for purposes of such disclosure.

Current §§ 1026.37(n) and 1026.38(s) and their associated commentary permit a creditor to determine in its sole discretion whether or not to include a signature line or insert the consumer's name under the signature line rather than the designation ''Applicant'' or ''Co-Applicant.'' When credit is extended to trusts established for tax or estate planning purposes and the creditor opts to insert a signature line, nothing in the TILA–RESPA Rule prohibits the creditor from inserting the trustee's name under the signature line along with a designation that the trustee is serving in its capacity as trustee.

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the **Federal Register,** but there will be an optional compliance period in effect until October 1, 2018.

Section 1026.3 Exempt Transactions

3(h) Partial Exemption for Certain Mortgage Loans

The Bureau's Proposal

Section 1026.3(h) currently provides that the TILA–RESPA integrated disclosure requirements do not apply to transactions that satisfy six criteria that are associated with certain housing assistance loans for low- and moderate-income consumers. If the six criteria in § 1026.3(h) are satisfied, a creditor is not required to provide the Loan Estimate, Closing Disclosure, or special information booklet in connection with the mortgage loan. The creditor must, however, provide the disclosures required by § 1026.18, ensuring that the consumer receives TILA disclosures of the cost of credit. Thus, § 1026.3(h) provides an exemption from certain Regulation Z disclosure requirements, though it does not provide a full exemption from Regulation Z. In addition, Regulation X § 1024.5(d) provides a partial exemption from certain RESPA disclosure requirements for federally related mortgage loans.[38] Regulation X § 1024.5(d)(2) cross-references the exemption criteria set forth in § 1026.3(h). The partial exemption in § 1026.3(h) and the parallel partial exemption in Regulation X § 1024.5(d)(2) replaced a disclosure exemption previously granted by HUD. The purpose of these partial exemptions is to facilitate access to certain low-cost, non-interest bearing, subordinate-lien transactions by streamlining the disclosures required in connection with these loans.

As discussed in the proposal, the Bureau understands that loans that satisfy the criteria in § 1026.3(h) generally provide a benefit to consumers and are predominantly made by housing finance agencies (HFAs) or by private creditors who partner with HFAs and extend credit pursuant to HFA guidelines (collectively, HFA program loans). The Bureau explained in the proposal that it understood that many of the low-cost housing assistance loans that satisfy the criteria in § 1026.3(h) are not covered transactions subject to the TILA–RESPA integrated disclosure requirements because they are neither subject to a finance charge nor payable in more than four installments, as required by the coverage test in § 1026.1(c)(1).[39] These loans generally are, however, federally related mortgage loans. Thus, unless they meet the criteria in § 1026.3(h) and qualify for the partial exemption in Regulation X § 1024.5(d)(2), lenders[40] making these housing assistance loans must comply with the RESPA disclosure requirements. In the proposal, the Bureau stated that it had received information that many HFAs were having difficulty finding lenders to partner with in making these loans because, following the introduction of the TILA–RESPA integrated disclosures, some vendors and loan originator systems no longer support the RESPA disclosures. The Bureau expressed concern that the limited support for the RESPA disclosures might make it difficult for HFAs, other nonprofits, and private lenders to make housing assistance loans available to low- and moderate-income borrowers if they are not able to take advantage of the partial exemption.

Among the criteria for the partial exemption is § 1026.3(h)(5), which provides that the total of costs payable by the consumer at consummation must be less than 1 percent of the amount of credit extended and include no charges other than fees for recordation, application, and housing counseling. The Bureau proposed to revise § 1026.3(h)(5) to clarify the costs that may be payable by the consumer at consummation without loss of eligibility for the partial exemption. Specifically, it proposed to clarify that transfer taxes, in addition to fees for recordation, application, and housing counseling, may be payable by the consumer at consummation without losing eligibility for the partial exemption. It also proposed to exclude recording fees and transfer taxes from the 1-percent threshold on total costs payable by the consumer at consummation. The Bureau proposed these changes to enable more loans to satisfy the criteria in § 1026.3(h), which the Bureau believed would support the extension of beneficial, low-cost credit to consumers. In addition, the Bureau proposed to amend comment 3(h)–2 and to add comments 3(h)–3 and –4. For the reasons discussed below, the Bureau is adopting § 1026.3(h)(5) as proposed, and is adopting comments 3(h)–3 and –4 as proposed but renumbered as comments 3(h)–4 and –5.

Additional criteria for the partial exemption are found in § 1026.3(h)(6), which requires the creditor to comply with all other applicable requirements of Regulation Z in connection with the transaction, including without limitation the disclosures required by § 1026.18. For the reasons discussed below, the Bureau is revising § 1026.3(h)(6) to permit the provision of the Loan Estimate and Closing Disclosure to satisfy this criteria for the partial exemption. The Bureau is revising the introductory text of § 1026.3(h) and comments 3(h)–1 and –2 to reflect the revisions to § 1026.3(h)(6). The Bureau is adding new comment 3(h)–3 to clarify further the relationship between the partial exemption in § 1026.3(h) and the parallel partial exemption for certain federally related mortgage loans in Regulation X § 1024.5(d)(2).

Comments Received

The Bureau received many comments supporting the proposal to clarify that transfer taxes may be charged in connection with the transaction without loss of eligibility for the partial exemption and to exclude recording fees and transfer taxes from the 1-percent threshold. Several commenters stated that the proposal would allow more housing assistance loans to satisfy the criteria for the partial exemption and would thus increase the availability of such loans. Some commenters specified that recording fees and transfer taxes on their own often preclude housing assistance loans from qualifying for the partial exemption and limit creditors' ability to offer such loans. One HFA commented that it offers a housing assistance program with loans ranging from $1,000 to $10,000, and that, in one county in the State in which it operates, it costs $222 to record four pages of a mortgage. As a result, the HFA stated that recording fees alone often prevent even the maximum $10,000 loan from being eligible for the partial exemption. A consumer group commenter stated that the proposal to exclude recording fees and transfer taxes from the 1-percent threshold was reasonable, if such fees and taxes are the reason that HFAs and nonprofits are having difficulty making otherwise exempt loans within the current 1-percent threshold. Another HFA recommended that the Bureau limit costs payable by the consumer in connection with the transaction to recording fees, transfer taxes, a reasonable application fee, and a reasonable housing counseling fee, and, along with an industry commenter, stated that 1 percent would be the appropriate threshold on permissible application and housing counseling fees.

[38] 12 CFR 1024.2(b) (defining federally related mortgage loan for purposes of Regulation X).

[39] Section 1026.1(c)(1) provides that, in general, Regulation Z applies to each individual or business that offers or extends credit, other than a person excluded from coverage 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, when four conditions are met: (i) The credit is offered or extended to consumers; (ii) The offering or extension of credit is done regularly; (iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) The credit is primarily for personal, family, or household purposes.

[40] Note that RESPA and TILA differ in their terminology. Whereas Regulation X generally refers to ''lenders'' and ''borrowers,'' Regulation Z generally refers to ''creditors'' and ''consumers.'' This Supplementary Information uses ''lenders'' and ''borrowers'' in its discussion of Regulation X and the RESPA disclosures and ''creditors'' and ''consumers'' in its discussion of Regulation Z, the TILA–RESPA integrated disclosures, and the partial exemptions generally.

Several commenters stated that the proposal to exclude recording fees and transfer taxes from the 1-percent threshold would not create or increase the risk of abuse or other consumer harm. Some commenters stated that the proposal would not increase such risks because recording fees and transfer taxes are determined by State and local officials, rather than by HFAs or other parties to the transaction. One industry commenter also stated that the provision of the disclosures required by § 1026.18 for transactions that satisfy the partial exemption would limit any potential abuse by creditors. A consumer group commenter stated that the risk that creditors would inflate the application and housing counseling fees that would remain subject to the 1-percent threshold if the proposal were finalized is mitigated by the requirement that these fees be bona fide and reasonable. The commenter recommended that the Bureau require creditors to maintain adequate documentation of these fees so borrowers and regulators can verify that the fees are truly bona fide and reasonable.

Many commenters that generally supported the proposal encouraged the Bureau to adopt further amendments to the partial exemption. For example, two industry commenters urged the Bureau to treat settlement or closing fees as allowable fees for purposes of the partial exemption and to exclude them from the 1-percent threshold. These commenters stated that the settlement or closing fees charged by a third-party settlement provider, and not by the creditor, can affect the creditor's ability to meet the 1-percent threshold.

Many commenters recommended expanding access to the partial exemption or providing broader exemptions from Regulation X or Z for HFA program loans or HFAs that originate loans. One trade association representing HFAs recommended that the partial exemption be expanded to include all HFA second-lien loan programs to ensure that the RESPA disclosures would never be required for any HFA program subordinate lien. This commenter stated that the RESPA disclosures are required for many HFA program loans that do not meet the partial exemption. It stated further that, because many HFA lending partners have updated their systems to comply with the TILA–RESPA integrated disclosure requirements, such lending partners have difficulty generating the RESPA disclosures and have thus decreased or suspended their participation in HFA program lending. This commenter expressed concern that other reasonable fees may still prevent some loans from meeting the criteria in proposed § 1026.3(h), and that certain other beneficial HFA program loans, such as those that help consumers avoid foreclosure, obtain home repairs, or make energy efficiency improvements, would not qualify for the partial exemption due to the inability to meet criteria aside from the 1-percent threshold.

One industry commenter stated that, although it believes consumers should still receive meaningful disclosures of the cost of credit, the Bureau could exempt HFA program loans from Regulation Z disclosure requirements when the creditor itself imposes no charges in connection with the loan. A trade association recommended a full exemption from Regulation Z for HFA down payment assistance loans that have no finance charge and are payable in four or fewer installments. A trade association representing HFAs stated that, if the Bureau chose not to adopt further amendments to the partial exemption itself, an exemption from the disclosure requirements in Regulations X and Z for HFA second-lien loans would be an appropriate method to ensure HFAs can continue to serve constituents without being limited by the disclosure rules. A few HFA commenters requested full exemptions from Regulations X and Z for HFA program loans or for HFAs that originate loans without regard to the criteria in § 1026.3(h) and stated that such exemptions would better enable HFAs to work with lenders.

A trade association representing HFAs and a few HFA commenters stated that exemptions from Regulations X and Z, either in full or in part, for HFA program loans or HFAs themselves would not increase risk to consumers because HFAs are mission-driven entities that would continue to require consumer disclosures. These commenters also noted that the Bureau has previously extended exemptions to HFA program loans or HFAs themselves in the Ability-to-Repay, HOEPA, and Mortgage Servicing Final Rules. A few of these commenters suggested that the Bureau adopt the same definition of HFA as set forth in § 1026.41(e)(4)(ii)(B), which cross-references the definition in 24 CFR 266.5, while one commenter stated that HFAs are defined as special purpose credit programs under Regulation B.

In response to the Bureau's request for comment, one nonprofit commenter expressed strong opposition to explicitly limiting the § 1026.3(h) partial exemption to HFAs and private creditors who partner with HFAs and extend credit pursuant to HFA guidelines. It stated that many entities, such as community banks and credit unions, use the partial exemption and do not partner with HFAs. An individual commenter stated that the partial exemption affects entities other than HFAs, including hundreds of county and municipal programs as well as nonprofit organizations that administer block grants and other programs designed for low- and moderate-income individuals.

Many commenters discussed the disclosures required for loans that satisfy the criteria for the partial exemption, HFA program loans, or housing assistance loans generally. A few commenters expressed concern that the unique characteristics of the loans that satisfy the criteria for the partial exemption may make it difficult to comply with the § 1026.18 disclosure requirements. For example, one trade association stated that some loan origination systems cannot create the disclosures required by § 1026.18 where the interest rate or finance charge is zero, with the result that lenders must complete these disclosures manually. This commenter stated further that some lenders and loan origination systems no longer maintain the ability to create RESPA disclosures as such disclosures are no longer required for most of their loans and expressed a belief that the same was true for the disclosures required by § 1026.18.

Many commenters advocated permitting creditors to use TILA–RESPA integrated disclosures more broadly, either in connection with all loans that satisfy the criteria for the partial exemption, all HFA program loans, or all housing assistance loans. Two trade associations recommended that, for loans subject to TILA and RESPA as well as for loans only subject to RESPA, creditors be permitted to provide TILA–RESPA integrated disclosures for loans that satisfy the partial exemption in place of the § 1026.18 disclosures. One trade association stated that TILA–RESPA integrated disclosures are generally understood by consumers and, due to systems updates, easier to produce than the disclosures required by § 1026.18. One HFA recommended that, to reduce burden and facilitate lender partnerships with HFAs, the Bureau should clarify that lenders are allowed to provide TILA–RESPA integrated disclosures for loans that qualify for the partial exemption or any broader exemption that the Bureau might adopt.

One trade association representing HFAs and one HFA commenter urged the Bureau to allow HFAs to use TILA–

RESPA integrated disclosures in connection with all HFA program second-lien loans, regardless of whether such loans qualify for the partial exemption. They stated that this option would improve efficiency and reduce the compliance burden because many operating systems are set up to provide TILA–RESPA integrated disclosures. The trade association stated that many HFAs and their lending partners currently provide TILA–RESPA integrated disclosures with limited difficulty when loans subject to Regulation Z do not meet the partial exemption and that such disclosures effectively convey critical loan information to consumers. A different HFA recommended that the Bureau eliminate the partial exemption and instead subject all HFA program second-lien loans to the TILA–RESPA integrated disclosure requirements.

A few industry and vendor commenters recommended that the Bureau require or permit TILA–RESPA integrated disclosures to be provided in connection with all housing assistance loans. These commenters expressed concern with the process of determining whether the partial exemption applies to a transaction and stated that a streamlined disclosure requirement for these loans would reduce compliance burden and costs to creditors while improving consumer understanding. Two commenters recommended that the Bureau adopt an alternative disclosure specific to HFAs.

One industry commenter recommended an immediate effective date or an effective date six months after the issuance of the final rule for the proposed amendments to the partial exemption. The commenter recommended that TILA–RESPA integrated disclosures be required for all housing assistance loans, and stated that such a requirement would involve minimal systems changes for creditors. One trade association representing HFAs requested that any amendments to expand the partial exemption for HFA second-lien loan programs be effective immediately. It stated that most HFA lending partners are already able to produce TILA–RESPA integrated disclosures and expressed concern that an implementation period could prevent some consumers from benefiting from HFA program lending.

Finally, a few commenters raised other issues regarding the partial exemption. Some industry commenters stated that there is uncertainty regarding the disclosure requirements where a loan satisfies the criteria for the partial exemption at the time of application, but, due to changed circumstances or an increase in closing costs charged by third parties, no longer satisfies the criteria after the initial disclosure is provided. One industry commenter stated that uncertainty also exists regarding the disclosure requirements when a loan initially does not satisfy the criteria for the partial exemption but subsequent borrower-requested changes during loan origination result in the loan qualifying for the partial exemption. A few commenters requested further clarification around the partial exemption generally and the preparation of the required disclosures. One HFA requested that the Bureau consider revisions to the seven-business-day review period between the initial disclosures and consummation in § 1026.19(e)(1)(iii) and 1026.19(a)(2) for HFA down payment and closing cost assistance loans, stating that determinations regarding consumers' income that occur during these review periods could affect their eligibility for such loans.

The Final Rule

The Bureau is adopting § 1026.3(h)(5) as proposed to clarify the costs that may be payable by the consumer at consummation without loss of eligibility for the partial exemption. Further, and for the reasons discussed below, the Bureau is revising the criteria in § 1026.3(h)(6) to permit the provision of a Loan Estimate and Closing Disclosure that comply with Regulation Z. The Bureau is revising the introductory text of § 1026.3(h) and comments 3(h)–1 and –2 to reflect revised § 1026.3(h)(6). The Bureau is adopting new comment 3(h)–3 to clarify further the relationship between the partial exemption in § 1026.3(h) and the parallel partial exemption for certain federally related mortgage loans in Regulation X § 1024.5(d)(2). The Bureau is adopting comments 3(h)–3 and –4 as proposed, but renumbered as comments 3(h)–4 and –5 to reflect the addition of new comment 3(h)–3.

The Bureau is revising the introductory text of § 1026.3(h) to reflect revised § 1026.3(h)(6). Currently, the introductory text explains that the special disclosure requirements in § 1026.19(e), (f), and (g) do not apply to a transaction that satisfies all of the criteria in § 1026.3(h). Section 1026.19(g) sets forth requirements regarding the special information booklet, while § 1026.19(e) and (f) set forth requirements regarding the Loan Estimate and Closing Disclosure, respectively. As discussed in more detail below, the Bureau is revising § 1026.3(h)(6) to require the provision of either disclosures described in § 1026.18 that comply with Regulation Z or disclosures described in § 1026.19(e) and (f) that comply with Regulation Z as a condition for satisfying the partial exemption. Consequently, if a creditor chooses to provide the TILA disclosures described in § 1026.18 in connection with a transaction that meets the criteria in § 1026.3(h), that transaction is exempt from the requirements in § 1026.19(e), (f), and (g). If a creditor instead chooses to provide the Loan Estimate and Closing Disclosure in connection with a transaction that meets the criteria in § 1026.3(h), that transaction is exempt from the requirements in § 1026.19(g), but not from the requirements in § 1026.19(e) and (f). Thus, § 1026.3(h) provides an exemption from § 1026.19(g), and, depending on which of the available disclosure options a creditor chooses under § 1026.3(h)(6), may also provide an exemption from § 1026.19(e) and (f). Accordingly, the Bureau is revising the introductory text of § 1026.3(h) to explain that the special disclosure requirements in § 1026.19(g) and, unless the creditor chooses to provide the disclosures described in § 1026.19(e) and (f), in § 1026.19(e) and (f) do not apply to a transaction that satisfies all of the criteria in § 1026.3(h).

As adopted, § 1026.3(h)(5)(i) provides that the costs payable by the consumer in connection with the transaction at consummation are limited to: (A) Recording fees; (B) transfer taxes; (C) a bona fide and reasonable application fee; and (D) a bona fide and reasonable fee for housing counseling services. Section 1026.3(h)(5)(ii) requires that the total of costs payable by the consumer under § 1026.3(h)(5)(i)(C) and (D) be less than 1 percent of the amount of credit extended. By clarifying that transfer taxes may be charged in connection with the transaction and excluding recording fees and transfer taxes from the 1-percent threshold, the Bureau believes that final § 1026.3(h)(5) will enable more transactions to satisfy the criteria for the partial exemption in § 1026.3(h). This will also facilitate access to the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2), which the Bureau believes will further support the extension of low-cost, non-interest bearing, subordinate-lien loans to low- and moderate-income borrowers.

As discussed in the proposal, the Bureau believes that, because recording fees and transfer taxes are established by State and local jurisdictions, there is limited risk that excluding such fees and taxes from the 1-percent threshold in § 1026.3(h)(5)(ii) will result in consumer harm. Additionally, in light of comments received, the Bureau has determined that 1 percent is the appropriate threshold for the bona fide and reasonable application and housing counseling fees that may be payable by the consumer at consummation. As one consumer group commenter noted, there is limited risk that the application and housing counseling fees that remain subject to the 1-percent threshold will be inflated because such fees must be bona fide and reasonable.

The Bureau declines to revise § 1026.3(h)(5) to permit additional third-party settlement or closing fees to be charged in connection with the transaction and to exclude such fees from the 1-percent threshold, as requested by some commenters. The Bureau intends that transactions eligible for the partial exemption in § 1026.3(h) remain low-cost, include only a certain limited set of fees that may be charged to the consumer, and pose little risk of consumer harm. It does not believe it would be appropriate to permit a creditor to provide only the disclosures required by § 1026.18, rather than the more detailed TILA–RESPA integrated disclosures or RESPA disclosures, as applicable, in connection with transactions that include additional third-party fees not established by State or local jurisdictions and not subject to the 1-percent threshold.

Regarding one commenter's recommendation that the Bureau require creditors to maintain adequate documentation demonstrating that the application and housing counseling fees permitted under § 1026.3(h)(5)(i) are bona fide and reasonable, the Bureau notes that § 1026.25(a) sets forth the general requirement that creditors retain evidence of compliance with Regulation Z for two years after the date disclosures are required to be made or action is required to be taken, and that § 1026.25(c)(1) sets forth the specific record retention requirements for evidence of compliance with the requirements of § 1026.19(e) and (f). Additionally, as discussed in more detail below, revised comment 3(h)–2 clarifies that, although not all requirements of § 1026.3(h) must be reflected in the loan contract, the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a) or (c), as applicable.

Additionally, in order to address concerns about access to the partial exemption that were discussed in the Bureau's proposal and further discussed by several commenters, the Bureau is revising § 1026.3(h)(6) to provide creditors with greater optionality in satisfying the criteria for the partial exemption. Specifically, revised § 1026.3(h)(6) provides that the following disclosures must be provided: (i) Disclosures described in § 1026.18 that comply with Regulation Z; or (ii) alternatively, disclosures described in § 1026.19(e) and (f) that comply with Regulation Z. Thus, under revised § 1026.3(h)(6), the creditor must provide either the TILA disclosures of the cost of credit or the Loan Estimate and Closing Disclosure and must comply with all Regulation Z requirements pertaining to the disclosures provided. Revised § 1026.3(h)(6) omits language in current § 1026.3(h)(6) that made compliance with all other applicable requirements of Regulation Z a condition for satisfying the criteria for the partial exemption. Because the Bureau is revising the commentary to § 1026.3(h) to provide more precise guidance regarding how transactions must comply with Regulation Z in order to satisfy the criteria for the partial exemption, the Bureau does not believe that the omitted language is necessary. As discussed in more detail below, the Bureau believes the flexibility provided by revised § 1026.3(h)(6) will further expand access to the partial exemption.

The Bureau finds persuasive comments recommending permissible use of TILA–RESPA integrated disclosures for all loans with characteristics that satisfy the non-procedural criteria for the partial exemption in § 1026.3(h)(1) through (5), as a way to address the issues regarding access to the partial exemption for which the Bureau requested comment. It is revising § 1026.3(h)(6) to further facilitate compliance for lenders making federally related mortgage loans that qualify for the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). Regulation X § 1024.5(d) provides a partial exemption from certain RESPA disclosure requirements for federally related mortgage loans that meet the criteria set forth in § 1026.3(h). Specifically, Regulation X § 1024.5(d) provides that lenders are exempt from the RESPA settlement cost booklet, RESPA Good Faith Estimate, RESPA settlement statement (HUD–1), and application servicing disclosure statement requirements of §§ 1024.6 through 1024.8, 1024.10, and 1024.33(a) (the RESPA disclosures) for a federally related mortgage loan: (1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z § 1026.19(e), (f), and (g); or (2) that satisfies the criteria in Regulation Z § 1026.3(h). Thus, a lender for a federally related mortgage loan must provide the RESPA disclosures unless: (1) The loan is a covered transaction for purposes of the TILA–RESPA integrated disclosure requirements; or (2) the transaction meets the partial exemption in § 1026.3(h). Where a federally related mortgage loan is not a covered transaction subject to the disclosure requirements in § 1026.19(e), (f), and (g) because, for example, it imposes no finance charge and is payable in four or fewer installments, and also does not satisfy the criteria in § 1026.3(h), the lender must provide the RESPA disclosures. Under the current rule, to meet the conditions of the partial exemption in § 1026.3(h), lenders making such loans must provide the disclosures required by § 1026.18; voluntary provision of TILA–RESPA integrated disclosures does not satisfy the criteria in § 1026.3(h), and thus does not make the loan eligible for the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2).

Revised § 1026.3(h)(6) provides lenders additional flexibility regarding the required disclosures for those federally related mortgage loans that are not otherwise subject to the disclosure requirements in § 1026.19(e), (f), and (g) and that satisfy the criteria in § 1026.3(h). Under revised § 1026.3(h)(6), to satisfy the criteria in § 1026.3(h), lenders making such loans may choose to provide either TILA disclosures or Loan Estimates and Closing Disclosures that comply with Regulation Z. Such lenders may also continue to instead provide the RESPA disclosures in connection with a transaction that would otherwise meet the criteria in § 1026.3(h) and qualify for the partial exemption in Regulation X § 1024.5(d)(2).

In addition, revised § 1026.3(h)(6) further clarifies and reduces burden regarding the disclosure requirements for loans that are covered transactions subject to the requirements in § 1026.19(e), (f), and (g) and that satisfy the criteria in § 1026.3(h). Under the current rule, creditors making a loan subject to the disclosure requirements in § 1026.19(e), (f), and (g) may continue to provide compliant TILA–RESPA integrated disclosures even if the loan satisfies the non-procedural criteria for the partial exemption in § 1026.3(h)(1) through (5). There is no requirement to utilize the partial exemption. The final rule clarifies further this optionality for loans subject to the disclosure requirements in § 1026.19(e), (f), and (g). Under revised § 1026.3(h)(6), when such loans satisfy the criteria in § 1026.3(h) creditors may elect to take advantage of the partial exemption and provide compliant TILA disclosures described in § 1026.18, or they may, at their option, continue to provide compliant Loan Estimates and Closing Disclosures. The Bureau does not believe it is necessary that the special information booklet described in § 1026.19(g) be provided to a consumer in connection with both a first lien and a subordinate lien that meets the criteria in § 1026.3(h), and the Bureau believes that not requiring the special information booklet would help address the issues regarding access to the partial exemption that were raised in the proposal and by commenters. The Bureau is therefore clarifying in revised § 1026.3(h)(6) that, if a creditor elects to provide TILA–RESPA integrated disclosures in connection with a transaction that satisfies the partial exemption, it need only provide the disclosures described in § 1026.19(e) and (f).

The Bureau expects that, for federally related mortgage loans that are not covered transactions subject to the disclosure requirements in § 1026.19(e), (f), and (g), revised § 1026.3(h)(6) should reduce further the procedural burden associated with the required disclosures when such loans meet the criteria for the partial exemption. As discussed in the proposal, the Bureau understands that many loan origination systems have been updated to produce TILA–RESPA integrated disclosures and that some vendors and loan origination systems no longer support the RESPA disclosures. The Bureau understands from comments received that some loan origination systems similarly have limited capabilities with regard to the disclosures required by § 1026.18 and that it should, at least in some instances, be operationally easier to provide compliant Loan Estimates and Closing Disclosures for loans that satisfy the criteria for the partial exemption. The Bureau continues to believe that, for the low-cost, non-interest bearing, subordinate loans with characteristics that satisfy the criteria in § 1026.3(h), compliant TILA disclosures under § 1026.18 would be relatively straightforward to calculate. However, the Bureau recognizes that, in light of increased systems support for the Loan Estimate and Closing Disclosure, it would facilitate compliance if creditors are permitted the option to provide either disclosures described in § 1026.18 or § 1026.19(e) and (f) that comply with Regulation Z for loans that satisfy the criteria for the partial exemption.

At the same time, the Bureau believes that the additional flexibility finalized in § 1026.3(h)(6) will not result in consumer harm when loans satisfy the criteria for the partial exemption. Revised § 1026.3(h)(6) provides that the disclosures described in § 1026.18 and the disclosures described in § 1026.19(e) and (f) must comply with Regulation Z. This means that regardless of which disclosures a creditor or lender chooses to provide, the creditor or lender must comply with all requirements of Regulation Z pertaining to those disclosures. Further, the Bureau again notes that § 1026.3(h) exempts transactions only from the requirements of § 1026.19(g) and, unless the creditor chooses to provide the Loan Estimate and Closing Disclosure, § 1026.19(e) and (f); it does not exempt transactions from any other applicable requirements of Regulation Z. In recommending broader use of TILA–RESPA integrated disclosures for certain housing assistance loans, commenters noted that such disclosures effectively present loan information and are generally understood by consumers. The Bureau believes that under revised § 1026.3(h)(6) consumers will receive disclosures that effectively convey the cost of credit in connection with a transaction that satisfies the criteria for the partial exemption.

In the TILA–RESPA Final Rule, the Bureau declined to provide creditors the option of either complying with the TILA–RESPA integrated disclosure requirements or § 1026.18, based in part on the Bureau's belief that permitting the disclosures required by § 1026.18 would decrease the disclosure burden for creditors making the covered transactions and thus render the option of using TILA–RESPA integrated disclosures unnecessary. However, commenters have indicated that HFAs that are currently required to provide TILA–RESPA integrated disclosures do so with limited difficulty and that it may facilitate compliance for some creditors to provide TILA–RESPA integrated disclosures rather than the disclosures required by § 1026.18 when the partial exemption is satisfied. Accordingly, the Bureau now believes that the optionality provided in revised § 1026.3(h)(6) will more effectively carry out the intent of the partial exemption in facilitating access to certain beneficial low-cost, non-interest bearing, subordinate-lien transactions for low- and moderate-income consumers by reducing the disclosure burden associated with such transactions.

The Bureau declines to permit or require broader use of TILA–RESPA integrated disclosures for all HFA program loans or all housing assistance loans without regard to the criteria in § 1026.3(h), as requested by some commenters. Thus, lenders making federally related mortgage loans not subject to the disclosure requirements in § 1026.19(e), (f), and (g) must continue to provide the RESPA disclosures where the criteria in § 1026.3(h) is not satisfied. The Bureau recognizes that, in some instances, different disclosures may be required in connection with a borrower's first lien and subordinate financing. However, as discussed above, the Bureau believes that final § 1026.3(h)(5) should enable more transactions to satisfy the criteria in § 1026.3(h), which will facilitate access to the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). The Bureau also notes that, to the extent loans do not meet the criteria in § 1026.3(h) because of additional fees beyond those permitted under § 1026.3(h)(5), such loans may be subject to a finance charge and thus may be covered transactions subject to the disclosure requirements in § 1026.19(e), (f), and (g). Further, the partial exemption is intended to apply where the specific characteristics of the transaction generally ensure that the consumer is obtaining beneficial, low-cost credit. Regulation Z does not provide, nor did commenters suggest, a definition of what constitutes a housing assistance loan. In the absence of supporting evidence indicating how many federally related mortgage loans are not covered transactions subject to the disclosure requirements in § 1026.19(e), (f), and (g) and would also not meet the criteria in final § 1026.3(h), the Bureau does not believe it is appropriate to permit or require broader use of TILA–RESPA integrated disclosures for such loans at this time. The Bureau will continue to monitor the market with regard to the required provision of the RESPA disclosures.

The Bureau also declines to apply the partial exemption to all HFA program second-lien loans, as suggested by one commenter. The Bureau believes that the criteria finalized in § 1026.3(h)(5) should increase the ability of HFAs and lenders making such loans to take advantage of the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). Such broader access to the partial exemption will address concerns regarding the required provision of the RESPA disclosures for many loans that do not currently meet the criteria in § 1026.3(h). Additionally, the Bureau notes that the purpose of the partial exemption in § 1026.3(h), cross-referenced in Regulation X § 1024.5(d)(2), is to reduce the procedural burden associated with the disclosures for certain low-cost, non-interest bearing, subordinate-lien transactions that represent a very limited risk for consumer harm. Although the Bureau understands that HFA lending is characterized by low-cost financing, it believes that, to the extent an HFA program loan does not satisfy the criteria for the partial exemption, it would not be appropriate to permit the creditor to provide only the streamlined disclosures described in § 1026.18 in connection with that loan. Further, a few commenters indicated that the partial exemption is utilized for many non-HFA program loans, and the Bureau has determined that it would not be appropriate to require these loans to meet all of the criteria in § 1026.3(h) while applying automatically the partial exemption to all HFA program second-lien loans without regard to their specific characteristics. As to the commenter's concern that other beneficial loans in addition to those that provide down payment assistance may not meet the criteria in § 1026.3(h), the partial exemption also applies to transactions that provide closing cost or other similar home buyer assistance, property rehabilitation and energy efficiency assistance, and foreclosure avoidance or prevention.

For similar reasons, the Bureau is not adopting a broader exemption from Regulation X or Z, either in full or in part, for HFA program loans or HFAs that originate mortgage loans. As to suggestions by commenters that such broader exemptions could reduce burden and incentivize creditors to make housing assistance loans available to low- and-moderate income consumers, the Bureau again notes that the revised criteria in final § 1026.3(h) should facilitate access to the partial exemption and alleviate the disclosure burden associated with such loans. Additionally, a full exemption from Regulation X or its disclosure requirements could result in borrowers not receiving advance disclosure of settlement costs, which would undermine one of the express purposes of RESPA and would not be authorized under RESPA's section 19(a) exemption authority. The Bureau has considered the factors for the exemption authority in TILA section 105(f) and has determined that further exemptions from Regulation Z could undermine the goal of consumer protection and deny important disclosure benefits to consumers. Comments indicating that HFAs would provide alternative disclosures if broader regulatory exemptions were granted did not provide specific examples demonstrating that such disclosures would adequately protect consumers from risk of abuse. Moreover, commenters did not provide a clear consensus as to how an HFA should be defined, whether an exemption from Regulation X or Z should apply in full or only to disclosure requirements, or whether any such exemption should apply to HFA program loans or HFAs directly.

As to one commenter's recommendation that nothing in Regulation Z should apply to an HFA down payment assistance loan that is not a covered transaction under Regulation Z, the Bureau notes that such a loan would only be subject to the requirements of Regulation Z if it met the criteria in § 1026.3(h) and the lender elected to take advantage of the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). A lender is not required to utilize the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). However, where a lender chooses to utilize the partial exemption from the RESPA disclosures and provide either disclosures described in § 1026.18 or § 1026.19(e) and (f), respectively, the lender must comply with all Regulation Z requirements that pertain to such disclosures. For example, in this situation the lender must comply with the general disclosure requirements set forth in § 1026.17, even if the lender would not otherwise be subject to those requirements.

The Bureau believes that § 1026.3(h), and in particular, the requirement that disclosures in compliance with Regulation Z be provided when a loan meets the partial exemption, is distinguishable from other requirements of Regulation Z from which the Bureau has exempted HFA program loans or HFAs themselves. The Bureau believes that the requirement that creditors provide compliant disclosures of the cost of credit where a loan satisfies the criteria for the partial exemption provides consumers a benefit and, especially in light of the flexibility adopted in the final rule, is not unnecessarily burdensome.

With respect to commenters' requests that the revisions to the criteria for the partial exemption become effective immediately, the Bureau refers to the discussion in part VI, below, regarding the final rule's effective date and optional compliance period. As a consequence of the optional compliance period, beginning on the effective date of this final rule, creditors and lenders have the option to take advantage of the partial exemptions in § 1026.3(h) and Regulation X § 1024.5(d)(2), respectively, by satisfying the criteria in § 1026.3(h) as revised by this final rule. Furthermore, if such creditors or lenders choose to satisfy revised § 1026.3(h)(6) by providing compliant Loan Estimates and Closing Disclosures, they may use the optional compliance period to phase in the changes to the TILA–RESPA integrated disclosure requirements that are made elsewhere in this final rule, in the manner described in part VI.

As to commenters that expressed uncertainty regarding situations where changed circumstances effect the applicability of the partial exemption, the Bureau refers such commenters to § 1026.17(c), which sets forth requirements pertaining to the basis of the disclosures and the use of estimates, and to § 1026.17(e), which addresses the effect of subsequent events that cause a disclosure to become inaccurate. As to commenters that requested further clarification around the partial exemption generally and the preparation of the required disclosures, the Bureau believes final § 1026.3(h) provides clear and objective criteria for the partial exemption and that the requirements pertaining to the disclosures described in § 1026.18 or § 1026.19(e) and (f), as applicable, are adequately set forth in Regulation Z. The Bureau declines one commenter's request to revise the seven-business-day review period between the provision of the initial disclosures and consummation for certain HFA loans. Section 1026.19(a)(2)(i) implements the timing requirements in TILA section 128(b)(2)(A), and, in adopting § 1026.19(e)(1)(iii)(B), the Bureau explained that the seven-business-day review period would best carry out the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring advance disclosure of settlement charges.[41]

The Bureau is revising comment 3(h)–1 for further clarity and to reflect the revisions adopted in § 1026.3(h)(6) regarding the disclosures required as a condition for meeting the partial exemption. The Bureau is revising the first sentence of comment 3(h)–1 to explain that § 1026.3(h) exempts certain transactions from the disclosures described in § 1026.19(g), and, under certain circumstances, § 1026.19(e) and (f). Revised comment 3(h)–1 includes an explanation that § 1026.3(h) exempts transactions from § 1026.19(e) and (f) if the creditor chooses to provide disclosures described in § 1026.18 that comply with Regulation Z pursuant to § 1026.3(h)(6)(i), but does not exempt transactions from § 1026.19(e) and (f) if the creditor chooses to provide

[41] 78 FR 79730, 79802 (Dec. 31, 2013).

disclosures described in § 1026.19(e) and (f) that comply with Regulation Z pursuant to § 1026.3(h)(6)(ii). Revised comment 3(h)–1 clarifies that creditors may provide, at their option, either the disclosures described in § 1026.18 or the disclosures described in § 1026.19(e) and (f). The revised comment explains further that, in providing these disclosures, creditors must comply with all provisions of Regulation Z relating to those disclosures. Finally, revised comment 3(h)–1 explains that § 1026.3(h) does not exempt transactions from any of the other requirements of Regulation Z to the extent they are applicable, and that, for transactions that would otherwise be subject to § 1026.19(e), (f), and (g), creditors must comply with all other applicable requirements of Regulation Z, including the consumer's right to rescind the transaction under § 1026.23, to the extent that provision is applicable. Thus, final comment 3(h)–1 clarifies that, where a transaction satisfies the criteria for the partial exemption in § 1026.3(h), and therefore satisfies the parallel partial exemption in Regulation X § 1024.5(d)(2), the creditor may provide either disclosures described in § 1026.18 or TILA–RESPA integrated disclosures in connection with the transaction. The creditor must, however, provide compliant disclosures that satisfy all Regulation Z requirements pertaining to those disclosures, even where the loan would not otherwise be subject to those requirements.

The Bureau is also adopting comment 3(h)–2 with additional clarifications and revisions to reflect revised § 1026.3(h)(6). Revised comment 3(h)–2 explains that the conditions that the transaction not require the payment of interest under § 1026.3(h)(3) and that repayment of the amount of credit extended be forgiven or deferred in accordance with § 1026.3(h)(4) must be reflected in the loan contract. It explains that the other requirements of § 1026.3(h) need not be reflected in the loan contract, but the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a) or (c), as applicable. As revised, comment 3(h)–2 provides further that, in particular, because the exemption in § 1026.3(h) means the creditor is not required to provide the disclosures of closing costs under § 1026.37 or § 1026.38 (unless the creditor chooses to provide disclosures described in § 1026.19(e) and (f) that comply with Regulation Z), the creditor must retain evidence reflecting that the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, a bona fide and reasonable application fee, and a bona fide and reasonable housing counseling fee, and that the total of application and housing counseling fees is less than 1 percent of the amount of credit extended, in accordance with § 1026.3(h)(5). Finally, the revised comment provides that, unless the itemization of the amount financed provided to the consumer sufficiently details this requirement, the creditor must establish compliance with § 1026.3(h)(5) by some other written document and retain it in accordance with § 1026.25(a) or (c), as applicable.

Because a creditor may provide the Loan Estimate and Closing Disclosure to meet the conditions of the partial exemption under revised § 1026.3(h)(6), the Bureau is finalizing comment 3(h)–2 to include a reference to § 1026.25(c), which, as discussed above, sets forth the record retention requirements regarding § 1026.19(e) and (f). Additionally, because creditors have the option of providing the Loan Estimate and Closing Disclosure under revised § 1026.3(h)(6), the Bureau is revising comment 3(h)–2 to explain that the exemption in § 1026.3(h) means the creditor is not required to provide, rather than the consumer will not receive, the disclosures of closing costs under § 1026.37 or § 1026.38. The revised comment clarifies, however, that creditors are required to provide the disclosures of closing costs under § 1026.37 and § 1026.38 if they choose to provide disclosures described in § 1026.19(e) and (f) that comply with Regulation Z. For further clarity and consistency with the requirements in final § 1026.3(h)(5)(i), revised comment 3(h)–2 refers to a bona fide and reasonable application fee and a bona fide and reasonable housing counseling fee, instead of application fees and housing counseling fees.

The Bureau is adding new comment 3(h)–3 to clarify further the relationship between the partial exemption in § 1026.3(h) and the parallel partial exemption for certain federally related mortgage loans in Regulation X § 1024.5(d)(2). New comment 3(h)–3 explains that Regulation X provides a partial exemption from certain Regulation X disclosure requirements in Regulation X § 1024.5(d). It explains further that the partial exemption in Regulation X § 1024.5(d)(2) provides that certain Regulation X disclosure requirements do not apply to a federally related mortgage loan, as defined in Regulation X § 1024.2(b), that satisfies the criteria in § 1026.3(h). Finally, new comment 3(h)–3 clarifies that for a federally related mortgage loan that is not otherwise covered by Regulation Z, lenders may satisfy the criteria in § 1026.3(h)(6) by providing the disclosures described in § 1026.18 that comply with Regulation Z or the disclosures described in § 1026.19(e) and (f) that comply with Regulation Z. Thus, under this final rule, to meet the criteria in § 1026.3(h) and qualify for the partial exemption in Regulation X § 1024.5(d)(2), lenders making such loans may choose to provide either compliant TILA disclosures or compliant Loan Estimates and Closing Disclosures, even though such loans are not otherwise subject to Regulation Z.

The Bureau is adopting new comments 3(h)–3 and –4 as proposed, but renumbered as comments 3(h)–4 and –5 to reflect the addition of new comment 3(h)–3. New comment 3(h)–4 refers to comment 37(g)(1)–1 for a discussion of what constitutes a recording fee for purposes of Regulation Z, and new comment 3(h)–5 refers to comment 37(g)(1)–3 for a discussion of what constitutes a transfer tax for purposes of Regulation Z.

For the reasons set forth above, the Bureau is revising the introductory text of § 1026.3(h), adopting § 1026.3(h)(5) as proposed, and revising § 1026.3(h)(6). The Bureau is revising comments 3(h)–1 and –2, adopting new comment 3(h)–3, and adopting comments 3(h)–3 and –4 as proposed but renumbered as comments 3(h)–4 and –5.

Legal Authority

TILA section 105(a) authorizes the Bureau to adjust or except from the disclosure requirements of TILA all or any class of transactions to facilitate compliance with TILA. As set forth above, revising the criteria for the § 1026.3(h) partial exemption will facilitate compliance by enabling more housing assistance loans to qualify for the partial exemption at § 1026.3(h) and reducing regulatory burden for a class of transactions that the Bureau believes generally benefit consumers and pose little risk of consumer harm. RESPA section 19(a) authorizes the Bureau to grant reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA. By broadening the § 1026.3(h) partial exemption, this amendment will enable more federally related mortgage loans to qualify for the partial exemption at Regulation X § 1024.5(d)(2) and permit lenders to provide the streamlined disclosures described in § 1026.18 that comply with Regulation Z or the disclosures described in § 1026.19(e) and (f) that comply with Regulation Z for these low-cost, non-interest bearing, subordinate-lien transactions.

In addition, the Bureau believes that the disclosure requirements that covered persons must meet to qualify for the § 1026.3(h) partial exemption will help ensure that the features of these mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with these mortgage transactions, consistent with Dodd-Frank Act section 1032(a).

Section 1026.17 General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

17(c)(6)

Allocation of Costs

The Bureau's Proposal

Comment 17(c)(6)–5 explains that a creditor, when using the special rule under § 1026.17(c)(6), may disclose certain construction-permanent transactions as multiple transactions, and may allocate buyers points or similar amounts imposed on the consumer between the construction and permanent phases of the transaction in any manner the creditor chooses. However, comment 17(c)(6)–5 does not provide guidance on how to allocate amounts so as to avoid violating TILA section 129(r), which prohibits structuring a loan transaction or dividing any loan transaction into separate parts for the purpose of evading the high-cost mortgage provisions.

To help ensure consumer protections are not evaded and to assist creditors in properly disclosing costs associated with construction-permanent loans, the Bureau proposed to amend comment 17(c)(6)–5 to provide greater clarity by adding a ''but for'' test to allocate amounts to the construction phase of a construction-permanent transaction if a creditor chooses to disclose the credit extended as more than one transaction.

Specifically, the Bureau proposed to amend comment 17(c)(6)–5 to explain that in a construction-permanent transaction disclosed as more than one transaction, the creditor must allocate to the construction phase all amounts that would not be imposed but for the construction financing. All other amounts would be allocated to the permanent financing. The proposed comment illustrated how the allocation would be made, using inspection and handling fees for the staged disbursement of construction loan proceeds as an example, and provided examples of how to allocate origination and application fees between the construction phase and the permanent phase.

The Bureau solicited comment on the proposed revision of comment 17(c)(6)–5, including whether the proposal presented a clear and understandable method of allocating costs between the construction phase and the permanent phase, whether there are fees that may not be clearly allocated to one phase or the other, and whether the proposed revision would improve or obscure consumer understanding and promote or discourage comparison shopping.

Comments Received

Comments received on the proposed amendment to comment 17(c)(6)–5 were generally favorable. A trade association, a group of vendors, and a compliance specialist stated the proposed clarification would help provide clarity and be useful for allocating fees specific to the construction phase when separate disclosures are used. The compliance specialist commenter additionally noted the clarification would assist creditors in avoiding potential regulatory criticisms or other liability if challenged for evading the high-cost mortgage provisions. However, commenters also expressed uncertainty as to what amounts the proposed comment covered and how to allocate fees for services that might be used for both the construction and permanent phases. One trade association noted that there are services that are required for both phases of the financing that would not be charged ''if not but for'' one phase alone. This commenter provided the example of updated abstracts and final title opinions obtained in connection with the construction loan and then reused for the permanent loan. The commenter also stated that fees should be lower on the permanent financing loan if the consumer stays with the same creditor that financed the construction, as many of the paid-for services can also be used for the permanent financing. The commenter requested that the final rule continue to permit the creditor to allocate points and similar charges in any way the creditor chooses when the construction and permanent phases are disclosed separately.

A trade association noted that the appraisal is used to establish the combined maximum loan amount for both the construction and permanent phases. The commenter expressed uncertainty as to how the fee for such an appraisal would be allocated. A vendor group and a compliance specialist both commented that, ''but for'' the construction financing, the land would not have been purchased and, consequently, under the proposed comment, all the costs of the loan would be reflected on the Loan Estimate and Closing Disclosure provided in connection with the construction financing.

The Final Rule

The Bureau is adopting the proposed amendments to comment 17(c)(6)–5, but with modifications. In response to comments that sought clarification of the scope of costs covered by the ''but for'' approach, the Bureau is revising comment 17(c)(6)–5 to identify more precisely the costs to which the ''but for'' allocation applies. As revised, comment 17(c)(6)–5 specifies that the ''but for'' test only applies to the finance charges under § 1026.4 and the points and fees under § 1026.32(b)(1), the amounts that are most relevant in determining whether the loan is a high-cost mortgage under § 1026.32 or a higher-priced mortgage loan under § 1026.35 or a qualified mortgage under § 1026.43(e). When a creditor uses the special rule in § 1026.17(c)(6) to disclose credit extensions as multiple transactions, fees and charges must be allocated for purposes of calculating disclosures. In the case of a construction-permanent loan that a creditor chooses to disclose as multiple transactions, the creditor must allocate to the construction transaction finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) that would not be imposed but for the construction financing. If a creditor charges separate finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) for the construction phase and the permanent phase, such fees and charges must be allocated to the phase for which they are charged. All other finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) must be allocated to the permanent financing. Using the ''but for'' allocation for these amounts when separate disclosures are provided for the phases of a construction-permanent loan will allow creditors to determine more accurately whether the permanent phase is a high-cost mortgage or higher-priced mortgage loan or qualified mortgage.

The Bureau is revising the examples in comment 17(c)(6)–5 to reflect these changes. The examples as finalized do not reference application fees because application fees are not necessarily finance charges under § 1026.4 or points and fees under § 1026.32(b)(1).[42] As

[42] Under § 1026.4(c)(1), application fees charged to all applicants for credit, whether or not credit is actually extended, are excluded from the finance

Continued

proposed, the comment stated that, if a creditor charges an application or origination fee for construction-only financing but charges a greater application or origination fee for construction-permanent financing, the difference between the two fees must be allocated to the permanent transaction. Under this example, if the origination fee for construction-only financing is $750, and the origination fee for construction-permanent financing is $1000, then $750 is allocated to the construction-only financing and $250 is allocated to the permanent financing. This example is retained in the comment as finalized, though the reference to an application fee is not. Creditors would conduct the same kind of analysis to determine how other fees and charges are allocated between the construction and permanent phases when separate disclosures are used.

As finalized, the revisions to comment 17(c)(6)–5 also provide that fees and charges that are not finance charges under § 1026.4 or points and fees under § 1026.32(b)(1) may be allocated between the transactions in any manner the creditor chooses. The comment provides an example of the fees and charges that may be allocated in any manner the creditor chooses. The example states that a reasonable appraisal fee paid to an independent, third-party appraiser may be allocated in any manner the creditor chooses because it would be excluded from the finance charge pursuant to § 1026.4(c)(7) and excluded from points and fees pursuant to § 1026.32(b)(1)(iii). This additional commentary addresses how disclosures may be made when an appraisal is used to establish the combined maximum loan amount for both the construction phase and the permanent phase, a situation that commenters on the proposed rule specifically described. Creditors would conduct the same kind of analysis to determine other fees and charges that may be allocated in any manner.

May Be Permanently Financed by the Same Creditor

The Bureau's Proposal

The Bureau proposed to add new comment 17(c)(6)–6 to clarify that the may be permanently financed by the same creditor condition specified in § 1026.17(c)(6)(ii), if satisfied, permits a creditor to treat a construction-permanent loan as one transaction or more than one transaction. Proposed comment 17(c)(6)–6 explained that a loan to finance the construction of a dwelling may be considered permanently financed by the same creditor, within the meaning of § 1026.17(c)(6)(ii), if the creditor generally makes both construction and permanent financing available to qualifying consumers, unless a consumer expressly states that the consumer will not obtain permanent financing from the creditor. Under this approach, the construction phase may be permanently financed by the same creditor, within the meaning of § 1026.17(c)(6)(ii), in all cases other than where permanent financing is not available at all from the creditor (*i.e.,* the creditor does not offer permanent financing) or the consumer expressly informs the creditor that the consumer will not obtain permanent financing from the creditor. This proposal aligned with proposed comment 19(e)(1)(iii)–5, which provided that a creditor determines the timing requirements for providing the Loan Estimate for both the construction and permanent financing based on when the application for the construction financing is received, so long as the creditor ''may'' provide the permanent financing. The creditor would have still been permitted to make the disclosures as a single transaction or as more than one transaction, as provided by § 1026.17(c)(6)(ii).

The Bureau solicited comment on the proposed addition of comment 17(c)(6)–6 to determine whether the condition that a construction loan may be permanently financed by the same creditor should be considered satisfied even if a consumer expressly states that the consumer will not seek permanent financing from the creditor, as long as the creditor generally makes permanent financing available to qualifying consumers. The Bureau also solicited comment on how the issues described in the proposal might be addressed if the Bureau adopted the proposal as final, and on any additional issues or complexities presented by the proposal, as well as how those might be addressed.

Comments Received

Generally, commenters opposed the Bureau's proposal to clarify the meaning of ''may be permanently financed'' in comment 17(c)(6)–6. Commenters indicated that there was no need for clarification as creditors already understand the meaning of ''may be permanently financed'' as used in § 1026.17(c)(6)(ii).

Commenters also believed the proposal could result in consumer harm. Two trade associations and one industry commenter stated that because the proposal would require creditors to provide a disclosure for the permanent phase, even if the consumer had not applied for permanent financing, consumers could perceive unrequested permanent financing disclosures as a pressure tactic to enter into permanent financing with the creditor. Commenters stated that consumers would generally be confused by receiving disclosures for financing they did not apply for and for which the creditor had not made a commitment to provide. One commenter expressed that consumers would understand the receipt of disclosures for permanent financing to mean that construction-only loans would not be available.

Commenters also discussed additional compliance burdens that could result from the proposed clarification. Three trade associations and two industry commenters indicated that creditors would have difficulty accurately disclosing the terms of the permanent transaction at the time they receive an application for construction-only financing. Commenters stated that, at the time of the construction disclosures, creditors may not know the availability, costs, and consumer application information for the permanent financing. Further, one trade association and one industry commenter stated that, because construction and permanent financings are usually in different departments, with different staff and different underwriting requirements, simultaneous disclosure would be extremely difficult and burdensome for such institutions. Additionally, one trade association and two industry commenters stated that creditors could have difficulty documenting a consumer's express rejection of permanent financing because there are many ways a consumer could reject permanent financing. One software vendor indicated that creditors would need a new form to document a consumer's rejection of permanent financing.

Additionally, commenters asserted that the proposal would be in conflict with comment 17(c)(6)–2. Commenters stated that proposed comment 17(c)(6)–6 would force treatment of the permanent and construction financing as a single transaction despite comment 17(c)(6)–2's express optionality for separate transactions.

The Final Rule

The Bureau is persuaded by commenters' concerns over compliance and consumer understanding. The Bureau concludes that proposed comment 17(c)(6)–6 would not provide

charge. Conversely, if the application fee is only charged to applicants for credit upon the extension of credit, the application fee is included in the finance charge.

enough benefit to outweigh the potential consumer confusion and compliance burdens that may result. For these reasons the Bureau is not adopting proposed comment 17(c)(6)–6.

17(f) Early Disclosures

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to comments 17(f)–1 and –2 to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

Section 1026.18 Content of Disclosures

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to comments 18–3, 18(g)–6, and 18(s)–1 and –4 to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

Section 1026.19 Certain Mortgage and Variable-Rate Transactions

Cooperatives

The Bureau's Proposal

The TILA–RESPA Rule generally applies to closed-end consumer credit transactions secured by real property, other than reverse mortgages. Regulation Z does not define the term ''real property,'' but § 1026.2(b)(3) states that, unless defined in Regulation Z, the words used therein have the meanings given to them by State law or contract. The Bureau proposed to amend § 1026.19(e), (f), and (g) and comments 19(e)(1)(i)–1 and –2, 19(f)(1)(i)–1, and 19(f)(3)(ii)–3, to cover closed-end consumer credit transactions secured by cooperative units, regardless of whether State or other applicable law considers cooperative units to be real or personal property. The Bureau also proposed conforming amendments to §§ 1026.1(d)(5) and 1026.37(c)(5)(i), the paragraph title for § 1026.25(c)(1), a subheading for the commentary to § 1026.25(c)(1), and comments 17(f)–1 and –2, 18–3, 18(g)–6, 18(s)–1 and –4, and 37(a)(7)–2.

Comments Received

Commenters, including consumer groups, creditors, vendors, trade associations, GSEs, a secondary market investor, and an individual commenter, supported the amendments to Regulation Z, including the amendments to § 1026.19(e) and (f), to cover closed-end consumer credit transactions secured by cooperative units, regardless of whether State or other applicable law considers cooperative units to be real or personal property.

A creditor commented that the proposed amendments to § 1026.19(g), whereby the scope of coverage for § 1026.19(g) would be delineated by cross-referencing § 1026.19(e)(1)(i), would have had the effect of eliminating the current § 1026.19(g) coverage of open-end transactions (except as provided in § 1026.19(g)(1)(ii) and (iii)). To the extent that the Bureau were to finalize the amendments to § 1026.19(g) as proposed, that creditor commented that § 1026.19(g)(1)(ii) and its reference to home equity lines of credit would be unnecessary and potentially confusing. An individual commenter requested clarification as to whether transactions secured by cooperative units are covered by the TILA–RESPA Rule if they are for business purposes. Consumer group commenters noted that there may be some uncertainty, beyond the TILA–RESPA Rule, as to whether Regulation X otherwise covers transactions secured by cooperative units.

A trade association supported the amendments to cover closed-end consumer credit transactions secured by cooperative units, regardless of whether State or other applicable law considers cooperative units to be real or personal property, while noting that these changes would require reprogramming and therefore impose implementation costs. Another trade association requested that these amendments become effective retroactively to ease compliance. Another trade association and two creditors requested retroactive protection from liability for creditors who have been treating loans secured by cooperative units as covered by the TILA–RESPA Rule as well as retroactive protection for creditors who have not been doing so, regardless of whether State or other applicable law considers cooperative units to be real or personal property.

The Final Rule

For the reasons discussed below, the Bureau is adopting §§ 1026.19(g) and 1026.37(c)(5)(i) substantially as proposed and is adopting, as proposed, the other amendments to Regulation Z, including § 1026.19(e) and (f), to cover closed-end consumer credit transactions secured by cooperative units, regardless of whether State or other applicable law considers cooperative units to be real or personal property. Specifically, in part in response to commenters' concerns, § 1026.19(g), as finalized, covers consumer credit transactions secured by real property or a cooperative unit, regardless of whether they are open-end or closed-end transactions (and except as provided in § 1026.19(g)(1)(ii) and (iii)). As finalized, § 1026.19(g)'s coverage continues not to be limited to closed-end transactions (except as provided in § 1026.19(g)(1)(ii) and (iii)). To conform § 1026.37(c)(5)(i) with the other amendments to Regulation Z, including § 1026.19(e) and (f), § 1026.37(c)(5)(i), as finalized, specifically references the real property or cooperative unit securing the transaction.

Regarding a commenter's request for clarification as to whether transactions secured by cooperative units are covered by the TILA–RESPA Rule if they are for business purposes, the Bureau notes that an extension of credit primarily for a business, commercial or agricultural purpose is not subject to Regulation Z, as provided in current § 1026.3(a) and the associated commentary. With respect to commenters asserting that there may be some uncertainty, beyond the TILA–RESPA Rule, as to whether other parts of Regulation X cover transactions secured by cooperative units, the Bureau notes that both RESPA and Regulation Z include cooperatives within the definition of federally related mortgage loan.[43]

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the **Federal Register**, but there will be an optional compliance period in effect until October 1, 2018.

Legal Authority

The Bureau is finalizing this amendment pursuant to its authority under Dodd-Frank Act section 1032(a) and (f), TILA section 105(a), and RESPA section 19(a). Section 1032(f) of the Dodd-Frank Act required that the Bureau propose for public comment rules and model disclosures combining the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by

[43] 12 U.S.C. 2602(1); 12 CFR 1024.2(b).

those laws,[44] and, as discussed above, RESPA and TILA each generally cover loans secured by cooperative units.

The Bureau believes that applying the TILA–RESPA Rule to cover closed-end consumer loans secured by cooperative units is consistent not only with both TILA and RESPA but also with general industry practice. Consequently, the Bureau believes that this extension of coverage will facilitate compliance by industry, which is one of the purposes of TILA. Furthermore, because this amendment will ensure that more consumers receive the integrated disclosures, which the Bureau believes, based on its extensive testing of the disclosures, to be superior to the pre-existing TILA and RESPA disclosures and because the Bureau believes that the integrated disclosures are generally effective for transactions secured by cooperative units, whether or not the cooperative unit is treated as real property under State or other applicable law, the Bureau also believes this amendment will carry out the purposes of TILA and RESPA to promote the informed use of credit and more effective advance disclosure of settlement costs, respectively. In addition, the Bureau believes the integrated disclosure requirements improve consumer understanding of the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a).

19(e) Mortgage Loans—Early Disclosures

19(e)(1) Provision of Disclosures

19(e)(1)(iii) Timing

The Bureau's Proposal

Section 1026.19(e)(1)(iii) sets forth the timing requirements for providing the Loan Estimate. Generally, the creditor must deliver the Loan Estimate or place it in the mail not later than the third business day after the creditor receives the consumer's application and not later than the seventh business day before consummation. The Bureau proposed to add comment 19(e)(1)(iii)–5 to explain how the timing requirements apply in the case of construction-permanent loans.

Proposed comment 19(e)(1)(iii)–5 summarized the provisions of §§ 1026.17(c)(6)(ii) and 1026.19(e)(1)(iii) and comment 17(c)(6)–2 relevant to construction-permanent loans, referenced proposed comment 17(c)(6)–6, and explained the ways a creditor that generally makes both construction and permanent financing available complies with the timing requirements in § 1026.19(e)(1)(iii). Proposed comment 19(e)(1)(iii)–5 explained that, when the creditor received a consumer's application for either construction financing only (without the consumer expressly stating that the consumer will not obtain permanent financing from the creditor) or an application for combined construction-permanent financing, the creditor complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail the disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing, either disclosed as one or more than one transaction, within the timing requirements of § 1026.19(e)(1)(iii). Proposed comment 19(e)(1)(iii)–5.i through –5.iv would have provided illustrative examples of how the Loan Estimate timing provisions apply to construction-permanent loans. Proposed comment 19(e)(1)(iii)–5.v would have explained that, if a consumer expressly states that the consumer will not obtain permanent financing from the creditor after a combined construction-permanent financing disclosure already has been provided, the creditor complies with § 1026.17(c)(6)(ii) by issuing a revised disclosure for construction financing only in accordance with the timing requirements of § 1026.19(e)(4).

The Bureau also solicited comment on an alternative approach, under which a creditor generally would provide a Loan Estimate only for the financing for which a consumer applies. For example, under the alternative approach, if a consumer applies for construction financing only, a creditor would be required to provide the Loan Estimate for only the construction financing. Similarly, under the alternative approach if the consumer applies for construction and permanent financing at the same time, the creditor would be required to provide the Loan Estimates for both phases within three days of receiving the application. If the construction financing may be permanently financed by the same creditor, the proposed alternative approach stated the creditor would be permitted to provide the Loan Estimate for the permanent financing at the same time as the Loan Estimate was provide for the construction financing, but would not be required to do so.

Comments Received

As explained in the section-by-section analysis for comment 17(c)(6)–6, commenters generally opposed the proposed clarification of ''may be permanently financed.'' Similarly, commenters opposed the clarification under comment 19(e)(1)(iii)–5 that, consistent with the proposed clarification of ''may be permanently financed,'' would have required creditors to provide, upon receiving a consumer's application for construction financing only, the disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation.

Commenters indicated that the proposed clarification of ''may be permanently financed'' would cause consumer confusion, and the related requirements under comment 19(e)(1)(iii)–5, would create substantial compliance burdens and confusion about the meaning of comment 17(c)(6)–2. As explained in the section-by-section analysis for comment 17(c)(6)–6, for these reasons, the Bureau is not finalizing proposed comment 17(c)(6)–6.

However, several commenters indicated their support for the alternative proposal under comment 19(e)(1)(iii)–5. Two trade associations explicitly supported the Bureau's proposed alternative. Additionally, two other commenters indicated they would support an alternative that allowed the creditor to provide disclosures only for the products for which a consumer applied, similar to the alternative approach mentioned in the Bureau's proposal. One commenter requested that, if the consumer applied for separate construction and permanent financing, the Bureau require the creditor provide a separate Loan Estimate for the construction and permanent financing within three days of that application.

The Final Rule

For the reasons stated above, the Bureau is adopting the alternative approach proposed with clarifications. The Bureau notes this approach should ease any coordination challenges occasioned by different departments, staff, and systems handling the construction and permanent phase underwriting. Different departments of the same creditor may continue to provide the construction and permanent disclosures separately, but within the timing requirements of § 1026.19(e)(1)(iii). Additionally, the Bureau believes that new documentation procedures and systems would not be required under the rule as finalized. The Bureau also believes this approach is consistent with comment 17(c)(6)–2.

[44] Public Law 111–203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(f)).

In response to comments, the Bureau is clarifying that, for construction-permanent financing transactions, the creditor is required to disclose the Loan Estimate only for the transaction for which it received an application. As finalized, comment 19(e)(1)(iii)–5.i provides an example of receipt of an application for construction financing only and explains that the Loan Estimate for the construction transaction is the only disclosure that is required to be provided at that time. Aligned with comment 17(c)(6)–2, the Bureau clarifies under comment 19(e)(1)(iii)–5.ii that, if a consumer's applications for separate construction and permanent financing transactions are received at the same time, the creditor provides the disclosures required under § 1026.19(e)(1)(i) as either a combined disclosure or separately for each phase of the transaction and within the timing requirements provided by § 1026.19(e)(1)(iii). Comment 19(e)(1)(iii)–5.iii explains the timing requirements under § 1026.19(e)(1)(iii) when construction and permanent phase applications are received separately. Further, comment 19(e)(1)(iii)–5.iv clarifies that a creditor need not provide a Loan Estimate for permanent financing for which a separate application is made if the creditor has already provided a Loan Estimate for the permanent phase under § 1026.17(c)(6)(ii), and may instead proceed with the disclosures required under § 1026.19(f)(1)(i).

19(e)(1)(vi) Shopping for Settlement Service Providers

Section 1026.19(e)(1)(vi)(A) defines how a creditor permits a consumer to shop for settlement services. Section 1026.19(e)(1)(vi)(B) requires the creditor to identify, on the Loan Estimate, the settlement services for which a consumer may shop. Section 1026.19(e)(1)(vi)(C), among other things, sets forth the requirement to provide the consumer with a written list identifying available providers of the settlement services for which a consumer is permitted to shop.

Identifying Settlement Services and Available Providers

The Bureau's Proposal

Comment 19(e)(1)(vi)–2 refers to the requirement in § 1026.19(e)(i)(vi)(B) that the creditor identify, on the Loan Estimate, the settlement services for which the consumer is permitted to shop and provides that the content and format for disclosure of such services can be found at § 1026.37(f)(3). In response to several informal guidance inquiries regarding the treatment of a settlement service that was excluded from the Loan Estimate, the Bureau proposed to revise comment 19(e)(1)(vi)–2 to simplify the disclosure requirements under § 1026.19(e)(1)(vi)(B) in an effort to reduce uncertainty and to ease compliance burden. The proposed revisions to comment 19(e)(1)(vi)–2 would have clarified that the creditor must specifically identify the settlement services for which a consumer is permitted to shop unless, based on the best information reasonably available to the creditor, the creditor knows that the service is provided as part of a package or combination of settlement services (hereinafter referred to as a package) offered by a single service provider.

Comment 19(e)(1)(vi)–4, among other things, provides requirements for disclosing settlement service providers under § 1026.19(e)(1)(vi)(C). It explains that the written list of providers must identify settlement service providers that provide services in the area in which the consumer or property is located, and must include sufficient information about each provider to allow the consumer to contact the provider. In response to several informal guidance inquiries, the Bureau proposed to revise comment 19(e)(1)(vi)–4 to simplify the disclosure requirements under § 1026.19(e)(1)(vi)(C) in an effort reduce uncertainty and ease compliance burden. The proposed revision to comment 19(e)(1)(vi)–4 was identical to the proposed revision to comment 19(e)(1)(vi)–2.

Comments Received

Several commenters expressed appreciation for the Bureau's interest in clarifying and simplifying these provisions. A consumer group stated that the Bureau should not allow the disclosure of a package, as proposed, and should require the disclosure of all settlement services, on the written list, for which a consumer may shop because allowing creditors to disclose a package of settlement services would obscure costs, reduce competition, and hinder the consumer's ability to shop. Industry commenters stated that the Bureau should define and clarify, with examples, what a package offered by a single service provider means. Industry comments included requests for clarification about the interplay between the itemization requirements under §§ 1026.37(f)(3) and 1026.38(f)(3) and the ability to package settlement services; how the disclosure of a package would work when title services and settlement or closing services are provided by different service providers; whether the phrase ''provided by a single service provider'' would allow for the use of third parties; and whether a package could include settlement services with different tolerance thresholds.

The Final Rule

For the reasons set forth below, the Bureau has decided not to finalize the proposed revisions to comments 19(e)(1)(vi)–2 and –4. Instead the Bureau is revising comment 19(e)(1)(vi)–2 to clarify that § 1026.19(e)(1)(vi)(B) provides that the creditor who permits a consumer to shop for settlement services must identify the settlement services required by the creditor for which the consumer is permitted to shop in the disclosures provided pursuant to § 1026.19(e)(1)(i). The Bureau is also revising comment 19(e)(1)(vi)–4 to clarify that § 1026.19(e)(1)(vi)(C) provides that the creditor must identify settlement service providers, that are available to the consumer, for the settlement services required by the creditor for which a consumer is permitted to shop. The Bureau is also revising comment 19(e)(1)(vi)–1 to conform with final comments 19(e)(3)(ii)–6 and 19(e)(3)(iii)–2.

The purpose of the proposed revisions to comments 19(e)(1)(vi)–2 and –4 was to clarify and simplify the disclosure requirements for settlement services on the Loan Estimate and written list of providers. As discussed above, commenters presented concerns about the potential complexity and uncertainty the proposed revisions might introduce. In pursuit of the original purpose to minimize confusion and compliance burden the Bureau believes it can achieve this purpose by revising comments 19(e)(1)(vi)–2 and –4 to clarify the current itemization requirements under § 1026.19(e)(1)(vi) instead of introducing a new disclosure scheme.

The Bureau understands from the comments that there may be uncertainty as to the extent a creditor must itemize settlement services on the Loan Estimate and the written list of providers. In revising comment 19(e)(1)(vi)–2, the Bureau is clarifying that the disclosure of settlement services under § 1026.19(e)(1)(vi)(B) need not include all settlement services that may be charged to the consumer, but must include at least those settlement services required by the creditor for which the consumer may shop. The Bureau is also revising comment 19(e)(1)(vi)–4 to provide that the creditor must identify settlement service providers, that are available to the consumer, for the settlement services that are required by the creditor for which a consumer is permitted to shop.

Current comment 19(e)(1)(vi)–2 notes that § 1026.19(e)(i)(vi)(B) requires the creditor to identify, on the Loan Estimate, the settlement services a consumer is allowed to shop for and cross-references § 1026.37(f)(3). Current and final comment 19(e)(1)(vi)–3, among other things, notes the requirement in § 1026.19(e)(1)(vi)(C) to identify at least one available provider of a settlement service for which a consumer may shop and also cross-references § 1026.37(f)(3). In addition, the settlement service providers identified on the written list required by § 1026.19(e)(vi)(C) must correspond to the settlement services for which the consumer may shop. Comment 37(f)(3)–1 provides that items included under the subheading ''Services You Can Shop For'' pursuant to § 1026.37(f)(3) are for those services: That the creditor requires in connection with its decision to make the loan; that would be provided by persons other than the creditor or mortgage broker; and for which the creditor allows the consumer to shop in accordance with § 1026.19(e)(1)(vi). Thus the provisions under § 1026.19(e)(1)(vi) require the creditor to identify, on the Loan Estimate and the written list of providers, the settlement services required by the creditor for which a consumer is permitted to shop. For example, if a creditor requires a consumer to purchase lender's title insurance and the creditor permits the consumer to shop for lender's title insurance, the creditor is required by the provisions under § 1026.19(e)(1)(vi) to disclose the lender's title insurance, on the Loan Estimate, and at least one provider of the required settlement service, on the written list, capable of coordinating or performing the services necessary to provide the required lender's title insurance. However, the creditor is not required by the provisions under § 1026.19(e)(1)(vi) to provide a detailed breakdown of all related fees that are not themselves required by the creditor but that may be charged to the consumer such as a notary fee, title search fee, or other ancillary and administrative services needed to perform or provide the settlement service required by the creditor.[45] The same principle is true for the disclosure of settlement services under § 1026.37(f)(3). This is consistent with the Bureau's concern, noted in the TILA–RESPA Final Rule, that a complete breakdown of all settlement services payable by the consumer could lead to information overload for the consumer and thereby hinder the consumer's ability to shop.[46]

As discussed in the respective section-by-section analyses of § 1026.19(e)(3)(ii) and § 1026.19(e)(3)(iii), the Bureau is adding new comment 19(e)(3)(ii)–6 and revising comment 19(e)(3)(iii)–2, which provide that, for fees paid to an unaffiliated third party, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), good faith is determined under § 1026.19(e)(3)(ii). Final comments 19(e)(3)(ii)–6 and 19(e)(3)(iii)–2 further provide that whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances. As a result, the Bureau is making a conforming amendment in final comment 19(e)(1)(vi)–1 to clarify that whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

Methods of Providing Settlement Service Providers List

Section 1026.19(e)(1)(vi) defines how a creditor permits a consumer to shop for services and requires the creditor to identify the settlement services for which the consumer may shop and provide a written list identifying at least one available provider for each of those services. The Bureau proposed to amend comment 19(e)(1)(vi)–3 to clarify that, although use of the model form H–27 of appendix H to this part is not required, creditors using it properly will be deemed to be in compliance with § 1026.19(e)(1)(vi)(C).

A creditor requested that the Bureau consider mandating the use of form H–27 rather than allowing creditors to use different variations. However, several industry commenters urged the Bureau to further clarify that creditors are not required to use model form H–27 and that creditors do not lose the model form's safe harbor protection if they opt not to include estimated fee amounts on the written list of providers.

The Bureau is adopting comment 19(e)(1)(vi)–3 substantially as proposed but with certain minor changes. Regarding commenters' requests to consider mandating the use of form H–27 or, alternatively, to further clarify that creditors are not required to use it, the Bureau notes that TILA section 105(b) permits creditors to delete non-required information or rearrange the format of a model form without losing the safe harbor protection afforded by use of the model form if, in making such deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. As finalized, comment 19(e)(1)(vi)–3 explicitly notes that flexibility. Regarding commenters' request for clarification that creditors do not lose the model form's safe harbor protection if they delete the column for estimated fee amounts, the Bureau notes that current § 1026.19(e)(1)(vi) does not require creditors to list the estimated fees of the service providers. As finalized, comment 19(e)(1)(vi)–3 states that deleting the column for estimated fee amounts is an example of an acceptable change to form H–27. Consistent with final comment 19(e)(1)(vi)–4, final comment 19(e)(1)(vi)–3 also clarifies that the settlement service providers identified on the written list required by § 1026.19(e)(1)(vi)(C) must correspond to the required settlement services for which the consumer may shop, disclosed under § 1026.37(f)(3).

19(e)(3) Good Faith Determination for Estimates of Closing Costs

Section 1026.19(e)(3)(i) provides the general rule that an estimated closing cost is in good faith if the charge paid by or imposed on the consumer does not exceed the estimate for the cost as disclosed on the Loan Estimate. However, § 1026.19(e)(3)(ii) provides that estimates for certain third-party services and recording fees are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed on the Loan Estimate by more than 10 percent (the ''10-percent tolerance'' category). Section 1026.19(e)(3)(iii) provides that certain other estimates are in good faith so long as they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether the amount paid by the consumer exceeds the estimate disclosed on the Loan Estimate. The Bureau proposed minor changes and technical corrections for clarification

[45] This is consistent with comment 19(e)(3)(ii)–2 which explains that § 1026.19(e)(3)(ii) provides flexibility in disclosing individual fees by focusing on aggregate amounts and illustrates this principle with an example of a Loan Estimate not including an estimated charge for a notary fee that is subject to § 1026.19(e)(3)(ii) but the notary fee is later charged to the consumer. In such example, the creditor does not violate § 1026.19(e)(3)(ii) as long as the sum of all charges subject to § 1026.19(e)(3)(ii), including the notary fee, does not exceed the 10 percent threshold.

[46] See the Bureau's discussion regarding information overload in the TILA–RESPA Final Rule. 78 FR 79730, 79742 (Dec. 31, 2013).

purposes to § 1026.19(e)(3) and its accompanying commentary. Each of these proposed changes is discussed in more detail below.

The Bureau is issuing the clarifications to § 1026.19(e)(3) in this final rule pursuant to its authority to prescribe standards for good faith estimates under TILA section 128 and RESPA section 5, as well as its authority under TILA section 105(a), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act. Section 128(b)(2)(A) of TILA provides that, for an extension of credit secured by a consumer's dwelling that also is subject to RESPA, good faith estimates of the disclosures in TILA section 128(a) shall be made in accordance with regulations of the Bureau.[47] Section 5(c) of RESPA states that lenders shall provide, within three days of receiving the consumer's application, a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement, as prescribed by the Bureau.[48]

The Bureau believes the clarifications to § 1026.19(e)(3) in this final rule are authorized under TILA section 105(a). They effectuate TILA's purposes, and help prevent potential circumvention or evasion of TILA, by helping ensure that the cost estimates are more meaningful and better inform consumers of the actual costs associated with obtaining credit. The clarifications also further TILA's goals by helping ensure more reliable estimates, which should foster competition among financial institutions.

In addition, the Bureau believes the clarifications to § 1026.19(e)(3) in this final rule are consistent with Dodd-Frank Act section 1032(a) because requiring more accurate initial estimates of the costs of the transaction helps ensure that the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan. The Bureau believes the clarifications to § 1026.19(e)(3) in this final rule are also in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because providing consumers with more accurate estimates of the cost of the mortgage loan transaction helps improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure.

Section 19(a) of RESPA authorizes the Bureau to prescribe regulations and make interpretations as may be necessary to achieve the purposes of RESPA,[49] which include the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services.[50] The Bureau believes that the clarifications to § 1026.19(e)(3) in this final rule are necessary to achieve the purposes of RESPA under RESPA section 19(a) because they encourage settlement service provider competition. Each of the clarifications to § 1026.19(e)(3) is discussed in more detail below.

19(e)(3)(i) General Rule

General Rule for Determining Good Faith Under § 1026.19(e)(3)

Section 1026.19(e)(3)(i) provides the general rule that an estimated closing cost is in good faith if the charge paid by or imposed on the consumer does not exceed the estimate for the cost as disclosed on the Loan Estimate. Comment 19(e)(3)(i)–1 clarifies that fees paid to, among others, the creditor, an affiliate of the creditor, or a mortgage broker are subject to that general rule, but § 1026.19(e)(3)(iii) provides that certain estimates are in good faith so long as they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether the amount paid by the consumer exceeds the estimate disclosed on the Loan Estimate. The Bureau proposed to modify comment 19(e)(3)(i)–1 to conform it with the regulation text of § 1026.19(e)(3)(iii).

A creditor supported the clarification in proposed comment 19(e)(3)(i)–1. A vendor group noted that proposed comment 19(e)(3)(i)–1 would be a non-substantive technical change. A secondary market investor broadly requested clarification as to which charges are subject to the good faith determination under § 1026.19(e)(3)(i).

The Bureau is adopting comment 19(e)(3)(i)–1 as proposed. Regarding a commenter's broad request for clarification as to which charges are subject to the good faith determination under § 1026.19(e)(3)(i), guidance can be found in § 1026.19(e)(3)(i) through (iii) and the associated commentary.

Paid by or Imposed on the Consumer

Section 1026.19(e)(3)(i) provides that good faith is determined by whether a closing cost paid by or imposed on the consumer does not exceed the amount originally disclosed on the Loan Estimate, while other sections of Regulation Z, including the finance charge definition in § 1026.4(a), are framed in terms of whether the charge is payable by the consumer. The Bureau proposed for comment the view that these standards, ''paid by or imposed on the consumer'' and ''payable by the consumer,'' are interchangeable. The proposal would have added comment 19(e)(3)(i)–8 to clarify that the phrase ''paid by or imposed on,'' as used in § 1026.19(e)(3)(i), has the same meaning as the term ''payable,'' as used elsewhere in Regulation Z.

A trade group and an industry commenter supported adopting proposed comment 19(e)(3)(i)–8. One industry commenter supported the proposed comment, but stated that the standard should not be applied to specific lender or seller credits. A vendor commenter stated that creditors may not understand the proposed comment and not accurately disclose costs or conduct the good faith analysis under § 1026.19(e)(3) properly. The vendor commenter stated that the term ''payable'' would be interpreted by industry to cover any types of fees which the consumer has the ability to pay, rather than the ones the consumer will pay or is legally obligated to pay. One trade group commenter stated that some confusion still exists in industry, as the proposed comment was substantially different from the standard previously discussed in guidance documents issued by the Department of Housing and Urban Development concerning the previous tolerance standards under RESPA. A law firm commenter representing industry stated further clarification of the proposed comment was needed. Lastly, a group of mortgage vendor commenters stated that a charge may be imposed on a consumer but not paid or payable by the consumer.

The comments received indicate that the term ''payable'' as used in Regulation Z is not clear to industry. Since commenters have shown that the term ''payable'' is not commonly understood, the Bureau is concerned that proposed comment 19(e)(3)(i)–8 would increase confusion concerning the meaning of the phrase ''paid by or imposed on'' in § 1026.19(e)(3)(i). Additionally, the Bureau believes that other comments in the Official Interpretations relating to the paragraphs of § 1026.19(e) provide sufficient guidance as to the meaning of

[47] 15 U.S.C. 1638(b)(2)(A).

[48] 12 U.S.C. 2604(c).

[49] 12 U.S.C. 2617(a).

[50] 12 U.S.C. 2601(a).

the phrase ''paid by or imposed on.'' [51] Accordingly, the Bureau is not adopting proposed comment 19(e)(3)(i)–8.

19(e)(3)(ii) Limited Increases Permitted for Certain Charges

The Bureau's Proposal

Comment 19(e)(3)(ii)–2, among other things, explains that § 1026.19(e)(3)(ii) provides flexibility when disclosing individual fees by focusing on aggregate amounts and illustrates this principle with an example. The Bureau understands that there is some uncertainty regarding the interplay between the requirements under § 1026.19(e)(1)(vi), shopping for settlement service providers, and the good faith determination under § 1026.19(e)(3)(ii) and (iii). The Bureau's proposed revisions to comment 19(e)(3)(ii)–2 provided that a creditor is in compliance with § 1026.19(e)(3)(ii) if the creditor permits the consumer to shop for the settlement services disclosed pursuant to § 1026.19(e)(1)(vi) and the aggregate increase in charges does not exceed 10 percent, even if the amount of an individual fee was omitted from the Loan Estimate. As proposed, comment 19(e)(3)(ii)–2 would have clarified further that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C), good faith is determined under § 1026.19(e)(3)(i) instead of § 1026.19(e)(3)(ii) or (iii), regardless of the provider selected by the consumer. The Bureau also proposed technical revisions to comment 19(e)(3)(ii)–2 and to make other clarifying revisions.

Comments Received

The Bureau did not receive comments regarding the proposed revisions to restructure comment 19(e)(3)(ii)–2 and to make other clarifying and technical revisions. Three industry commenters supported the Bureau's proposed clarification regarding compliance with § 1026.19(e)(1)(vi) and the proposal to determine good faith under § 1026.19(e)(3)(i) for required settlement services when the written list of providers is not issued by a creditor.

Most comments focused on the Bureau's proposed clarification regarding compliance with § 1026.19(e)(1)(vi)(B) and (C). A commenter asserted that the good faith determination under § 1026.19(e)(3)(ii) and (iii) should not be tied to whether the written list of providers was issued by the creditor. Several commenters representing various financial services businesses requested that the Bureau clarify and narrow the scope of what constitutes noncompliance with § 1026.19(e)(1)(vi)(B) and (C) under proposed comment 19(e)(3)(ii)–2. In general, these commenters were concerned that inadvertent mistakes and typographical errors could be considered noncompliance under the proposed revision and thereby constitute a violation of § 1026.19(e)(3)(ii) and subject certain settlement services to zero tolerance under § 1026.19(e)(3)(i). Two commenters asked the Bureau to clarify whether a creditor's use of inconsistent terminology between the Loan Estimate, the written list of providers, and the Closing Disclosure would be deemed noncompliance with § 1026.19(e)(3)(ii). One commenter asserted that, if finalized, a strict interpretation of the proposed revision would impose litigation and compliance risk on creditors and affect secondary market opportunities because secondary market participants might not accept loans with typographical errors on the written list of providers or Loan Estimate.

Some commenters asked that the Bureau provide a mechanism to allow for a revised written list of providers if the consumer still has time to shop, in lieu of prescribing the scope of noncompliance with § 1026.19(e)(1)(vi)(B) and (C) under proposed revisions to comment 19(e)(3)(ii)–2. Some commenters stated that neither Regulation Z nor the Bureau's informal guidance discuss the circumstances under which a revised written list of providers may be issued. One commenter, arguing in support of its request to allow for a revised written list of providers, asserted that not allowing for a revised written list of providers to correct an error would hinder the consumer's ability to shop. Relatedly, some commenters noted the Bureau's informal guidance allowing for a revised written list of providers when a settlement service is added as a result of a change under § 1026.19(e)(3)(iv).[52] These commenters asked the Bureau to clarify whether a revised written list of providers can be provided when a Closing Disclosure is issued in lieu of the Loan Estimate for revised estimates pursuant to § 1026.19(e)(3)(iv).

A trade association representing banks asked the Bureau to clarify whether a service or a fee mistakenly omitted from the Loan Estimate or the written list of providers can be added to the Closing Disclosure and charged to the consumer provided that the sum of the charges is within the 10 percent threshold prescribed in § 1026.19(e)(3)(ii).

The Final Rule

For the reasons discussed below, to conform with final comment 19(e)(3)(iii)–2, the Bureau is not finalizing proposed modifications to comment 19(e)(3)(ii)–2 that would have provided that good faith is determined under § 1026.19(e)(3)(i) instead of under § 1026.19(e)(3)(ii) or (iii) if a creditor permits a consumer to shop but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C). As discussed in the section-by-section analysis of § 1026.19(e)(3)(iii), after considering the comments, the Bureau is revising comment 19(e)(3)(iii)–2. Final comment 19(e)(3)(iii)–2 provides that good faith is determined under § 1026.19(e)(3)(ii) even if the creditor fails to issue the list required by § 1026.19(e)(1)(vi)(C), as long as the fee for the settlement service required by the creditor is paid to an unaffiliated third party and the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A). These revisions do not extinguish the obligation to comply with § 1026.19(e)(1)(vi)(B) and (C) if the creditor permits the consumer to shop. For example, although the good faith determination under § 1026.19(e)(3)(ii) may apply to settlement services even when a creditor fails to issue the written list of providers, the creditor is still in violation of § 1026.19(e)(1)(vi)(C) for failure to comply with the requirements to issue a written list of providers.

The Bureau is adopting new comment 19(e)(3)(ii)-6 to conform to final comment 19(e)(3)(iii)–2 and thereby clarify the interplay between the shopping requirements under § 1026.19(e)(1)(vi) and the good faith determination under § 1026.19(e)(3)(ii) and (iii). Comment 19(e)(3)(ii)–6 provides that when a creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), good faith is determined under § 1026.19(e)(3)(ii), unless the settlement service provider is the creditor or an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i). In conformity with final comment 19(e)(1)(vi)–1, final comment 19(e)(3)(ii)–6 also provides that whether

[51] *See, e.g.,* comment 19(e)(3)(i)–2.

[52] CFPB Webinar, *TILA–RESPA Integrated Disclosure, Part 5—Implementation Challenges and Questions* (May 26, 2015), *available at https://consumercomplianceoutlook.org/outlook-live/2015/tila-respa-integrated-disclosures-rule-5/.*

the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances. In addition, the Bureau is revising comment 19(e)(3)(ii)–1.i to conform with new comment 19(e)(3)(ii)–6. Final comment 19(e)(3)(ii)–1.i explains that § 1026.19(e)(3)(ii) permits limited increases for fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the third-party service, consistent with § 1026.19(e)(1)(vi)(A).

The Bureau is finalizing as proposed, with minor stylistic changes, the portion of comment 19(e)(3)(ii)–2 that relates to an individual charge omitted from the Loan Estimate and then imposed at consummation. As finalized, comment 19(e)(3)(ii)–2 provides that, under § 1026.19(e)(3)(ii)(A), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increases by more than 10 percent, regardless of whether a particular charge increases by more than 10 percent. This is true even if an individual charge was omitted from the estimate provided under § 1026.19(e)(1)(i) and then imposed at consummation. Thus, final comment 19(e)(3)(ii)–2 provides flexibility when disclosing individual fees by focusing on aggregate amounts. The Bureau is also finalizing, as proposed, the revisions to restructure comment 19(e)(3)(ii)–2 by separating the examples in the comment into subparagraphs i. and ii. and other revisions to enhance clarity.

As discussed above, some commenters asked the Bureau to clarify whether a creditor may issue a revised written list of providers. As Bureau staff noted in an informal webinar,[53] a revised written list of providers may be issued when a settlement service is added as a result of a reason provided for under § 1026.19(e)(3)(iv). Whether or not a creditor issues a revised written list of providers, in accordance with final comment 19(e)(3)(ii)–6, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A), good faith is determined under § 1026.19(e)(3)(ii), unless the settlement service provider is the creditor or an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i). Whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

[53] *Id.*

As for comments regarding the § 1026.19(e)(3) good faith determination if a creditor has not complied with § 1026.19(e)(1)(vi) because of a typographical error or has used inconsistent terminology between disclosures, the Bureau is not finalizing its proposal to provide that noncompliance with § 1026.19(e)(1)(vi)(B) and (C) would subject a settlement service to zero tolerance under § 1026.19(e)(3)(i). As discussed above, many commenters focused on noncompliance with § 1026.19(e)(1)(vi)(C) and remedies for resolving inadvertent errors and omissions on the written list of providers. The Bureau believes new comment 19(e)(3)(ii)–6 addresses the concern regarding the omission of a required settlement service from the written list of providers. Relatedly, commenters requested clarification regarding the applicable good faith determination when an untimely written list of providers is issued. Consistent with new comment 19(e)(3)(ii)–6, the creditor may still comply with § 1026.19(e)(3)(ii), depending (in part) on whether the creditor—based on all relevant facts and circumstances—permitted the consumer to shop consistent with § 1026.19(e)(1)(vi)(A).

19(e)(3)(iii) Variations Permitted for Certain Charges

Charges Paid to the Creditor or Affiliates of the Creditor

The Bureau's Proposal

Section 1026.19(e)(3)(iii) states that certain charges are in good faith for purposes of § 1026.19(e)(1)(i) if they are consistent with the best information reasonably available, regardless of whether the amounts paid by the consumer exceed the amounts disclosed under § 1026.19(e)(1)(i). Section 1026.19(e)(3)(iii) applies to the following five categories of charges: (A) Prepaid interest; (B) property insurance premiums; (C) amounts placed into an escrow, impound, reserve, or similar account; (D) charges paid to third-party service providers selected by the consumer consistent with § 1026.19(e)(1)(vi)(A) that are not on the list provided under § 1026.19(e)(1)(vi)(C); and (E) charges paid for third-party services not required by the creditor. The Bureau proposed to amend § 1026.19(e)(3)(iii) to provide that, for purposes of § 1026.19(e)(1)(i), good faith is determined under § 1026.19(e)(3)(iii) for all five of the categories of charges listed therein, even if such charges are paid to affiliates of the creditor, so long as the charges are bona fide. In addition, proposed comment 19(e)(3)(iii)–4 would have clarified that, to be bona fide for purposes of § 1026.19(e)(3)(iii), charges must be lawful and for services that are actually performed.

Comments Received

Industry commenters, including creditors, vendors, trade associations, a title insurance underwriter, a secondary market investor, and an individual compliance professional, supported the provision in proposed § 1026.19(e)(3)(iii) that good faith is determined under § 1026.19(e)(3)(iii) for all five of the categories of charges listed therein, even if such charges are paid to affiliates of the creditor. An individual attorney requested that the Bureau further revise § 1026.19(e)(3)(iii) to explicitly include charges paid to mortgage broker affiliates. A secondary market investor requested that the Bureau provide specific examples for § 1026.19(e)(3)(iii).

Some industry commenters expressed concerns with the provision in proposed § 1026.19(e)(3)(iii) that excludes charges if they are not bona fide. A creditor, trade association, and title insurance underwriter stated that the proposed bona fide limitation adds confusion and uncertainty. A creditor asserted that the proposed bona fide limitation is unnecessary. A title insurance underwriter questioned whether including a bona fide limitation for proposed § 1026.19(e)(3)(iii) suggests that charges are not required to be bona fide for purposes of § 1026.19(e)(3)(i) and (ii). The title insurance underwriter and a trade association also stated that the proposed bona fide limitation can cause confusion as appearing to be in conflict with the holding in *Freeman* v. *Quicken Loans, Inc.*[54] The trade association further stated that ''bona fide'' is a term of art for purposes of analyzing claims under RESPA section 8; the Court in *Freeman* held that the RESPA section 8(b) fee-splitting prohibition does not, in the absence of fee-splitting, prohibit charging fees for which no services were provided; and, given the holding in *Freeman,* some industry members may be confused by use of the term ''bona fide'' in proposed § 1026.19(e)(3)(iii) to exclude charges for services that are not actually performed. The trade association suggested that the Bureau remove the term ''bona fide'' in proposed § 1026.19(e)(3)(iii) and instead replace it with the phrase ''for services actually performed.''

[54] 132 S.Ct. 2034 (2012).

Consumer group commenters did not object to the provision in proposed § 1026.19(e)(3)(iii) that good faith is determined under § 1026.19(e)(3)(iii) for all five of the categories of charges listed therein, even if such charges are paid to affiliates of the creditor. However, consumer group commenters expressed concerns with comment 19(e)(3)(iii)–4 defining ''bona fide'' charges as being lawful charges for services that are actually performed. Those commenters stated that, if the Bureau intends for that definition to be limited to determining good faith for purposes of § 1026.19(e)(1)(i), then the Bureau should expressly state such limitation in the text of § 1026.19(e)(3)(iii) or its associated commentary. However, if the Bureau intends for comment 19(e)(3)(iii)–4 to also define the term ''bona fide'' for other purposes in Regulation Z, then consumer group commenters stated that the definition should exclude any inflation or padding of charges beyond the amount of the charge actually incurred and unreasonable charges (*i.e.,* charges exceeding the market rate for equivalent services in the local community or any limits set by law).

Regarding implementation costs, a vendor group supported proposed § 1026.19(e)(3)(iii) and noted it would require some moderate reprogramming. Regarding an implementation period, a creditor requested that proposed § 1026.19(e)(3)(iii) become effective retroactively to address uncertainty and legal risk.

The Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.19(e)(3)(iii) and comment 19(e)(3)(iii)–4 substantially as proposed but with certain modifications. Specifically, in part in response to commenters' concerns, the bona fide determination in comment 19(e)(3)(iii)–4, as finalized, is expressly limited to determining good faith for purposes of § 1026.19(e)(1)(i). That limitation is consistent with the Bureau's stated intent in the proposal.[55] For example, the bona fide determination in comment 19(e)(3)(iii)–4 is distinct from the broader finance charge determination under § 1026.4(c)(7) (*i.e.,* whether certain fees are bona fide and reasonable in amount) and the points and fees determination under § 1026.32(b) (*e.g.,* the bona fide discount point definition requires, among other things, a calculation that is consistent with established industry practices). Final § 1026.19(e)(3)(iii) and comment 19(e)(3)(iii)–4 also clarify that for purposes of § 1026.19(e)(1)(i), good faith is determined under § 1026.19(e)(3)(iii) for categories of charges listed therein, even if such charges are paid to the creditor, so long as the charges are bona fide. The Bureau believes that, as is the case for charges covered under current § 1026.19(e)(3)(ii), charges paid to a creditor generally should be treated the same way for purposes of determining good faith as is a charge paid to an affiliate of a creditor.

The Bureau declines to make any further changes requested by commenters regarding § 1026.19(e)(3)(iii) or comment 19(e)(3)(iii)–4. The Bureau concludes that it is not necessary to revise § 1026.19(e)(3)(iii) to explicitly include charges paid to mortgage broker affiliates because, unlike creditor affiliates, mortgage broker affiliates are not explicitly noted in current § 1026.19(e)(3)(iii). Good faith is determined under § 1026.19(e)(3)(i) unless a charge otherwise satisfies the conditions of § 1026.19(e)(3)(ii) or (iii). With respect to a commenter's request for specific examples regarding § 1026.19(e)(3)(iii), guidance can be found in the commentary accompanying § 1026.19(e)(3)(iii).

Regarding commenters' concern that there is confusion and uncertainty associated with the provision in § 1026.19(e)(3)(iii) that excludes charges if they are not bona fide, the Bureau believes that comment 19(e)(3)(iii)–4 provides sufficient clarity that, to be bona fide for purposes of § 1026.19(e)(3)(iii), charges must be lawful and for services that are actually performed. The Bureau believes that the bona fide provision in § 1026.19(e)(3)(iii) will limit any potential consumer harm associated with permitting variations for charges within the five categories paid to the creditor or to affiliates of the creditor. In response to the commenter's question, such a bona fide limitation is not necessary in § 1026.19(e)(3)(i) and (ii) because those provisions present less risk of consumer harm.

Regarding commenters' citation to the Supreme Court's interpretation of RESPA section 8(b) in *Freeman* v. *Quicken Loans, Inc.,* the Bureau is not relying on RESPA section 8(b) to adopt § 1026.19(e)(3)(iii), as clarified by comment 19(e)(3)(iii)–4. Rather, as stated in the proposal, the Bureau is adopting § 1026.19(e)(3)(iii), as clarified by comment 19(e)(3)(iii)–4, pursuant to its authority to prescribe standards for good faith estimates under TILA section 128 and RESPA section 5, as well as its authority under TILA sections 105(a), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act.[56]

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the **Federal Register**, but there will be an optional compliance period in effect until October 1, 2018.

Certain Service Providers Selected by the Consumer

The Bureau's Proposal

Currently, comment 19(e)(3)(iii)–2 explains that § 1026.19(e)(3)(iii)(D) applies when (1) a creditor permits the consumer to shop, consistent with § 1026.19(e)(1)(vi)(A), for a settlement service it requires; (2) the creditor provides the list required under § 1026.19(e)(1)(vi)(C); and (3) the consumer selects a service provider that is not on that list to perform the service. If these conditions are met, the actual estimate of a settlement service need not be compared to the original estimate for purposes of determining good faith under § 1026.19(e)(3). Comment 19(e)(3)(iii)–2 also provides that an estimate or lack of an estimate must be based on the best information reasonably available at the time the disclosures are provided. Although amounts disclosed pursuant to § 1026.19(e)(3)(iii) may vary from the original estimates, the original estimates must not be unreasonably low. Lastly, comment 19(e)(3)(iii)–2 provides that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), then good faith is determined under § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii). This is true unless the provider selected by the consumer is an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i).

Section 1026.19(e)(1)(vi) sets forth the requirements creditors must comply with if a creditor permits a consumer to shop for a settlement service it requires. Among other things, the creditor must identify the required settlement services for which the consumer is permitted to shop and identify an available provider of that service.[57] Section

[55] 81 FR 54317, 54332 (Aug. 15, 2016).

[56] 81 FR 54317, 54331 (Aug. 15, 2016).

[57] Section 1026.19(e)(1)(vi)(B) requires the creditor to identify required settlement services for which the consumer is permitted to shop on the Loan Estimate in accordance with § 1026.37(f)(3). Section 1026.19(e)(1)(vi)(C) requires the creditor to identify settlement service providers for required settlement services for which a consumer is permitted to shop.

1026.19(e)(3)(ii) sets forth the requirements for the 10 percent tolerance category, which includes the requirement that the creditor permit the consumer to shop, consistent with § 1026.19(e)(1)(vi), for required settlement services. If a creditor permits a consumer to shop for a required settlement service, but fails to provide a written list of providers, the creditor has not complied with § 1026.19(e)(1)(vi)(C). The Bureau proposed to revise comment 19(e)(3)(iii)–2 to provide that good faith is determined under § 1026.19(e)(3)(i), regardless of the provider selected by the consumer, if a creditor fails to issue the list required under § 1026.19(e)(1)(vi)(C) or if the creditor does not otherwise comply with the requirements under § 1026.19(e)(1)(vi)(B) and (C).

Comments Received

Several industry commenters, including banks, credit unions, settlement agents, and document management and compliance software companies addressed the Bureau's proposed revisions to comment 19(e)(3)(ii)–2 in tandem with comment 19(e)(3)(iii)–2 to the extent that the proposed revisions in these comments mirrored each other. As stated above in the discussion of comment 19(e)(3)(ii)–2, these commenters requested that the Bureau define noncompliance and narrow the scope of noncompliance with § 1026.19(e)(1)(vi)(B) and (C). Commenters were generally concerned that inadvertent mistakes and typographical errors could be considered noncompliance under a strict interpretation of the proposed amendment. One commenter asked the Bureau to clarify whether a creditor's use of inconsistent terminology between the Loan Estimate, the written list of providers, and the Closing Disclosure would be considered noncompliance.

Several commenters asked that the Bureau provide a mechanism for issuing a revised or corrected written list of providers as long as the consumer would still have time to shop. Most industry commenters were opposed to the proposed revision to comment 19(e)(3)(ii)–2 that would have changed the tolerance threshold for settlement services not provided on the written list of providers. Three commenters agreed with the Bureau's proposed revision. Commenters asked the Bureau to consider the approach taken by the Department of Housing and Urban Development (HUD) in the 2008 RESPA Final Rule, which commenters asserted, used the 10 percent tolerance threshold for settlement services when the written list of providers was not issued.[58] In general, commenters asserted that the proposed revision to comment 19(e)(3)(ii)–2 would increase compliance cost and require software and system reprogramming and staff retraining. Other commenters stated that no industry or consumer benefit would be achieved by the proposed revision. Some commenters stated that creditors would be required to provide greater amounts of tolerance refunds to consumers and the increased cost imposed on creditors would ultimately be paid by consumers. One commenter stated that the proposed revision did not take into account the potential that a consumer actually shopped for settlement services. A state trade association commenter representing credit unions stated the Bureau should exempt credit unions from the requirement to provide the written list of providers because requiring credit unions to provide the written list of providers is an unnecessary burden that exposes credit unions to compliance risk even when credit unions do not require the use of any particular settlement service provider. In general, comments regarding the implementation date for the proposed revision ranged from six to twelve months.

The Final Rule

For the reasons discussed below, the Bureau is not finalizing comment 19(e)(3)(iii)–2 as proposed but is instead revising it to clarify the applicable good faith determination when the written list of providers is not issued. Comment 19(e)(3)(iii)–2 continues to provide that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), good faith is determined under § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii) unless the settlement service provider is an affiliate of the creditor in which case good faith is determined pursuant to § 1026.19(e)(3)(i). As finalized, comment 19(e)(3)(iii)–2 clarifies that whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

As discussed above, several commenters asserted that requiring the good faith determination under § 1026.19(e)(3)(i) (rather than the good faith analysis under § 1026.19(e)(3)(ii)) when a creditor does not provide the written list of providers would, in summary, introduce uncertainty and significantly increase compliance cost and burden. In addition, many commenters presented concerns about the proposed revision regarding compliance with the provisions of § 1026.19(e)(1)(vi)(B) and (C). These comments persuaded the Bureau that the proposed revisions could provoke confusion rather than provide greater clarity about the requirements under § 1026.19(e)(3).

As explained in the TILA–RESPA Final Rule, the Bureau believes that information asymmetry between the creditor and the consumer is pervasive in the mortgage origination process and that the disclosures on the Loan Estimate and written list of providers play an important role in partially correcting that asymmetry. The disclosures provided related to settlement services are an important factor in determining whether a creditor's estimates were disclosed in good faith. The Bureau believes that the disclosures, presented on the Loan Estimate and the written list of providers, inform consumers of their ability to shop and promote a meaningful opportunity to shop for the required settlement services.

Currently, comment 19(e)(3)(iii)–2 provides that the good faith determination under § 1026.19(e)(3)(ii) applies when a creditor does not issue a written list of providers but the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A), unless the settlement service provider is an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i).

As part of the good faith determination under § 1026.19(e)(3)(ii), the creditor must permit the consumer to shop for a third-party service. Comment 19(e)(1)(vi)–1 as finalized, and as cross-referenced by final comments 19(e)(3)(ii)–6 and 19(e)(3)(iii)–2, clarifies that whether a creditor permits a consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

The Bureau believes that, as finalized, the clarification provided under revised comment 19(e)(3)(iii)–2 is a balanced approach to preclude the weakening of the consumer protection interests implicit in the written list of providers while avoiding a significant increase in compliance cost and administrative burden. Although the Bureau is not finalizing the proposed revision to comment 19(e)(3)(iii)–2 regarding

[58] The Bureau notes that the 2008 RESPA Final Rule actually provides that settlement services are subject to 10 percent tolerance unless the borrower selects a provider other than one identified by the loan originator in which case these fees are not subject to any tolerance. 73 FR 14029, 14094 (Mar. 14, 2008).

compliance with § 1026.19(e)(1)(vi)(B) and (C), the Bureau emphasizes that the good faith determination under § 1026.19(e)(3)(ii) or (iii) for third-party service charges requires compliance with § 1026.19(e)(1)(vi)(A), which is determined based on all the relevant facts and circumstances per final comments 19(e)(1)(vi)–1, 19(e)(3)(ii)–6, and 19(e)(3)(iii)–2.

Regarding the § 1026.19(e)(3) good faith determination, as discussed above some commenters were concerned that typographical errors regarding § 1026.19(e)(1)(vi)(B) and (C) could be considered a violation of § 1026.19(e)(3)(ii) and subject certain settlement services to zero tolerance if the error hinders the consumer's ability to shop. As noted in the section-by-section analysis of § 1026.19(e)(3)(ii) above, typographical errors regarding a settlement service under § 1026.19(e)(1)(vi)(B) and (C) do not subject the charges for such service to the zero percent tolerance category when determining good faith, unless the error interferes with the consumer's ability to shop.

In response to commenters that asked the Bureau to exempt credit unions from providing the written list of providers because they do not require the consumer to use a particular settlement service provider, the Bureau declines to do so. The written list of providers and other requirements under § 1026.19(e)(1)(vi) only apply to settlement services for which a creditor permits a consumer to shop and provide helpful information to consumers to partially correct for the information asymmetry between the creditor and the consumer.

19(e)(3)(iii)(E)

Under § 1026.19(e)(3)(iii)(E) estimates of charges paid for third-party services not required by the creditor are in good faith if they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under § 1026.19(e)(1)(i). The Bureau noted, in the proposal, its understanding that there may be some uncertainty as to whether real property taxes are included in this category.

The supplementary information to the TILA–RESPA Final Rule erroneously stated that property taxes and other fees were subject to tolerance under § 1026.19(e)(3)(i). In February 2016, the Bureau corrected this typographical error and clarified that property taxes (and property insurance premiums, homeowner's association dues, condominium fees, and cooperative fees) are not subject to tolerances, whether or not placed into an escrow or impound account.[59]

The Bureau proposed to revise § 1026.19(e)(3)(iii)(E) and comment 19(e)(3)(iii)–3 to make explicit that an estimate of property taxes is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under § 1026.19(e)(1)(i). The Bureau also proposed revisions to comment 19(e)(3)(iii)–3, which would provide an illustrative example for disclosing property taxes under § 1026.19(e)(3)(iii)(E).

In general, commenters representing various industry stakeholders supported the proposed revisions to § 1026.19(e)(3)(iii)(E) and comment 19(e)(3)(iii)–3. A commenter representing a mortgage finance company asked the Bureau to provide specific guidance on the disclosure of property taxes under § 1026.19(e)(3)(iii)(E) for new construction, refinance, and purchase transactions. A commenter representing banks asked the Bureau to define the good faith standard under § 1026.19(e)(3)(iii)(E) broadly to prevent industry confusion. A commenter representing a mortgage company supported the revisions but asked that the Bureau consider changing the good faith determination of tolerance for appraisal cost. The commenter asserted that appraiser's fees should not be subject to zero tolerance because lenders may not know what an appraiser will charge.

The Bureau is finalizing, as proposed, the revisions to § 1026.19(e)(3)(iii)(E) and comment 19(e)(3)(iii)–3. In regard to the commenter requesting specific guidance on the disclosure of property taxes for new construction and refinance transactions, the Bureau notes that the good faith determination under § 1026.19(e)(3)(iii)(E) applies to property taxes whether the loan is for new construction or to refinance a loan. The original estimated charge, or lack of an estimated charge for property taxes, complies with § 1026.19(e)(3)(iii)(E) if the estimate for property taxes is consistent with the best information reasonably available to the creditor at the time it is disclosed.

As discussed above, a commenter asked the Bureau to define or interpret good faith under § 1026.19(e)(3)(iii)(E) broadly to stave off industry confusion. The Bureau believes that the explanation of the good faith determination under § 1026.19(e)(3)(iii)(E) is sufficient. The Bureau notes that the good faith determination of an estimate under § 1026.19(e)(3)(iii)(E) is based on the best information reasonably available to the creditor at the time it is disclosed. In addition, the Bureau illustrates this principle with several examples under the comments 19(e)(3)(iii)–1 through –3. Revised comment 19(e)(3)(iii)–3 as finalized under this rule will explain that a creditor complies with the requirements under § 1026.19(e)(3)(iii)(E) unless the creditor, contrary to the best information reasonably available at the time the disclosures are made, does not provide an estimate or an unreasonably low estimate.

In regard to the comment requesting the Bureau to reconsider the good faith tolerance determination for appraisal fees, the Bureau declines to address this issue in the final rule. The Bureau notes that the disclosure of the appraisal fee must be based on the best information reasonably available at the time the disclosure is provided to the consumer.

19(e)(3)(iv) Revised Estimates

The Bureau's Proposal

Section 1026.19(e)(3)(iv) provides that, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed on the Loan Estimate (*i.e.,* the creditor may reset the applicable tolerance) if the revision is due to any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Section 1026.17(c)(2)(i) requires that any disclosures provided to the consumer must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. Proposed comments 19(e)(3)(iv)–2 and –4 would have clarified that § 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, even in situations where the creditor is not resetting tolerances for any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Proposed comment 19(e)(3)(iv)–5 would have clarified that, regardless of whether a creditor issues a revised Loan Estimate to reset tolerances or simply for informational purposes, § 1026.17(c)(2)(i) requires that any disclosures on the revised Loan Estimate must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer.

[59] 81 FR 7032 (Feb. 10, 2016).

Comments Received

Industry commenters, including vendors, a creditor, and an individual compliance professional, supported the clarification in proposed comments 19(e)(3)(iv)–2 and –4. However, consumer group commenters opposed permitting revised disclosures for informational purposes in situations where the creditor is not resetting tolerances for any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Consumer group commenters asserted that such revised disclosures may lead consumers to experience information overload; consumers already receive similar information on the Closing Disclosure no later than three business days before consummation; and consumers will not understand the difference between revised Loan Estimates for resetting tolerances and those simply for informational purposes. Consumer group commenters also recommended that all disclosures include a statement, at the top of the page, directing the consumer to keep any and all versions of the disclosures; and a notation, on the first page, indicating the quantity of any prior Loan Estimates provided to the consumer.

Several industry commenters, including vendors and an individual compliance professional, supported the clarification in proposed comment 19(e)(3)(iv)–5. However, other industry commenters opposed requiring that, if a creditor opts to provide a revised Loan Estimate, any disclosures on the revised Loan Estimate must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. A secondary market investor expressed concern that the requirement increases the likelihood of disclosure errors. Trade associations and a creditor stated that some vendors are not currently in compliance with the requirement and their systems will need substantial reprogramming. Trade associations also expressed their belief that there would be no significant consumer injury if creditors were excused from updating disclosures on revised Loan Estimates based on the best information reasonably available. A creditor requested that industry be given an implementation period of at least 180 days if the Bureau finalizes proposed comment 19(e)(3)(iv)–5, while a vendor group stated that reprogramming for some vendors could take up to 12 months.

Several industry commenters also sought additional clarifications regarding revising the Loan Estimate based on the best information reasonably available. A trade association requested further clarification as to how the requirement noted in proposed comment 19(e)(3)(iv)–5 comports with the creditor discretion noted in proposed comment 19(e)(3)(iv)–4. Two creditors requested clarification as to what the impact is on tolerance baselines when a creditor decreases an estimated charge on a revised Loan Estimate or Closing Disclosure; an individual attorney requested similar clarification while suggesting that the Bureau's current small entity compliance guide indicates that such decreases do not impact tolerance baselines.

The Final Rule

The Bureau is adopting as proposed the amendments to comment 19(e)(3)(iv)–2 and new comment 19(e)(3)(iv)–4 and is adopting new comment 19(e)(3)(iv)–5 substantially as proposed. As finalized, comments 19(e)(3)(iv)–2 and –4 are consistent with current comment 19(e)(3)(iv)(A)–1.ii, which states that § 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, even in situations where the creditor is not resetting tolerances for any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). The Bureau declines to make revisions that would contradict current comment 19(e)(3)(iv)(A)–1.ii. The Bureau concludes that the concerns expressed by consumer group commenters do not warrant prohibiting consumers from receiving the best information reasonably available, even if consumers will later receive a Closing Disclosure. Regarding commenters' assertion that consumers will not understand the difference between revised Loan Estimates for resetting tolerances and those simply for informational purposes, the Bureau notes that the Loan Estimate form intentionally has been designed, first and foremost, as a means of providing consumers with the best information reasonably available. Therefore, in many instances, tracking legal compliance will require reviewing not just the most recent Loan Estimate but also prior versions. With respect to the comments recommending that creditors be required to add an additional statement and notation on the Loan Estimate, the Bureau notes that § 1026.37(a)(2) already requires that all Loan Estimates include the statement ''Save this Loan Estimate to compare with your Closing Disclosure.'' The Bureau declines to mandate the additional disclosures requested, which would impose additional regulatory implementation costs.

Comment 19(e)(3)(iv)–5, as finalized, includes an example stating that, if the creditor issues revised disclosures reflecting a new rate lock extension fee for purposes of determining good faith under § 1026.19(e)(3)(i), other charges unrelated to the rate lock extension must be reflected on the revised disclosures based on the best information reasonably available to the creditor at the time the revised disclosures are provided. As finalized, comment 19(e)(3)(iv)–5, including that example, is consistent with longstanding § 1026.17(c)(2)(i), as well as current comments 19(e)(1)(i)–1 and 37–1, which require that disclosures provided to the consumer must be based on the best information reasonably available to the creditor. The Bureau declines to make revisions that would contradict current § 1026.17(c)(2)(i) and current comments 19(e)(1)(i)–1 and 37–1. The Bureau concludes that commenters' concerns do not warrant consumers receiving Loan Estimates that are not based on the best information reasonably available. Regarding a commenter's request for further clarification as to how the requirement noted in proposed comment 19(e)(3)(iv)–5 comports with the creditor discretion noted in proposed comment 19(e)(3)(iv)–4, comment 19(e)(3)(iv)–4 notes that creditors may, at their option, issue a revised Loan Estimate for informational purposes even when creditors are not otherwise required to do so; but, if a creditor opts to do so, comment 19(e)(3)(iv)–5, consistent with § 1026.17(c)(2)(i) and comments 19(e)(1)(i)–1 and 37–1, requires the Loan Estimate to be based on the best information reasonably available to the creditor at the time it is provided to the consumer.

Regarding commenters' request for clarification as to what the impact is on tolerance baselines when a creditor decreases an estimated charge on a revised Loan Estimate or Closing Disclosure, current § 1026.19(e)(3)(i) states that, except as otherwise provided in § 1026.19(e)(3)(ii) through (iv), an estimated closing cost on the Loan Estimate is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed. Moreover, for purposes of determining good faith, § 1026.19(e)(3)(iv) states that in certain circumstances a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed—but the rule does not require the creditor to use a revised estimate for purposes of determining good faith. Thus, if a creditor decreases an estimated charge on a revised Loan Estimate or Closing Disclosure, the creditor is not required to use the decreased estimate for purposes of determining good faith; the creditor may determine good faith by comparing the charge paid by or imposed on the consumer versus the amount originally disclosed.

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the **Federal Register**, but there will be an optional compliance period in effect until October 1, 2018.

19(e)(3)(iv)(D) Interest Rate Dependent Charges

The Bureau's Proposal

In circumstances where a creditor provides an initial Loan Estimate disclosing an interest rate without a rate lock agreement in place, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised Loan Estimate to the consumer no later than three business days after the date the interest rate is subsequently locked. Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure. Consistent with § 1026.19(e)(4)(ii), the Bureau proposed to add new comment 19(e)(3)(iv)(D)–2 to clarify that the creditor may not provide a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure, even if the interest rate is locked on or after the date on which the creditor provides the Closing Disclosure. In addition, new comment 19(e)(3)(iv)(D)–2 would have also noted that the creditor must provide a corrected Closing Disclosure if the disclosures on the previous Closing Disclosure become inaccurate, in accordance with the existing requirements of § 1026.19(f)(2). The Bureau also proposed technical revisions to existing comment 19(e)(3)(iv)(D)–1.

Comments Received

Some industry commenters stated that new comment 19(e)(3)(iv)(D)–2 clarified that a revised Loan Estimate must be provided to the consumer when the initial Loan Estimate disclosed an interest rate without a rate lock agreement, but the interest rate is subsequently locked. Other industry commenters sought additional clarity on whether a revised Loan Estimate was required in such a situation if the terms and charges associated with the loan would not change on the revised Loan Estimate, and therefore argued there is no basis to require a revised Loan Estimate where there are no changes in the information disclosed.

Other commenters addressed the statement in proposed new comment 19(e)(3)(iv)(D)–2 that the creditor must provide a corrected Closing Disclosure if the disclosures on the previous Closing Disclosure become inaccurate, in accordance with the requirements of § 1026.19(f)(2). Some industry commenters sought more clarity on what a creditor must do when the interest rate is subsequently locked by a rate lock agreement after the Closing Disclosure is issued. A secondary market participant commenter also stated that a creditor should not be required to issue a revised Closing Disclosure when there are no changes made to the interest rate or other terms.

The Final Rule

For the reasons discussed below, the Bureau is adopting the technical revisions to existing comment 19(e)(3)(iv)(D)–1 as proposed and is adopting new comment 19(e)(3)(iv)(D)–2 as proposed, with a modification for clarity. Commenters that expressed a need for clarification in relation to proposed new comment 19(e)(3)(iv)(D)–2 in effect argued that § 1026.19(e)(3)(iv)(D) should not require the disclosure of a revised Loan Estimate if the terms and charges disclosed have not changed. As noted above, § 1026.19(e)(3)(iv)(D) explicitly requires the creditor to provide a revised Loan Estimate when the initial Loan Estimate did not disclose an interest rate subject to a rate lock agreement, even if the terms and charges disclosed are the same. As noted in the 2012 TILA–RESPA Proposal, the disclosures on the initial Loan Estimate related to the interest rate should be able to fluctuate on subsequent Loan Estimates if the consumer's rate was not set on the initial Loan Estimate, but revised disclosures should be provided when the consumer's interest rate is later set.[60] The Bureau's concern was, and continues to be, that, absent a rate lock agreement, the terms and charges of the loan as disclosed on the initial Loan Estimate are more likely to change, as the consumer would only be able to rely on the interest rate related charges and terms on the Loan Estimate when the rate has been locked. When a revised Loan Estimate is provided as required by § 1026.19(e)(3)(iv)(D), the rate lock information disclosed pursuant to § 1026.37(a)(13)(i) must be updated to reflect the expiration date of the interest rate disclosed, regardless of any changes to the disclosed interest rate or interest rate-related charges. Once the interest rate is subject to a rate lock agreement, § 1026.19(e)(3)(iv)(D) does not subsequently require the disclosure of a revised Loan Estimate. As discussed above, proposed new comment 19(e)(3)(iv)(D)–2 included an explicit cross-reference to the requirement in § 1026.19(f)(2) for a creditor to provide a corrected Closing Disclosure if the disclosures on the previous Closing Disclosure become inaccurate. The Bureau is adopting new comment 19(e)(3)(iv)(D)–2 with this additional cross-reference to provide clarity. To provide guidance to commenters that sought clarity on whether a corrected Closing Disclosure is required if the interest rate becomes subject to a rate lock agreement after the initial Closing Disclosure has been provided to the consumer, such a corrected Closing Disclosure is required only when the disclosures have become inaccurate, pursuant to § 1026.19(f)(2). Notably, information disclosed on the Loan Estimate under § 1026.37(a)(13) concerning the terms of the rate lock agreement are not required on the Closing Disclosure under § 1026.38, therefore a subsequent rate lock agreement by itself would not require a corrected Closing Disclosure unless the charges and terms become inaccurate.

19(e)(3)(iv)(E) Expiration

Section 1026.19(e)(3)(iv)(E) provides that, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed on the Loan Estimate (*i.e.,* the creditor may reset the applicable tolerance) if the consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided under § 1026.19(e)(1)(iii).

To reduce uncertainty, the Bureau proposed to revise § 1026.19(e)(3)(iv)(E) and to add new comment 19(e)(3)(iv)(E)–2 to clarify that, if a creditor voluntarily extends the period disclosed under § 1026.37(a)(13)(ii) to a period greater than 10 business days, that longer time period becomes the relevant time period for purposes of using revised estimates under § 1026.19(e)(3)(iv)(E). Proposed revisions to § 1026.19(e)(3)(iv)(E) permitted a creditor to use revised estimates under § 1026.19(e)(3)(iv) when the consumer indicates an intent to

[60] 2012 TILA–RESPA Proposal, 77 FR 51116, 51173 (Aug. 23, 2012).

proceed with the transaction more than 10 business days, or more than any additional number of days specified by the creditor before the offer expires, after the disclosures required under § 1026.19(e)(1)(i) are provided. Proposed new comment 19(e)(3)(iv)(E)–2 stated that, if the creditor establishes a period greater than 10 business days after the disclosures were provided (or subsequently extends it to such a longer period), the longer time period becomes the relevant time period for purposes of § 1026.19(e)(3)(iv)(E). Proposed comment 19(e)(3)(iv)(E)–2 further stated that a creditor establishes such a period greater than 10 business days by communicating the greater time period to the consumer, including through oral communication. While not discussed in the section-by-section analysis of § 1026.19(e)(3)(iv)(E) in the proposal, the Bureau also proposed minor stylistic changes to existing comment 19(e)(3)(iv)(E)–1.

Commenters generally supported revised § 1026.19(e)(3)(iv)(E) and new comment 19(e)(3)(iv)(E)–2, with some concerns related to the proper disclosure of the expiration period on the Loan Estimate. These concerns are discussed in the section-by-section analysis of § 1026.37(a)(13), below. Accordingly, the Bureau is adopting, as proposed, revised § 1026.19(e)(3)(iv)(E), revised comment 19(e)(3)(iv)(E)–1, and new comment 19(e)(3)(iv)(E)–2.

19(e)(3)(iv)(F) Delayed Settlement Date on a Construction Loan

The Bureau proposed to amend § 1026.19(e)(3)(iv)(F) to correct a typographical error, replacing a reference to § 1026.19(f) with a reference to § 1026.19(e)(3)(iv). Section 1026.19(e)(3)(iv)(F) addresses when revised Loan Estimates can be provided for transactions involving new construction. Currently, it provides that, if the disclaimer under § 1026.19(e)(3)(iv)(F) was not provided, the creditor may not issue a revised Loan Estimate except as otherwise allowed under § 1026.19(f). However, revised Loan Estimates are issued pursuant to § 1026.19(e)(3)(iv), not § 1026.19(f), and the proposed modification would have corrected this reference in § 1026.19(e)(3)(iv)(F).

In general, commenters supported the proposed revision. A compliance professional asserted that there is confusion in the industry regarding when § 1026.19(e)(3)(iv)(F) is applicable. Specifically, the commenter requested that the Bureau clarify whether § 1026.19(e)(3)(iv)(F) applies during the permanent phase or construction phase of a construction-permanent loan. The Bureau notes that § 1026.19(e)(3)(iv)(F) is applicable to any new construction transaction where the creditor reasonably expects that settlement will occur more than 60 days after the Loan Estimate is required to be provided under § 1026.19(e)(1)(iii). If a construction-permanent loan is disclosed as separate transactions and involves new construction, § 1026.19(e)(3)(iv)(F) would apply to the construction phase Loan Estimate and permanent phase Loan Estimate if the creditor reasonably expects that settlement will occur more than 60 days after that respective Loan Estimate is required to be provided under § 1026.19(e)(1)(iii). A commenter representing a title company asked the Bureau to apply a retroactive effective date or otherwise implement technical non-substantive changes such as this one as soon as possible. See comment 1(d)(5)–2 and the Bureau's discussion regarding the effective date in part VI, below. For the reasons discussed above the Bureau is finalizing as proposed the modification to § 1026.19(e)(3)(iv)(F).

19(e)(4) Provision and Receipt of Revised Disclosures

19(e)(4)(ii) Relationship to Disclosures Required Under § 1026.19(f)

Section 1026.19(e)(3)(iv) permits creditors, in certain limited circumstances, to use revised estimates, instead of the estimate originally disclosed to the consumer, to compare to the charges actually paid by or imposed on the consumer for purposes of determining whether an estimated closing cost was disclosed in good faith (*i.e.,* whether the actual charge exceeds the allowed tolerance). This is referred to as resetting tolerances.

Section 1026.19(e)(4) contains rules for the provision and receipt of those revised estimates, including a requirement that any revised estimates used to determine good faith must be provided to the consumer within three business days of the creditor receiving information sufficient to establish that a permissible reason for revision applies. If the conditions for revising the original estimates are met, creditors generally may provide these revised estimates on revised Loan Estimates or, in certain circumstances, on Closing Disclosures. The creditor cannot provide revised estimates on a Loan Estimate on or after the date the Closing Disclosure is provided to the consumer and the consumer must receive any revised Loan Estimate used to reset tolerances no later than four business days prior to consummation.[61] However, if there are less than four business days between the time the revised version of the disclosures is required to be provided (*i.e.,* within three business days of the time the creditor received information sufficient to establish the reason for revision) and consummation, the creditor may provide the revised estimate on a Closing Disclosure.[62] This is referred to herein as the ''four-business day limit.''

The Bureau's Proposal

The proposal would have added new comment 19(e)(4)(ii)–2, which provided that ''[i]f there are fewer than four business days between the time the revised version of the disclosures is required to be provided under § 1026.19(e)(4)(i) and consummation or the Closing Disclosure required by § 1026.19(f)(1) has already been provided to the consumer, creditors comply with the requirements of § 1026.19(e)(4) (to provide a revised estimate under § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii)) if the revised disclosures are reflected in the corrected disclosures provided under § 1026.19(f)(2)(i) or (2)(ii), subject to the other requirements of § 1026.19(e)(4)(i).''

The proposed comment was intended to clarify that creditors may use corrected Closing Disclosures provided under § 1026.19(f)(2)(i) or (ii) (in addition to the initial Closing Disclosure) to reflect changes in costs that will be used to reset tolerances.[63] As noted above, existing comment 19(e)(4)(ii)–1 clarifies that creditors may reflect revised estimates on the Closing Disclosure to reset tolerances if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Although comment 19(e)(4)(ii)–1 expressly references only the Closing Disclosure required by § 1026.19(f)(1)(i), the Bureau has provided informal guidance that the provision also applies to corrected Closing Disclosures provided pursuant to § 1026.19(f)(2)(i) or (ii). The Bureau proposed comment 19(e)(4)(ii)–2 to clarify this point.

Comments Received

The Bureau received comments on this aspect of the proposal from trade associations, creditors, GSEs, mortgage software providers, secondary market

[61] 12 CFR 1026.19(e)(4)(ii).

[62] *Id.* at comment 19(e)(4)(ii)–1.

[63] *See* 81 FR 54317, 54334 (Aug. 15, 2016).

purchasers, title companies, and servicers. Commenters generally supported the clarification that creditors may use corrected Closing Disclosures (in addition to initial Closing Disclosures) to reflect revised amounts and reset tolerances. However, some commenters expressed continued concern that the rule and commentary would not fully clarify ambiguities on this subject even if comment 19(e)(4)(ii)–2 were finalized as proposed. For example, one trade association commenter requested that the Bureau clarify that corrected Closing Disclosures can be provided at the closing table, and can be used to reset tolerances, if the closing occurs prior to the end of the three-business-day period after the creditor receives information sufficient to establish that a reason for revision applies.

Further, many commenters interpreted proposed comment 19(e)(4)(ii)–2 as allowing creditors to use corrected Closing Disclosures to reset tolerances regardless of when consummation is expected to occur, as long as the creditor provides the corrected Closing Disclosure within three business days of receiving information sufficient to establish a reason for revision applies pursuant to § 1029.19(e)(4)(i). Specifically, under this interpretation, creditors could provide initial Closing Disclosures to reset tolerances only if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. But this interpretation would remove the four-business day limit for corrected Closing Disclosures provided pursuant to § 1026.19(f)(2) and therefore allow creditors to provide corrected Closing Disclosures to reset tolerances regardless of when consummation is expected to occur. Commenters were not uniform in their interpretation of the proposal.

Commenters who interpreted the proposal as removing the four-business day limit as it applies to corrected Closing Disclosures were generally supportive, citing uncertainty about the proper interpretation of current rules and stating that current timing rules regarding resetting tolerances with a Closing Disclosure are unworkable. Some of these commenters described a situation that could occur if the creditor has already provided the Closing Disclosure and an event occurs or a consumer requests a change that causes an increase in closing costs that would be a reason for revision under § 1026.19(e)(3)(iv). In some circumstances, the creditor may be unable to provide a corrected Closing Disclosure to reset tolerances because there are four or more days between the time the revised disclosures would be required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Commenters seemed to identify this as most likely to occur where there was also a delay in the scheduled consummation date after the initial Closing Disclosure is provided to the consumer.

The Bureau understands that this situation can occur because of the intersection of current timing rules regarding the provision of revised estimates to reset tolerances. Section 1026.19(e)(4)(ii) prohibits creditors from providing Loan Estimates on or after the date on which the creditor provides the Closing Disclosure. In many cases, this limitation would not create issues for creditors because current comment 19(e)(4)(ii)–1 explains that creditors may reflect revised estimates on a Closing Disclosure to reset tolerances if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. But there is no similar provision that explicitly provides that creditors may use a Closing Disclosure to reflect the revised disclosures if there are four or more days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Commenters stated that this can lead to circumstances where creditors are unable to provide either a revised Loan Estimate (because the Closing Disclosure has been provided) or a corrected Closing Disclosure (because there are four or more days prior to consummation) to reset tolerances. Commenters referred to this situation as a ''gap'' or ''black hole'' in the rules. Many commenters perceived proposed new comment 19(e)(4)(ii)–2 as resolving this issue because they interpreted it as allowing creditors to use corrected Closing Disclosures to reset tolerances even if there are four or more business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation.

Commenters noted various reasons for supporting such a change. Some commenters asserted that the inability to pass unforeseen cost increases directly to the affected consumers in these instances causes the cost of credit to increase for all consumers. Two trade associations representing settlement agents stated concerns about creditors requesting that settlement agents reduce their fees to absorb the cost of the unforeseen cost increases that could not be passed directly to the affected consumers. A national title insurance company commenter noted its belief that some creditors are currently rejecting applications and starting new ones when closing is delayed and costs increase, such as for additional appraisal or inspection fees or rate lock extension fees, to avoid the compliance and legal risks associated with the current rules. This commenter argued that these actions could cause further delay to closings and expense to consumers. Other commenters similarly noted that the change could minimize closing delays and disruptions.

Some commenters who interpreted the proposal as removing the four-business day limit for corrected Closing Disclosures supported that perceived change, but also cautioned about unintended consequences. For example, some commenters stated that the proposal would remove a disincentive that currently exists under the rule from providing the initial Closing Disclosure extremely early in the mortgage origination process, which these commenters stated would not be consistent with the Bureau's intent that the Closing Disclosure be a statement of actual costs. Some commenters, including a national title insurance company, a mortgage servicer, and a mortgage software provider, requested that the Bureau provide additional guidance on the timing or circumstances under which it is appropriate to provide Closing Disclosures, generally (while one large creditor commenter cautioned against such an approach). Some commenters suggested other revisions to the rule the Bureau might consider in lieu of finalizing proposed comment 19(e)(4)(ii)–2. For example, one large national lender suggested that the Bureau eliminate the four-business day limit and instead develop a test to determine if the reason for revision is truly beyond the control of the creditor.

In addition to these comments, some commenters also requested that the Bureau amend § 1026.19(e)(4)(i) and comment 19(e)(4)(ii)–1 to specifically include interest rate dependent charges referred to in § 1026.19(e)(3)(iv)(D) as a reason for providing a revised estimate. Further, one trade association commenter stated that it is not clear that proposed comment 19(e)(4)(ii)–2 would apply to the initial Closing Disclosure, such that a lender may not be able to disclose a rate lock with an initial Closing Disclosure. This commenter stated that such an interpretation could harm consumers that wish to lock their interest rate three business days before closing and receive an initial Closing Disclosure the same day to ensure a timely closing.

The Final Rule

As noted above and described in the proposal, proposed comment 19(e)(4)(ii)–2 was intended to clarify that the reference to Closing Disclosures required by § 1026.19(f)(1) in existing comment 19(e)(4)(ii)–1 refers to both the initial Closing Disclosure required by § 1026.19(f)(1) and to any corrected Closing Disclosures provided pursuant to § 1026.19(f)(2). Although the Bureau recognizes that the text of proposed comment 19(e)(4)(ii)–2 could plausibly be interpreted as also removing the existing four-business day limit for providing corrected Closing Disclosures to reset tolerances, the preamble to the proposal does not describe that the Bureau intended such a change.

At the same time, the Bureau has considered the concerns expressed by industry through comments about the implementation challenges caused by the current provisions regarding the use of Closing Disclosures to reset tolerances, and the potential negative effects of those provisions on consumers and creditors. In particular, the Bureau recognizes that the current rules may lead to circumstances under which creditors might be unable to provide revised estimates for purposes of resetting tolerances where the Closing Disclosure has already been provided and there are four or more days between consummation and the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i). The Bureau believes, however, that before finalizing a rule that addresses this issue it is advisable to propose more explicit language and to seek comment so that stakeholders who understood the proposal in accordance with the Bureau's intent will have the opportunity to provide their perspectives on this issue. For this reason, the Bureau is issuing a new proposal, concurrent with this final rule, that would address this issue. Accordingly, the Bureau declines to finalize proposed comment 19(e)(4)(ii)–2.

19(f) Mortgage Loans—Final Disclosures

19(f)(1) Provision of Disclosures

19(f)(1)(i) Scope

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to comment 19(f)(1)(i)–1 to reflect a change to the coverage of § 1026.19(f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

19(f)(2) Subsequent Changes

19(f)(2)(iii) Changes Due to Events Occurring After Consummation

The Bureau's Proposal

The Bureau proposed to add comment 19(f)(2)(iii)–2 to clarify the interaction of §§ 1026.19(f)(2)(iii) and 1026.17(c)(2)(ii), such that a creditor would not be required to provide to the consumer a corrected Closing Disclosure for any disclosure that is accurate under § 1026.17(c)(2)(ii), even if the amount actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). Under § 1026.17(c)(2)(ii), for a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest is considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

The Bureau requested comment on the benefits to consumers of receiving a post-consummation disclosure under § 1026.19(f)(2)(iii) of the changed per-diem interest amounts reflecting the actual amounts paid by the consumer. The Bureau also requested comment on whether additional clarity is needed in § 1026.17(e) or § 1026.19(e) regarding the effect of post-consummation events on the accuracy of disclosures or if additional clarity is needed on the interaction of §§ 1026.17(e) and 1026.19(e).

Comments Received

Several industry commenters supported adding proposed comment 19(f)(2)(iii)–2. One industry commenter opposed adding this proposed comment. This commenter indicated that consumers will not have accurate disclosures of the per-diem interest that is paid (and other disclosures affected by the change in per-diem interest such as the annual percentage rate, finance charge, and other material disclosures under TILA) if they do not receive a post-consummation disclosure under § 1026.19(f)(2)(iii) when the per-diem interest has changed after consummation. The commenter also indicated that, with no final document showing the actual amount of prepaid interest paid by the consumer, buyers and sellers of loans will not be able to accurately calculate the purchase amount of the loan, and servicers will not be able to accurately credit the consumer's account or accurately provide the Internal Revenue Service Form 1098.

Several industry commenters asked for additional clarifications related to per-diem interest. One industry commenter requested additional clarification on which disclosures are affected by the per-diem interest and thus would be covered by proposed comment 19(f)(2)(iii)–2. Two industry commenters indicated that § 1026.17(c)(2)(ii) should apply to all disclosures of per-diem interest and any affected disclosures that are provided under § 1026.19(e) and (f), including disclosures provided before or at consummation. One industry commenter suggested that the Bureau modify the proposal to state that, even if a creditor is issuing a Closing Disclosure due to events occurring after consummation for reasons other than changes in the per-diem interest, the creditor must not amend the per-diem interest (and affected disclosures) on the corrected disclosure if it has changed.

Several industry commenters requested clarifications related to the requirement to provide a corrected Closing Disclosure under § 1026.19(f)(2)(iii). One industry commenter indicated that creditors in escrow states need additional guidance on the requirements for populating the post-consummation Closing Disclosure under § 1026.19(f)(2)(iii) because it is unclear what point in time the Closing Disclosure is disclosing. The commenter indicated that creditors in escrow states may ''net out'' cash to close to equal ''$0'' because these creditors understand the accuracy requirement to mean that they must reflect changes that have happened since the time of consummation. The commenter recommended that the Bureau amend § 1026.19(f)(2)(iii) to clarify that this post-consummation Closing Disclosure be revised to accurately reflect the changes to any charges that are the subject of the redisclosure, and that the cash to close amount be amended only to reflect the effect of the changed amount. Another industry commenter requested additional guidance on when disclosure is required under § 1026.19(f)(2)(iii) in non-escrow states where disbursement or recording occurs days after consummation and the actual recording fee is found to be less than disclosed on the Closing Disclosure at consummation. This commenter requested guidance on whether a corrected disclosure under § 1026.19(f)(2)(iii) is required to be provided to the consumer after the settlement agent has disbursed funds and refunded any excess funds remaining. Another industry commenter requested additional guidance on whether the delivery of a corrected disclosure under § 1026.19(f)(2)(iii) would extend the right of rescission period under § 1026.23.

The Final Rule

The Bureau is adopting proposed comment 19(f)(2)(iii)–2 with revisions. The Bureau is adopting comment 19(f)(2)(iii)–2 to provide that a creditor is not required to provide corrected disclosures under § 1026.19(f)(2)(iii) if the only changes that would be required to be disclosed in the corrected disclosure are changes to per-diem interest and any disclosures affected by the change in per-diem interest, even if the amount of per-diem interest actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). In finalizing new comment 19(f)(2)(iii)–2, the Bureau has revised the comment to clarify that, if a creditor is providing a corrected Closing Disclosure under § 1026.19(f)(2)(iii) for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the creditor must disclose in the corrected disclosures under § 1026.19(f)(2)(iii) the correct amount of the per-diem interest and provide corrected disclosures for any disclosures that are affected by the change in per-diem interest.

As discussed above, one industry commenter suggested that the Bureau should modify the proposal to state that, even if a creditor is issuing a Closing Disclosure due to events occurring after consummation for reasons other than changes in the per-diem interest, the creditor must not amend the per-diem interest (and affected disclosures) on the corrected disclosure if it has changed. The Bureau is not implementing this suggestion. The Bureau is concerned that, if creditors were not required to correct the per-diem interest (and affected disclosures) in the post-consummation corrected Closing Disclosure that is otherwise being provided to consumers under § 1026.19(f)(2)(iii), consumers would receive inaccurate information in the corrected Closing Disclosure that the creditor knows is incorrect at the time the disclosure is provided.

As discussed above, several industry commenters indicated that § 1026.17(c)(2)(ii) should apply to all disclosures of per-diem interest and any affected disclosures that are provided under § 1026.19(e) and (f), including disclosures provided before or at consummation. The Bureau is not adopting this suggestion. The Bureau notes that § 1026.17(c)(2)(ii) provides that for a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest is considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction. Nonetheless, comment 17(c)(2)(ii)–1 provides that for purposes of transactions subject to § 1026.19(e) and (f), the creditor shall disclose the actual amount of per-diem interest that will be collected at consummation, subject only to the disclosure rules in those sections. The Bureau notes that for disclosure of per-diem interest in the Loan Estimate, § 1026.19(e)(3)(iii) provides that the prepaid interest disclosure must be consistent with the best information reasonably available to the creditor at the time it is disclosed. For disclosures of per-diem interest in the Closing Disclosure provided on or before consummation, comment 19(f)(1)(i)–2 provides that creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii) using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i). As discussed above, new comment 19(f)(2)(iii)–2 sets forth the circumstances in which changes in per-diem interest must be disclosed in post-consummation disclosures under § 1026.19(f)(2)(iii).

As discussed above, one industry commenter requested additional guidance on when disclosure is required under § 1026.19(f)(2)(iii) in non-escrow states where disbursement or recording occurs days after consummation and the actual recording fee is found to be less than disclosed on the Closing Disclosure at consummation. The Bureau is not adopting additional clarification in the final rule because this situation is already addressed in the example in current comment 19(f)(2)(iii)–1.i.

Also, with respect to the comment requesting clarification as to how the delivery of a corrected disclosure under § 1026.19(f)(2)(iii) relates to the right of rescission period under § 1026.23, the Bureau notes that guidance for rescission rights related to closed-end credit can be found in current § 1026.23 and its associated commentary. In addition, one industry commenter recommended that the Bureau amend § 1026.19(f)(2)(iii) to clarify that the post-consummation Closing Disclosure be revised to accurately reflect the changes to any charges that are the subject of the redisclosure, and that the cash to close amount be amended only to reflect the effect of the changed amount. The Bureau is not addressing this issue as part of the final rule. The Bureau did not propose changes in the proposal to address this issue and has not collected sufficient information to address this issue as part of the final rule.

19(f)(2)(v) Refunds Related to the Good Faith Analysis

Comment 19(f)(2)(v)–1 explains that under § 1026.19(f)(2)(v), if amounts paid at consummation exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. Comment 19(f)(2)(v)–1 refers to comment 38(h)(3)–2 for additional guidance on disclosing refunds. The Bureau proposed to revise comment 19(f)(2)(v)–1 to add a cross-reference to proposed comment 38–4. The Bureau also proposed to revise the dollar amounts in the example in comment 19(f)(2)(v)–1 for greater clarity.

A financial holding company asserted that the Bureau's preamble states that the Bureau proposed to amend comment 38(h)(3)–2, but the Bureau failed to provide amended commentary. The commenter requested that the Bureau provide the text of the amended commentary. A mortgage company requested that the Bureau increase the timing requirements for refunds related to the good faith analysis in § 1026.19(f)(2)(v) from 60 days after consummation to the timing under § 1026.43(e)(3)(iii)(B) for a creditor to cure a violation of the qualified mortgage limit on points and fees.

The Bureau is adopting as proposed the revisions to comment 19(f)(2)(v)–1. The Bureau believes the cross-reference to final comment 38–4 is helpful for compliance purposes and the revised example is clearer. Comment 19(f)(2)(v)–1 currently cross-references comment 38(h)(3)–2, and although the Bureau did propose to amend comment 19(f)(2)(v)–1, the Bureau did not propose to amend the cross-reference to comment 38(h)(3)–2 or to amend comment 38(h)(3)–2 itself. Therefore, the Bureau is not amending comment 38(h)(3)–2 in this final rule. The Bureau also is not altering the timing requirements under § 1026.19(f)(2)(v) in this final rule as requested by a commenter. The Bureau believes that the current 60-day period after consummation will give creditors sufficient time to cure tolerance violations. Further, the Bureau believes that extending the cure period further than 60 days after consummation would undermine the incentive for creditors to conduct quality control reviews as soon as reasonably practicable after consummation.

19(f)(3) Charges Disclosed

19(f)(3)(ii) Average Charge

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to comment 19(f)(3)(ii)–3 to reflect a change to the coverage of § 1026.19(f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

19(f)(4) Transactions Involving a Seller

19(f)(4)(i) Provision to Seller

Comment 19(f)(4)(i)–1 explains that the settlement agent complies with § 1026.19(f)(4)(i) either by providing to the seller a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable. Section 1026.38(t)(5)(v) permits the creditor or settlement agent preparing the form to use form H–25 of appendix H for the disclosure provided to both the consumer and the seller, with certain modifications to separate the information of the consumer and seller, as necessary. Section 1026.38(t)(5)(vi) permits certain information to be deleted from the form provided to the seller or a third-party. The Bureau proposed to streamline § 1026.19(f)(4)(i) by replacing unnecessary text with a cross-reference to § 1026.19(e)(1)(i), to streamline comment 19(f)(4)(i)–1, and to add comment 19(f)(4)(i)–2 to clarify that in purchase transactions with simultaneous subordinate financing the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the Closing Disclosure for the first-lien transaction if that Closing Disclosure records the entirety of the seller's transaction.

A trade association commenter supported the clarifying language in the proposed revisions to § 1026.19(f)(4)(i) and its commentary. Other commenters specifically supported the Bureau's proposal in comment 19(f)(4)(i)–2 to clarify that, in a purchase transaction with simultaneous subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the Closing Disclosure for the first-lien transaction if that Closing Disclosure records the entirety of the seller's transaction.

For the reasons discussed below, the Bureau is adopting the proposed amendments to § 1026.19(f)(4)(i) and comment 19(f)(4)(i)–1 as final, and is revising new comment 19(f)(4)(i)–2 for better alignment with comment 19(f)(4)(i)–1. The Bureau believes streamlining § 1026.19(f)(4)(i) and comment 19(f)(4)(i)–1 will aid in industry compliance. Although not raised as a concern by commenters, the Bureau recognizes that as proposed, new comment 19(f)(4)(i)–2 could have appeared to impose additional disclosure requirements for simultaneous subordinate financing. Therefore, the Bureau is revising comment 19(f)(4)(i)–2 to more closely mirror the language of comment 19(f)(4)(i)–1. Final comment 19(f)(4)(i)–2 provides that in a purchase transaction with simultaneous subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the first-lien transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)–1 if the first-lien Closing Disclosure records the entirety of the seller's transaction. If the first-lien Closing Disclosure does not record the entirety of the seller's transaction, comment 19(f)(4)(i)–2 provides that the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with both the first-lien and simultaneous subordinate financing transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)–1. The Bureau concludes that in a purchase transaction with simultaneous subordinate financing, if the Closing Disclosure for the first-lien transaction records the entirety of the seller's transaction, the seller receives no additional benefit from receiving a copy of the § 1026.38 disclosures for the simultaneous subordinate financing.

19(g) Special Information Booklet at Time of Application

19(g)(1) Creditor To Provide Special Information Booklet

As detailed in the section-by-section analysis of § 1026.19, the Bureau is adopting amendments to § 1026.19(g)(1) substantially as proposed. Specifically, § 1026.19(g)(1), as finalized, covers consumer credit transactions secured by real property or a cooperative unit, regardless of whether they are open-end or closed-end transactions (and except as provided in § 1026.19(g)(1)(ii) and (iii)). As finalized, § 1026.19(g)'s coverage continues not to be limited to closed-end transactions (except as provided in § 1026.19(g)(1)(ii) and (iii)).

Section 1026.23 Right of Rescission

23(g) Tolerances for Accuracy

The Bureau's Proposal

TILA section 125 sets forth a consumer's right to rescind certain transactions.[64] For purposes of a consumer's right of rescission, TILA section 106(f)(2)[65] sets forth the applicable tolerances for accuracy of the finance charge[66] and other disclosures affected by any finance charge, which has been understood to include the total of payments.[67] Section 1026.23(g) implements this statutory provision.

As explained more fully in the section-by-section analysis of § 1026.38(o)(1), the finance charge tolerance historically applied to the total of payments because that calculation was affected by the finance charge. However, in the TILA–RESPA Final Rule, the Bureau modified the requirement under TILA section 128(a)(5) to disclose the total of payments as the sum of the amount financed and the finance charge by requiring instead that a creditor disclose the total of payments on the Closing Disclosure as the sum of principal, interest, mortgage insurance, and loan costs. The Bureau believed that modifying the calculation of the total of payments would improve consumer understanding.[68] As explained in the proposal, the Bureau believed it would

[64] 15 U.S.C. 1635.

[65] 15 U.S.C. 1605(f)(2).

[66] Finance charge is defined in TILA section 106(a) (15 U.S.C. 1605(a)). Section 1026.4 implements this definition, provides examples, and excludes certain charges from the finance charge.

[67] *See Carmichael* v. *The Payment Ctr., Inc.,* 336 F.3d 636, 639 (7th Cir. 2003) (interpreting the total of payments as a disclosure affected by the finance charge and therefore subject to the finance charge tolerances as long as a misdisclosure of the total of payments resulted from a misdisclosure of the finance charge).

[68] 78 FR 79730, 80038 (Dec. 31, 2013).

be appropriate to continue to apply the tolerances for the finance charge and disclosures affected by the finance charge to the modified total of payments calculation. Accordingly, the Bureau proposed to revise § 1026.23(g) to apply the same tolerances for accuracy to the total of payments for purposes of the Closing Disclosure that already apply to the finance charge and other disclosures affected by the finance charge. The Bureau sought comment on these proposed revisions to § 1026.23(g).

Comments Received

Comments received on the proposed tolerances for the total of payments apply generally to both §§ 1026.23(g) and 1026.38(o)(1). See the discussion below in the section-by-section analysis of § 1026.38(o)(1) for a summary of and responses to those comments.

The Final Rule

For the reasons discussed below in the section-by-section analysis of § 1026.38(o)(1), the Bureau adopts the revisions to § 1026.23(g) as proposed. Specifically, the Bureau redesignates current § 1026.23(g)(1) and (2) as § 1026.23(g)(1)(i) and (2)(i) and amends § 1026.23(g)(1)(ii) to provide that, in general, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 if the disclosed total of payments: (A) Is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or (B) is greater than the amount required to be disclosed. The Bureau further amends § 1026.23(g)(2)(ii) to provide that, in a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 1026.32), if there is no new advance and no consolidation of existing loans, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 if the disclosed total of payments (A) is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or (B) is greater than the amount required to be disclosed. The Bureau also adopts new comment 23(g)–1 as proposed, which references the examples set forth in new comment 38(o)–1 that illustrate the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

Legal Authority

The Bureau revises § 1026.23(g) to apply the same tolerances for accuracy of the finance charge and other disclosures affected by the finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).[69] Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute.

The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted below in the section-by-section analysis of § 1026.38(o)(1), the Bureau has concluded that the tolerances for the total of payments promote consistency with the tolerances in effect before the TILA–RESPA Final Rule. The Bureau therefore believes that the tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in revised § 1026.23(g)(1)(ii) and (2)(ii), which are identical to the finance charge tolerances provided by Congress in TILA section 106(f), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

23(h) Special Rules for Foreclosures

23(h)(2) Tolerance for Disclosures

The Bureau's Proposal

For purposes of exercising rescission rights after the initiation of foreclosure, TILA section 125(i)(2) explains that the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed.[70] Section 1026.23(h)(2) implements this statutory provision.

As explained more fully above in the section-by-section analysis of § 1026.23(g) and below in the section-by-section analysis of § 1026.38(o)(1), the finance charge tolerance historically applied to the total of payments because that calculation was affected by the finance charge. For the reasons discussed in the section-by-section analyses of §§ 1026.23(g) and 1026.38(o)(1), the Bureau proposed to revise § 1026.23(h)(2) to apply the same tolerances for accuracy to the total of payments for purposes of the Closing Disclosure that already apply to the finance charge and other disclosures affected by the finance charge. The Bureau sought comment on the proposed amendment to § 1026.23(h)(2) and its commentary.

Comments Received

Comments received on the proposed tolerances for the total of payments generally apply to both §§ 1026.23(h)(2) and 1026.38(o)(1). See the discussion below in the section-by-section analysis of § 1026.38(o)(1) for a summary of and responses to those comments.

The Final Rule

For the reasons discussed below in the section-by-section analysis of § 1026.38(o)(1), the Bureau adopts the revisions to § 1026.23(h)(2) as proposed. Specifically, the Bureau redesignates current § 1026.23(h)(2) as § 1026.23(h)(2)(i) and amends § 1026.23(h)(2)(ii) to provide that, after the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 if the disclosed total of payments: (A) Is understated by no more than $35; or (B) is greater than the amount required to be disclosed.

The Bureau revises comment 23(h)(2)–1 to also explain that, for each transaction subject to § 1026.19(e) and (f), § 1026.23(h)(2) is based on the accuracy of the total of payments, taken as a whole, rather than its component charges. The Bureau also adopts new comment 23(h)(2)–2 as proposed, which references the examples set forth in new comment 38(o)–1 that illustrate the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

Legal Authority

The Bureau revises § 1026.23(h)(2) to apply the same tolerances for accuracy of the finance charge and other disclosures affected by the finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).[71] Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute.

[69] 15 U.S.C. 1631(d).

[70] 15 U.S.C. 1635(i)(2).

[71] 15 U.S.C. 1631(d).

The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted below in the section-by-section analysis of § 1026.38(o)(1), the Bureau has concluded that the tolerances for the total of payments promote consistency with the tolerances in effect before the TILA–RESPA Final Rule. The Bureau therefore believes that the tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in revised § 1026.23(h)(2)(ii), which are identical to the finance charge tolerances provided by Congress in TILA section 125(i)(2), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

Section 1026.25 Record Retention

25(c) Records Related to Certain Requirements for Mortgage Loans

25(c)(1) Records Related to Requirements for Loans Secured by Real Property

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to the paragraph title for § 1026.25(c)(1), and a subheading for the commentary to § 1026.25(c)(1), to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

37(a) General Information

37(a)(7) Sale Price

Comment 37(a)(7)–1 explains the requirement in § 1026.37(a)(7)(ii) to provide the estimated value of the property in transactions where there is no seller. The comment explains that, where there is no seller, the creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, use that estimate. The Bureau proposed to revise comment 37(a)(7)–1 to clarify that, if a creditor has performed its own estimate of the property value by the time the disclosure is provided to the consumer, the creditor must disclose its own estimate under § 1026.37(a)(7)(ii).

One industry commenter requested that, with respect to a transaction involving construction where there is no seller, the Bureau clarify that the creditor must disclose under § 1026.37(a)(7)(ii) the value of the underlying lot at the time of issuing the Loan Estimate, irrespective of what the projected value of the property may be after construction is finished because the value of the land would be the value of the property at the time the Loan Estimate is given. This commenter also asked the Bureau to clarify the disclosure requirement on the Closing Disclosure under § 1026.38(a)(3)(vii) for the appraised value for a transaction involving construction where there is no seller. The commenter asked for clarification on whether the creditor must disclose only the value of the underlying lot, or instead must disclose the projected value of the completed project after construction is finished that was used to determine approval of the credit transaction.

The Bureau is adopting the proposed modifications to comment 37(a)(7)–1, with revisions. As discussed in more detail below, the Bureau is adopting the proposed change to final comment 37(a)(7)–1. Also, in response to the comment discussed above, the Bureau is revising comment 37(a)(7)–1 to provide additional guidance on how creditors may make the disclosures under § 1026.37(a)(7)(ii) with respect to transactions involving construction where there is no seller.

Current comment 37(a)(7)–1, in part, provides that in transactions where there is no seller, such as in a refinancing, § 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) at the time the disclosure is issued to the consumer. The commenter appears to read the language ''at the time the disclosure is issued to the consumer'' to mean that for transactions involving construction where there is no seller, the creditor must disclose the value of the land under § 1026.37(a)(7)(ii), irrespective of what the projected value of the property may be after construction is finished, because the value of the land would be the value of the property at the time the Loan Estimate is given. At the time the Loan Estimate is given, the improvements to be made to the land have not been completed. Nonetheless, the Bureau notes that the language ''at the time of the disclosure'' instead is intended to indicate that the disclosure of the estimated value of the property must be based on the best information reasonably available to the creditor at the time the disclosure is provided, consistent with the general standard set forth for accuracy of the Loan Estimate disclosures in comment 19(e)(1)(i)–1. To make this clearer, the Bureau is revising comment 37(a)(7)–1 to indicate that where there is no seller, § 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. To facilitate compliance, the Bureau also is revising comment 37(a)(7)–1 to clarify that for transactions involving construction where there is no seller, the estimated value of the property may include, at the creditor's option, the estimated value of the improvements to be made on the property. Alternatively, the creditor in transactions involving construction where there is no seller may disclose under § 1026.37(a)(7)(ii) the estimated value of the property that does not include the estimated value of the improvements to be made on the property.

The Bureau believes that this flexibility will give a creditor the option of maintaining consistency between the disclosure of the estimated value of the property in the Loan Estimate under § 1026.37(a)(7) and the disclosure of the value of the property in the Closing Disclosure under § 1026.38(a)(3)(vii) in transactions involving construction where there is no seller. As discussed in the section-by-section analysis of § 1026.38(a)(3)(vii), current comment 38(a)(3)(vii)–1 provides that, for transactions without a seller, the creditor must disclose on the Closing Disclosure under § 1026.38(a)(3)(vii) the value of the property that is used to determine the approval of the credit transaction. The Bureau is revising comment 38(a)(3)(vii)–1 to make clear that, for transactions involving construction where there is no seller, the creditor must disclose the value of the property that is used to determine the approval of the credit transaction, including improvements to be made on the property if those improvements are used in determining the approval of the credit transaction. Thus, if a creditor includes improvements to be made on a property in determining the approval of a credit transaction involving construction where there is no seller, the creditor must include the improvements in the disclosure of the value of the property on the Closing Disclosure under § 1026.38(a)(3)(vii). Final comment 37(a)(7)–1 allows a creditor the flexibility to include the improvements into the estimated value of the property disclosed on the Loan Estimate under § 1026.37(a)(7), which gives the creditor the option of maintaining consistency between the disclosure that is given on the Loan Estimate under § 1026.37(a)(7) and the disclosure that will be given on the Closing Disclosure under § 1026.38(a)(3)(vii) by including improvements to be made in both disclosures. On the other hand, if a creditor does not include improvements to be made on the property in determining the approval of a credit transaction involving construction where there is no seller, the creditor must not include the improvements in the disclosure of the value of the property on the Closing Disclosure under § 1026.38(a)(3)(vii). Final comment 37(a)(7)–1 allows a creditor the flexibility not to include the improvements into the estimated value of the property disclosed under § 1026.37(a)(7), which gives the creditor the option of maintaining consistency between the disclosure that is given on the Loan Estimate under § 1026.37(a)(7) and the disclosure that will be given on the Closing Disclosure under § 1026.38(a)(3)(vii) by not including improvements to be made in both disclosures.

Current comment 37(a)(7)–1 also provides, in part, that the creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, use that estimate. If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction. Consistent with the proposal, the Bureau is revising comment 37(a)(7)–1 to clarify that, if a creditor has performed its own estimate of the property value by the time the disclosure is provided to the consumer, the creditor must disclose its own estimate rather than disclose an estimate provided by the consumer at application.

Cooperatives

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to comment 37(a)(7)–2 to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

37(a)(8) Loan Term

Section 1026.37(a)(8) requires disclosure of the term to maturity of the credit transaction. The Bureau proposed to add comment 37(a)(8)–3 to provide a cross-reference to proposed new comment app. D–7.i, which explains the disclosure of the loan term for a construction-permanent loan, taking into account the unique features of such a transaction.

Commenters generally appreciated the additional clarification provided by comment 37(a)(8)–3 and comment app. D–7.i. However, two commenters indicated the cross-references to comment 37(a)(8)–3 in proposed comment app. D–7.i were not clear. Although both comments app. D–7.i.A and B referred to comment 37(a)(8)–3 as providing relevant explanations, comment 37(a)(8)–3, as proposed, provided a cross-reference but did not include any explanations. Two commenters also requested the Bureau clarify that the loan term for construction loans is determined using the approach applicable to non-construction loans in addition to the construction-specific clarifications provided in comment 37(a)(8)–3 and comment app. D–7.i.

For the reasons explained in the discussion of comment app. D–7.i, below, the Bureau is finalizing comment 37(a)(8)–3 as proposed. The Bureau is not including more than a cross-reference to comment app. D–7.i in comment 37(a)(8)–3. As explained in the section-by-section analysis of comment app. D–7.i, sections, such as § 1026.17(c)(3) and (c)(4), are applicable in determining the impact of minor variations in the number of days counted for the loan term, as well as other disclosures, as applicable. In order to avoid creating an impression that only § 1026.17(c)(3) applies for purposes of construction and construction-permanent disclosures to the exclusion of other potentially applicable sections, the Bureau declines to add further clarification in comment 37(a)(8)–3 about the applicability of other sections to determining the loan term for loans.

37(a)(9) Purpose

Section 1026.37(a)(9) requires a creditor to disclose on the Loan Estimate the consumer's intended use for the credit, labeled ''Purpose.'' Comment 37(a)(9)–1.i explains that the creditor must disclose the loan purpose as ''Purchase'' when the consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. Because the proceeds from simultaneous subordinate financing in a purchase transaction are used to purchase the property that will secure the extension of credit, the Bureau proposed to amend comment 37(a)(9)–1.i to clarify that simultaneous subordinate financing used to purchase the property is disclosed with the purpose ''Purchase'' under § 1026.37(a)(9). The Bureau also proposed to make a minor technical revision to comment 37(a)(9)–1.iii to change the phrase ''construction-to-permanent'' to ''construction-permanent'' for consistency with terminology used elsewhere in the proposed rule.

The Bureau received one comment responsive to the proposals to amend comments 37(a)(9)–1.i and 37(a)(9)–1.iii. A title insurance company stated that the Bureau should provide a corresponding amendment that pertains to the Closing Disclosure.

For the reasons discussed below, the Bureau is adopting the amendment to comment 37(a)(9)–1.i as proposed with a technical revision and the technical revision to comment 37(a)(9)–1.iii as proposed with an additional revision. As discussed above, a commenter requested that the Bureau provide an amendment for the Closing Disclosure comparable to that in comment 37(a)(9)–1.i. The Bureau concludes that a corresponding amendment for the Closing Disclosure is not necessary because the Closing Disclosure's requirement to disclose the loan purpose, in § 1026.38(a)(5)(ii), specifically cross-references the disclosure required by § 1026.37(a)(9), which also includes the commentary to § 1026.37(a)(9). An additional conforming amendment is being made to comment 37(a)(9)–1.iii to include a cross-reference to comment 17(c)(6)–5, which is being amended as discussed above in the section-by-section analysis of § 1026.17(c)(6) and provides additional guidance on disclosing construction-permanent loans.

37(a)(10) Product

Section 1026.37(a)(10) requires a description of the loan product to be disclosed, including the features that may change the periodic payment. Comment 37(a)(10)–2.ii explains disclosure of the interest-only feature. The Bureau proposed to add a cross-reference in comment 37(a)(10)–2.ii to proposed comment app. D–7.ii, which explained the disclosure of the time period of the interest-only feature for a construction loan or a construction-permanent loan.

The Bureau did not receive comments on adding a cross-reference to comment app. D–7.ii into comment 37(a)(10)–2.ii. The Bureau is adopting as proposed the revision to comment 37(a)(10)–2.ii.

37(a)(13) Rate Lock

The Bureau's Proposal

Section 1026.37(a)(13) requires creditors to disclose the date and time at which estimated closing costs expire. Section 1026.19(e)(3)(iv)(E) provides that, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed on the Loan Estimate (*i.e.,* the creditor may reset the applicable tolerance) if the consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided under § 1026.19(e)(1)(iii). The Bureau proposed to amend comment 37(a)(13)–2 to clarify the relationship between the expiration date disclosure under § 1026.37(a)(13)(ii) and the ability to reset tolerances under § 1026.19(e)(3)(iv)(E). The Bureau also proposed to amend comment 37(a)(13)–2 by adding a cross-reference to new proposed comment 19(e)(3)(iv)(E)–2, which would clarify when the creditor may use a revised estimate of a charge for the purposes of determining good faith under § 1026.19(e)(3)(i) and (ii) in circumstances where the creditor voluntarily extends the period for which it will honor the estimated charges disclosed on the Loan Estimate for a period beyond 10 business days. The Bureau further proposed to add new comment 37(a)(13)–4,[72] to clarify that, once the consumer has indicated an intent to proceed with the transaction, the date and time at which estimated closing costs expire would be left blank on revised Loan Estimates, if any.

Comments Received

Some industry commenters supported the revisions to comment 37(a)(13)–2 and proposed new comment 37(a)(13)–4. A vendor and two State trade association commenters stated that the last sentence of the § 1026.37(a)(13) disclosure on form H–24 of appendix H, which begins with the phrase ''All other estimated closing costs expire on'' and includes the date and time when the charges unrelated to the interest rate expire, should be either deleted on revised Loan Estimates after the consumer has expressed an intention to proceed or completed with the term ''N/A.'' One industry commenter stated a concern about the applicability of an extended expiration period to loans that would be in process when revised comment 37(a)(13)–2 and new comment 37(a)(13)–4 are effective, and indicated that changing the expiration period for loans in process could be difficult for creditors. One vendor and an industry commenter stated that there should be no change to the expiration dates because no consumer testing was conducted on the change, and that the change could prompt consumer confusion and mistrust of creditors. A vendor group stated that the proposed revisions could be read to require the disclosure of a 10-day expiration date, with any potential extension documented outside the disclosures.

The Final Rule

For the reasons discussed below, the Bureau is adopting revised comment 37(a)(13)–2 as proposed and new comment 37(a)(13)–4 as proposed. In response to commenters' suggestions to require the deletion of the sentence, ''All other estimated closing costs expire on,'' on the first page of the Loan Estimate or to complete the sentence with the term ''N/A,'' the Bureau notes that new comment 37(a)(13)–4 was intended to provide guidance with respect to expiration-date disclosures on any revised Loan Estimates provided once a consumer has indicated an intent to proceed. However, the Bureau did not propose modifications to the Loan Estimate form itself.[73] In addition, the terms ''N/A'' or ''not applicable'' are not permitted to be used on the Loan Estimate.[74] Regarding commenters' concerns relating to the effect of the proposed revised comment 37(a)(13)–2 and proposed new comment 37(a)(13)–4 on loans that are already in process when the provisions are effective, the date disclosed on the initial Loan Estimate provided by the creditor controls the length of the expiration period. For loans where the initial Loan Estimate discloses a 10-day expiration date, nothing in current Regulation Z requires a creditor to subsequently permit a longer time period. Once the consumer has expressed an intention to proceed, the expiration date is moot for the purposes of the Loan Estimate, as the amounts disclosed provide the applicable baseline for the good faith tolerance requirements under § 1026.19(e)(3). Accordingly, the disclosure of the expiration date on revised Loan Estimates provided after the consumer indicates an intention to proceed does not change the validity of the charges disclosed on the Loan Estimate. Regarding suggestions that consumer testing is necessary for various permutations of the disclosure on revised Loan Estimates provided after the consumer indicates an intention to proceed, the Bureau does not consider additional consumer testing to be necessary in this instance. The general rule of leaving inapplicable disclosures blank on the Loan Estimate furthers the goals of reducing information overload.[75] As to the commenter that stated that the proposed revisions could be read to require the disclosure of a 10-day expiration date, the Bureau believes that revised comment 37(a)(13)–2 is clear that the creditor may choose a longer expiration period, and that the cross-reference to comment 19(e)(3)(iv)(E)–2, which also explicitly references the permission of the creditor to set a longer time period under § 1026.19(e)(3)(iv)(E), provides sufficient clarity to creditors. Accordingly, the Bureau is adopting revised comment 37(a)(13)–2 as proposed and new comment 37(a)(13)–4 as proposed.

37(b) Loan Terms

37(b)(1) Loan Amount

Section 1026.37(b)(1) currently requires the disclosure on the Loan Estimate of the amount of credit to be extended under the terms of the legal obligation, labeled ''Loan Amount.'' To reduce inconsistent language in Regulation Z and facilitate compliance, the Bureau proposed to revise § 1026.37(b)(1) to indicate that the loan amount disclosed on the Loan Estimate (and, accordingly, on the Closing Disclosure) would be the total amount the consumer will borrow, as reflected by the face amount of the note. This language parallels that of § 1026.32(c)(5), which requires the disclosure of the total amount the consumer will borrow, as reflected by the face amount of the note for loans subject to the Home Ownership and

[72] Although the proposed amendatory instructions in the proposal correctly labeled this new comment as 37(a)(13)–4, the accompanying section-by-section analysis of § 1026.37(a)(13) inadvertently described the proposed comment as ''new comment 37(a)(13)–3.'' There is an existing comment 37(a)(13)–3 concerning time zones in the Official Interpretations of Regulation Z, and no modification of existing comment 37(a)(13)–3 was proposed.

[73] 81 FR 54317, 54320 (Aug. 15, 2016).

[74] *See* comment 37–1.

[75] 78 FR 79730, 79742 (Dec. 31, 2013).

Equity Protection Act (HOEPA). Commenters stated that they agreed that the proposed revision would clarify the amount to be disclosed and supported the proposed revision. Accordingly, the Bureau is adopting the proposed revision to § 1026.37(b)(1).

37(b)(2) Interest Rate

Section 1026.37(b)(2) requires disclosure of the interest rate that will be applicable to the transaction at consummation. The Bureau proposed to add a cross-reference in comment 37(b)(2)–1 to proposed comment app. D–7.iii, which, as discussed further below, explained the disclosure of the permanent financing interest rate for a construction-permanent loan.

The Bureau did not receive comments on the addition of the cross-reference in comment 37(b)(2)–1 to proposed comment app. D–7.iii. The Bureau is adopting as proposed the revision to comment 37(b)(2)–1.

37(b)(3) Principal and Interest Payment

Section 1026.37(b)(3) requires disclosure of the initial periodic payment amount. The Bureau proposed to add a cross-reference in comment 37(b)(3)–2 to proposed comment app. D–7.iv, which explained the disclosure of an initial periodic payment for a construction or construction-permanent loan.

The Bureau did not receive comments on the addition of the cross-reference in comment 37(b)(3)–2 to proposed comment app. D–7.iv. However, because, as discussed below, the Bureau is not adopting proposed comment app. D–7.iv, the Bureau is not adopting the proposed revision to comment 37(b)(3)–2.

37(b)(6) Adjustments After Consummation

37(b)(6)(iii) Increase in Periodic Payment

Section 1026.37(b)(6)(iii) requires disclosures of increases in the periodic payment if the periodic payment may increase after consummation. The Bureau proposed to add a cross-reference in comment 37(b)(6)(iii)–1 to proposed comment app. D–7.v, which, as discussed further below, explained the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.

The Bureau did not receive comments on the addition of the cross-reference in comment 37(b)(6)(iii)–1 to proposed comment app. D–7.v. The Bureau is adopting as proposed the revision to comment 37(b)(6)(iii)–1, but, because proposed comment app. D–7.iv is not being adopted, the reference to comment app. D–7.v is renumbered as comment app. D–7.iv.

37(c) Projected Payments

Section 1026.37(c) requires itemization of each separate periodic payment or range of payments. As described below, the Bureau proposed to amend the commentary accompanying § 1026.37(c), (c)(1)(iii)(B), and (c)(4)(iv). The Bureau proposed to add new comment 37(c)–2 to provide a cross-reference to comment app. D–7.vi, which explains the projected payments disclosure for a construction or construction-permanent loan.

The Bureau did not receive comments on the addition of the cross-reference in comment 37(c)–2 to proposed comment app. D–7.vi. The Bureau is adopting as proposed the revision to comment 37(c)–2, but, because proposed comment app. D–7.iv is not being adopted, the reference to comment app. D–7.vi is renumbered as comment app. D–7.v.

37(c)(1) Periodic Payment or Range of Payments

37(c)(1)(iii)

37(c)(1)(iii)(B)

The Bureau's Proposal

Section 1026.37(c) requires creditors to disclose an itemization of the periodic payments. Under certain circumstances, described in § 1026.37(c)(1)(iii), creditors must disclose the minimum and maximum periodic payment amounts (the range). Section 1026.37(c)(1)(iii)(B) requires disclosing the range when the periodic principal and interest payment may change more than once during a single year. Section 1026.37(c)(1)(iii)(B) also requires disclosing the range when the periodic principal and interest payment may change during the same year as the initial periodic payment. Generally, pursuant to § 1026.37(c)(3)(ii), periodic payments or ranges of payments must be disclosed under a subheading that states the years of the loan during which the payment or range of payments will apply.

Comment 37(c)(1)(iii)(B)–1 illustrates the disclosure of ranges of payments when multiple changes to periodic principal and interest payments occur during a single year. One of the examples in that comment involves a loan payment that adjusts upward at three months and at six months, adjusts once more at 18 months, and becomes fixed thereafter. The Bureau identified inconsistencies between that commentary example and the requirements of § 1026.37(c)(1). Specifically, that commentary example calls for disclosing as a single range in year two: The payment that would apply on the first anniversary of the due date of the initial periodic payment; and the periodic payment that would apply after the payment adjustment that occurs at 18 months. However, § 1026.37(c)(1)(iii)(B) does not require disclosing a range merely because the periodic principal and interest payment may change once during a single year (unless such change may occur during the same year as the initial periodic payment). Nor does any other provision of § 1026.37(c)(1) require disclosing a range in that circumstance. The same example in comment 37(c)(1)(iii)(B)–1 also calls for an additional separate payment disclosure specifically for ''the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the second year of the loan.'' However, nothing in § 1026.37(c)(1) requires disclosing an additional separate payment disclosure for an anniversary in that circumstance. For example, § 1026.37(c)(1)(i)(D) does not require an additional separate payment disclosure for an anniversary unless the anniversary ''immediately follows'' the occurrence of multiple events whereby the periodic principal and interest payment may change during a single year.

The Bureau proposed revisions to that example in comment 37(c)(1)(iii)(B)–1 to harmonize it with the requirements of § 1026.37(c)(1). As proposed, rather than disclosing as a single payment range, the example calls for separately disclosing, under a year two subheading, the payment that would apply on the first anniversary of the due date of the initial periodic payment and, under a year three subheading, the payment that would apply after the payment adjustment that occurs at 18 months. However, the Bureau requested comment on whether the text of § 1026.37(c)(1) should be amended to conform to the example in comment 37(c)(1)(iii)(B)–1 (instead of amending the comment to conform to the text of § 1026.37(c)(1)). The Bureau also requested comment on whether, rather than complying with a single, mandatory approach, creditors should have the discretion to disclose payments or ranges of payments in conformity with either the text of § 1026.37(c)(1) or the current examples in comment 37(c)(1)(iii)(B)–1.

Comments Received

A vendor supported the proposed amendments to comment 37(c)(1)(iii)(B)–1 to harmonize it with the requirements of § 1026.37(c)(1). The vendor stated that the proposed amendments are consistent with current comment 37(c)(3)(ii)–1, which provides that: If an event requiring an additional separate payment disclosure occurs on a date (*e.g.,* at 18 months) other than the anniversary of the due date of the initial periodic payment, and if no other events occur during that single year (*e.g.,* during year two) that otherwise require disclosure of multiple events under § 1026.37(c)(1)(iii)(B), then such payment event is disclosed beginning in the next year in the sequence (*e.g.,* in year three); in other words, under both current comment 37(c)(3)(ii)–1 and proposed comment 37(c)(1)(iii)(B)–1, the payment event that occurs at 18 months is not disclosed as part of a range of payments in year two. The vendor further stated that, in the section-by-section analysis of § 1026.37(c)(3) in the TILA–RESPA Final Rule, the Bureau expressly concluded that such approach in current comment 37(c)(3)(ii)–1 ensures that consumers receive a disclosure that clearly and accurately discloses future changes to periodic payments.[76] The vendor asserted that that conclusion in the TILA–RESPA Final Rule similarly supports proposed comment 37(c)(1)(iii)(B)–1.

Regarding alternatives, the vendor stated that system reprogramming would be more complicated if the Bureau were to amend the text of § 1026.37(c)(1) to conform to the example in comment 37(c)(1)(iii)(B)–1 (instead of finalizing proposed comment 37(c)(1)(iii)(B)–1 to conform it to the text of § 1026.37(c)(1)). The vendor stated that conforming to comment 37(c)(1)(iii)(B)–1 would then require determining not only whether a change of payments occurred within a single year, but also require looking to previous years to determine whether multiple changes occurred in those years, in order to determine whether a year with a singular triggering event under § 1026.37(c)(1)(i)(A) should be treated as having multiple changes under § 1026.37(c)(1)(iii)(B), because the year before it had multiple changes (and whether such year had to be treated as having multiple triggering events as well, even though there is only a singular triggering event under § 1026.37(c)(1)(i)(A), because the year prior to the previous year had multiple triggering events).

The vendor objected to the possibility that, rather than requiring compliance with a single, mandatory approach, the Bureau might provide creditors with the discretion to disclose in conformity with either the current text of § 1026.37(c)(1) or the current examples in comment 37(c)(1)(iii)(B)–1. The vendor stated that such creditor discretion and lack of uniformity would inhibit consumers' ability to comparison shop.

A trade association objected to proposed comment 37(c)(1)(iii)(B)–1 as overly prescriptive and requested that creditors be afforded greater flexibility in deciding how to provide disclosures to consumers. A vendor requested that, instead of finalizing proposed comment 37(c)(1)(iii)(B)–1 to conform it to the text of § 1026.37(c)(1), the Bureau amend the text of § 1026.37(c)(1) to conform to the example in comment 37(c)(1)(iii)(B)–1. The vendor asserted that doing so would be more useful to consumers because, for example, a payment event that occurs at 18 months would be disclosed as part of a range of payments in year two, even if no other events occur during year two that require disclosure of multiple events under § 1026.37(c)(1)(iii)(B). The vendor stated that, where proposed comment 37(c)(1)(iii)(B)–1 would have such payment event disclosed in year three, but not in year two, the projected payments table would cause the consumer to believe mistakenly that the payment does not change in year two. The vendor further stated that, for those creditors whose current systems were programmed in reliance on current comment 37(c)(1)(iii)(B)–1, it would be extremely burdensome if the Bureau were to finalize proposed comment 37(c)(1)(iii)(B)–1 to conform it to the text of § 1026.37(c)(1). An individual compliance professional also requested that the Bureau amend the text of § 1026.37(c)(1) to conform to the example in comment 37(c)(1)(iii)(B)–1 and further requested that that approach be mandatory for all creditors.

A vendor group discussed how either alternative (*i.e.,* finalizing proposed comment 37(c)(1)(iii)(B)–1 to conform it to the current text of § 1026.37(c)(1) or, instead, amending the text of § 1026.37(c)(1)) could address uncertainty. The vendor group requested that, either way, the Bureau require compliance with a single, mandatory approach.

The vendor group noted that current § 1026.37(c)(1) does not provide for consistent disclosure of payment changes. During the same year as the initial periodic payment (*i.e.,* in year one), § 1026.37(c)(1)(iii)(B) calls for disclosing any payment change, even a single payment change, as part of a range in year one. But in years other than year one (*e.g.,* in year two), § 1026.37(c)(1)(iii)(B) calls for disclosing a range only if there are multiple payment changes in a single year. Otherwise, consistent with current comment 37(c)(3)(ii)–1, a single payment change is disclosed beginning in the next year in the sequence, *e.g.,* in year three (and not as part of a range in year two).

The vendor group requested that, if the Bureau finalizes proposed amendments to comment 37(c)(1)(iii)(B)–1 to conform it to the current text of § 1026.37(c)(1), the Bureau also amend § 1026.37(c)(1)(iii)(B) to further clarify that a range is disclosed when an event described in § 1026.37(c)(1)(i)(A) occurs prior to the first anniversary date of the date the initial periodic payment is due. The vendor group also requested that the Bureau make certain additional clarifying amendments to the introductory sentence of comment 37(c)(1)(iii)(B)–1 and to the example of a payment adjustment that occurs at 18 months in comment 37(c)(1)(ii)(B)–1.iii. The vendor group requested an implementation period of up to one year for reprogramming.

The Final Rule

For the reasons discussed below, the Bureau is adopting the revisions to comment 37(c)(1)(iii)(B)–1 substantially as proposed but with certain minor changes. The Bureau concludes that comment 37(c)(1)(iii)(B)–1 as finalized is consistent with the requirements of § 1026.37(c)(1) as well as comment 37(c)(3)(ii)–1. As stated in the section-by-section analysis of § 1026.37(c)(3) in the TILA–RESPA Final Rule, the approach in current comment 37(c)(3)(ii)–1 ensures that consumers receive a disclosure that clearly and accurately discloses future changes to periodic payments.[77] The Bureau declines to adopt the alternative of amending the text of § 1026.37(c)(1) and comment 37(c)(3)(ii)–1 to conform to the example in current comment 37(c)(1)(iii)(B)–1 because, as noted above, that would unnecessarily require disclosing ranges and additional separate payments in more circumstances without providing overall benefit to consumers. The Bureau also concludes that a single, mandatory approach with respect to complying with § 1026.37(c)(1)(iii)(B) and comment 37(c)(1)(ii)(B)–1 will facilitate consumers' ability to comparison shop.

As to the commenter's concern that current § 1026.37(c)(1) does not provide for consistent disclosure of payment changes because § 1026.37(c)(1)(iii)(B) distinguishes between changes

[76] *See* 78 FR 79730, 79945 (Dec. 31, 2013).

[77] 78 FR 79730, 79945 (Dec. 31, 2013).

occurring in year one versus those occurring in other years, and also distinguishes between a year with multiple changes versus a year with a single change, the Bureau again declines to revisit major policy decisions in this rulemaking. Unlike the example in current comment 37(c)(1)(iii)(B)–1, which is being amended here because its contradiction of § 1026.37(c)(1) and comment 37(c)(3)(ii)–1 generated uncertainty, the Bureau believes that the distinctions in § 1026.37(c)(1)(iii)(B) are clear and, for a given type of loan, provide that all creditors will disclose the loan's payment provisions in the same manner. As to commenters' request to amend § 1026.37(c)(1)(iii)(B) to further clarify that a range is disclosed when an event described in § 1026.37(c)(1)(i)(A) occurs prior to the first anniversary date of the date the initial periodic payment is due, the Bureau concludes that such amendment is not warranted as § 1026.37(c)(1)(iii)(B) already provides for disclosing a range when an event described in § 1026.37(c)(1)(i)(A) occurs during the same year as the initial periodic payment or range of payments.

In part in response to commenters' concerns, the Bureau is finalizing the introductory sentence of comment 37(c)(1)(iii)(B)–1 with the phrase ''multiple changes,'' instead of ''changes,'' to further emphasize that § 1026.37(c)(1)(iii)(B) does not require disclosing a range merely because the periodic principal and interest payment may change once during a single year. The Bureau concludes that doing so will further alleviate uncertainty regarding this comment. Moreover, to provide clarification, the example in comment 37(c)(1)(iii)(B)–1.iii includes a cross-reference to § 1026.37(c)(3)(ii) and, consistent with current comment 37(c)(3)(ii)–1, expressly states that, beginning in the next year in the sequence (*i.e.,* in year three), the creditor separately discloses the periodic payment that would apply after the payment adjustment that occurs at 18 months.

In response to the commenter's request for an implementation period of up to one year with respect to this aspect of the proposal, as discussed in part VI below, the rule will be effective 60 days from publication in the **Federal Register**, but there will be an optional compliance period in effect until October 1, 2018. During the optional compliance period, a creditor has the option of complying based on the example in current comment 37(c)(1)(iii)(B)–1.

37(c)(4) Taxes, Insurance, and Assessments

37(c)(4)(iv)

Section 1026.37(c)(4) requires the disclosure on the Loan Estimate of the amount of periodic payments for taxes, insurance, and assessments. Section 1026.37(c)(4)(iv) requires a statement of whether the amounts disclosed under § 1026.37(c)(4)(ii) include payments for property taxes, amounts identified in § 1026.4(b)(8), and other amounts described under § 1026.37(c)(4)(ii) along with a description of any such other amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds. Comment 37(c)(4)(iv)–2 explains that creditors may indicate that only some of the amounts disclosed under § 1026.37(c)(4)(ii) will be paid using escrow account funds when that is the case. In the January 2015 Amendments, the Bureau removed ''other than amounts for payments of property taxes or homeowner's insurance'' from comment 37(c)(4)(iv)–2 to permit creditors to disclose that only a portion of the property taxes or homeowner's insurance payments were being paid from escrow, consistent with other situations where the creditor pays only a portion of the disclosed amounts from escrow.

In the preamble to the proposal the Bureau noted that it understands that uncertainty remains over the disclosure that only a portion of the property taxes and homeowner's insurance payments will be paid from escrow. The Bureau proposed to revise comment 37(c)(4)(iv)–2 to clarify that creditors may indicate that a portion of the property taxes and homeowner's insurance will be paid by the creditor using funds from the escrow account when that is the case.

The Bureau is finalizing as proposed the revisions to comment 37(c)(4)(iv)–2. The Bureau received two comments in support of the proposed revision to comment 37(c)(4)(iv)–2. However, one commenter asked the Bureau to define and address whether builder's risk insurance is considered homeowner's insurance for purposes of the disclosures under § 1026.37(c)(4). The Bureau notes that it did not propose to address this matter in the proposal, and that treatment of builder's risk insurance premiums for purposes of these disclosures on the Loan Estimate may depend on the facts and context. Accordingly, the finalized revisions to comment 37(c)(4)(iv)–2 do not address the issue raised by the commenter.

37(c)(5) Calculation of Taxes and Insurance

37(c)(5)(i)

As detailed in the section-by-section analysis of § 1026.19, the Bureau is adopting amendments to § 1026.37(c)(5)(i) substantially as proposed. Section 1026.37(c)(5)(i), as finalized, specifically references the real property or cooperative unit securing the transaction. This conforming amendment to § 1026.37(c)(5)(i) reflects the change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

37(d) Costs at Closing

37(d)(2) Optional Alternative Table for Transactions Without a Seller or for Simultaneous Subordinate Financing

The Bureau's Proposal

Section 1026.37(d)(2) only permits creditors to use the optional alternative table in transactions without a seller. The Bureau has provided informal guidance that, in purchase transactions with simultaneous subordinate financing, the optional alternative table may be used for the simultaneous subordinate financing Loan Estimate if the first-lien Closing Disclosure will record the entirety of the seller's transaction and the seller did not contribute to the cost of the subordinate financing. The Bureau proposed to amend § 1026.37(d)(2) and comment 37(d)(2)–1 to clarify that creditors may use the optional alternative table for simultaneous subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau specifically sought comment on whether it is appropriate to limit use of the optional alternative table for the disclosure of simultaneous subordinate financing purchase transactions to situations in which the first-lien Closing Disclosure will record the entirety of the seller's transaction.

Comments Received

Commenters included a title insurance company, software vendors, a bank, a loan originator, and a compliance professional. Most commenters supported the Bureau's proposal to allow the use of the optional alternative table if the first-lien Closing Disclosure will record the entirety of the seller's transaction. One commenter questioned what disclosures should be used when the optional alternative tables were used on the Loan Estimate because the creditor correctly concludes, based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer, that the Closing Disclosure for the first-lien loan will record the entirety of the seller's transaction, but a seller later agrees to contribute to the costs of the subordinate financing. The commenter suggested that the Bureau permit the use of the standard disclosures in situations where there is a valid change of circumstance following the provision of the optional alternative disclosures to the consumer. One commenter stated that the proposal could lead to variation among creditors and another commenter stated that the Uniform Closing Dataset (UCD) may not allow the use of the alternative disclosures for any transactions with sellers. Commenters asked the Bureau to clarify how to disclose the loan proceeds from the simultaneous subordinate financing being applied to the first lien, noting that most creditors prefer that the subordinate lien is balanced to zero. A commenter explained that permitting the use of the alternative disclosures for simultaneous subordinate financing is extremely desirable for industry and consumers and should be effective immediately, but that revisions which clarify how simultaneous subordinate financing is disclosed on the standard forms require systems changes which will take between four and nine months to implement.

The Final Rule

For the reasons discussed below, the Bureau is finalizing the proposed amendments to § 1026.37(d)(2) and comment 37(d)(2)–1 with minor technical revisions. The Bureau appreciates the commenter's question regarding how to proceed under the proposal when the alternative table was properly used on the Loan Estimate, or even the Closing Disclosure, but a subsequent event causes the continued use of the alternative table to be impermissible. However, the Bureau declines to implement the commenter's suggestion to permit the use of standard disclosures in situations where there is a valid change of circumstance following the provision of the alternative disclosures to the consumer. On the Closing Disclosure, the calculating cash to close table requires a comparison of cash to close amounts disclosed on the Loan Estimate and the Closing Disclosure. Because the standard and alternative calculating cash to close tables do not contain the same components, amounts disclosed on a Loan Estimate's optional alternative calculating cash to close table could not be properly compared to amounts disclosed on a Closing Disclosure's standard calculating cash to close table. The Bureau is, however, directly addressing this concern by adding new comment 38(k)(2)(vii)–1, amending comments 38(d)(2)–1 and 38(j)–3, and amending proposed new comments 38(t)(5)(vii)(B)–1 and –2 to require the disclosure of the seller's contributions to the subordinate financing, if any, in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure and the summaries of transactions table on the first-lien Closing Disclosure, when the alternative disclosures are used for the simultaneous subordinate financing. The result of these amendments is that the first-lien Closing Disclosure will be able to record the entirety of the seller's transaction. For a more detailed discussion of these new and revised comments, see the section-by-section analyses of § 1026.38(d)(2), (j), (k)(2), and (t)(5)(vii).

The Bureau recognizes that allowing the use of the optional alternative tables for simultaneous subordinate financing purchase transactions may cause variability in disclosure among creditors but concludes that consumers will not be harmed by such optionality. In addition, the Bureau understands that investor requirements may be more restrictive than the optionality provided by the Bureau. However, the Bureau believes flexibility is beneficial to some creditors, and the Bureau will continue to provide the option for creditors to use the optional alternative tables for simultaneous subordinate financing transactions with sellers.

The Bureau is addressing the commenter's question regarding the disclosure of simultaneous subordinate loan proceeds in the section-by-section analysis of § 1026.37(h)(2)(iii). The Bureau is clarifying how to disclose the proceeds of subordinate financing on the Loan Estimate for a first-lien transaction disclosed under § 1026.37(h)(2), such as a refinance transaction. The Bureau is also clarifying how a creditor may disclose, on the simultaneous subordinate financing Loan Estimate itself, the amount of subordinate loan proceeds that will be applied to the first-lien loan. The Bureau is making related revisions in the commentary to § 1026.38(j)(1)(v) and (t)(5)(vii)(B).

As related to a commenter's discussion of the time needed to implement these provisions, as discussed in part VI below, the final rule will be effective 60 days from publication in the **Federal Register**, but there will be an optional compliance period in effect until October 1, 2018.

37(f) Closing Cost Details; Loan Costs

Construction Loan Inspection and Handling Fees

The Bureau's Proposal

Section 1026.37(f) requires the disclosure of all loan costs associated with the transaction. Bureau staff previously has provided informal guidance that construction loan inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.37(f), and the Bureau proposed new comment 37(f)–3 to memorialize this guidance.

Under comment 37(f)–3 as proposed, if such inspection and handling fees are collected at or before consummation, they are disclosed in the loan costs table in the same manner as any other loan cost. For example, if the creditor collects a handling fee at or before consummation to process the advances of a multiple-advance construction loan, the handling fee would be disclosed under § 1026.37(f)(1) as an origination charge the consumer will pay to the creditor for originating and extending the credit. If the creditor collects an inspection fee at or before consummation that will be used to pay a third-party inspector that is selected by the creditor, the fee would be disclosed under § 1026.37(f)(2) as an amount the consumer will pay for settlement services for which the consumer cannot shop.

Under proposed comment 37(f)–3, a creditor would disclose construction loan inspection and handling fees collected at or before consummation in the loan costs table. Such fees collected after consummation would be disclosed in a separate addendum to the Loan Estimate rather than in the loan costs table, as proposed comment 37(f)(6)–3, discussed below, would provide. The creditor would not count inspection and handling fees to be collected after consummation for purposes of the calculating cash to close table. In proposing comment 37(f)–3, the Bureau noted its belief that disclosing the construction loan inspection and handling fees that are collected after consummation in an addendum would promote the informed use of credit by giving consumers loan cost information necessary to exercise such informed use, while preserving the accuracy of the total amount determined in the calculating cash to close table that must be provided to the consumer in the Loan Estimate.

Proposed comment 37(f)–3 included a cross-reference to proposed comment 37(f)(6)–3 for an explanation of the addendum that would be used to disclose post-consummation inspection and handling fees, as discussed below. Proposed comment 37(f)–3 also included cross-references to comments 38(f)–2 and app. D–7.viii, for additional explanations of the disclosure of such fees. Because the number of post-consummation construction loan inspections and disbursements may not be known at the time the disclosures are required to be provided, proposed comment 37(f)–3 included a cross-reference to comment 19(e)(1)(i)–1, which includes instruction on providing disclosures based on the best information reasonably available. Finally, proposed comment 37(f)–3 provided a cross-reference to § 1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures. The Bureau requested comment in particular on whether additional guidance on the effect of subsequent events in construction financing would provide additional clarity and what issues such additional guidance might address.

Comments Received

Comments on the disclosure of construction loan inspection and handling fees generally were favorable, although commenters also noted the difficulties in accurately disclosing fees to be collected after consummation and the additional software development that the proposal would require. Commenters also requested additional clarifications related to making this disclosure, as described below.

A trade association agreed that construction loan inspection and handling fees should be disclosed to consumers seeking construction loans as these costs are often significant. However, this association stated its members were split on the use of an addendum for this purpose, as further noted in the discussion of proposed comment 37(f)(6)–3, below. A compliance specialist commented that proposed comment 37(f)–3 is a positive change that better facilitates the bank's processes. Several vendors commented on the software changes the disclosure of post-consummation inspection and handling fees would require, as further explained in the discussion of proposed comment 37(f)(6)–3, below.

Comments received from another compliance specialist did not favor the proposal. This commenter did not believe that disclosing the construction loan inspection and handling fees that are collected after consummation in an addendum would significantly promote the informed use of credit by giving consumers loan cost information necessary to exercise such informed use. This commenter pointed out a loan agreement contract may call for any number of fees to be assessed on the consumer for a variety of reasons after consummation, and construction loan inspection and handling fees should not be singled out for separate handling. A national trade association commented that it will be extremely difficult for creditors to provide accurate Loan Estimate disclosures for inspection fees because such fees are not known at the time the Loan Estimate is required to be provided to the consumer.

A consumer organization commented that permitting post-consummation fees of this type to be disclosed in an addendum raises the question of whether they should be included in the Total of Payments, and urged the Bureau to clarify that those charges must be added to the Total of Payments disclosures on the Loan Estimate and Closing Disclosure. A professional association asked whether anticipated inspection fees in connection with multiple advance construction loan draws are subject to a tolerance from the Loan Estimate to the Closing Disclosures.

The Final Rule

The Bureau is adopting comment 37(f)–3 as proposed with minor modifications to provide additional consistency and clarity. Specifically, comment 37(f)–3 as finalized provides that the total of inspection and handling fees is disclosed in the loan costs table or in a separate addendum. Proposed comment 37(f)(6)–3, discussed below, provided that the total of inspection and handling fees to be collected after consummation is disclosed on an addendum, but proposed comment 37(f)–3 did not specify that the total of fees collected at or before consummation is disclosed in the loan costs table. While creditors may have assumed that proposed comment 37(f)–3 also required a single disclosure of the total amount of construction and handling fees, rather than an individual listing of each separate fee, the change made in finalizing comment 37(f)–3 confirms that the total fee is disclosed.

Otherwise, comment 37(f)–3 is adopted as proposed. Construction loan inspection and handling fees are loan costs uniquely associated with construction transactions and, as a commenter agreed, they are often significant amounts. Because of the amounts involved, the Bureau considers that disclosure of these amounts is particularly helpful in promoting informed use of credit, and therefore merit separate handling. The Bureau recognizes the difficulty of providing accurate disclosures at or before consummation of amounts that will be collected after consummation. For that reason, comment 37(f)–3 includes a cross-reference to comment 19(e)(1)(i)–1, which includes instruction on providing disclosures based on the best information reasonably available. Comment 37(f)(6)–3, which is discussed below and explains the use of an addendum to disclose inspection and handling fees collected after consummation, provides examples of what the best information reasonably available could be for such disclosures. Disclosures made consistent with these comments would be considered accurate, even though the inspection and handling fees actually collected after consummation in a particular transaction may differ from the amount of fees in previous similar transactions upon which the disclosures were based. To underscore this outcome, comment 37(f)–3 also includes a cross-reference to § 1026.17(e) and its commentary. Section 1026.17(e) generally provides that, if a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation. Pursuant to that section, the disclosure of inspection and handling fees that is based on the best information reasonably available but that becomes inaccurate because of an event occurring after consummation, for example, topographical features are discovered or weather-related events occur that affect the complexity and timing of the inspections and therefore affect the amount or timing of the fees, would not be considered a violation.

The impact of basing the disclosure of inspection and handling fees on the best information reasonably available and taking into account the effect of subsequent events is relevant for responding to the commenter that asked whether anticipated inspection fees in connection with multiple advance construction loan draws are subject to a tolerance if the amount disclosed changes between the Loan Estimate and the Closing Disclosures. These fees are subject to the same tolerance as any other fees disclosed as loan costs depending on the category into which they fall under § 1026.19(e)(3), such as origination charges or fees for a service the consumer can or cannot shop for, regardless of whether they are paid at or before closing and disclosed on the disclosures, or paid after consummation and disclosed on the addendum. Thus, if the fees are collected at or before consummation and are disclosed as ''Services Borrower Did Not Shop For,'' they would be subject to the same tolerance as other amounts under that heading. However, when such fees are to be collected after consummation and disclosed on an addendum based on the best information reasonably available, if a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation, as provided by § 1026.17(e).

To provide an example of how the tolerance requirements would apply, in a case where a creditor does not permit the consumer to shop for the construction inspection service provider, the inspection and handling fees would be in the ''zero tolerance'' category under section § 1026.19(e)(3)(i). If, at the time a Loan Estimate must be provided, the creditor has only a general sense of the scope and site of the construction (as is often the case), the creditor may disclose a total amount of inspection and handling fees based on the total amount of fees the creditor has previously charged in construction transactions the creditor believes to be similar to the present transaction. The creditor may also disclose a total amount of fees based on the estimate the creditor uses in setting the construction transaction's commitment amount. In either case, the creditor will likely consider the estimated number of inspections that will be required and the estimated cost of each inspection to arrive at a total, thus using the best information reasonably available. If after the Loan Estimate is provided the creditor discovers, for example, that the construction site has features that will require additional work and therefore additional and more complex inspections, the best information reasonably available to the creditor at that time is that the total inspection and handling fees will be greater than initially estimated. In such a case the creditor may issue a revised Loan Estimate pursuant to § 1026.19(e)(3)(iv) to reset the tolerance for the inspection and handling fees.

Further, if after consummation additional topographical features are discovered or weather-related events occur that result in additional or more costly inspections, consistent with § 1026.17(e) there is not a violation when a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures. The example described here would apply both when the inspection and handling fees are disclosed in the loan costs table because they are collected at or before consummation and when such fees are disclosed in a separate addendum because they are collected after consummation.

Therefore, if the inspection and handling fees are in a category of fees that is subject to tolerances and these fees change between the Loan Estimate and the Closing Disclosure without the disclosure of revised estimates that can reset tolerances, the applicable tolerance violation could be present. However, if the fees change after consummation because of subsequent events, as described in § 1026.17(e), there would not be a tolerance violation.

The Bureau agrees with the commenter that noted construction loan inspection and handling fees are Loan Cost charges that must be added to the Total of Payments disclosures on the Loan Estimate and Closing Disclosure. This clarification will be provided in comment app. D–7.viii, which is also being finalized in this final rule as discussed below as comment app D–7.vii. Although commenters assumed, correctly, that draw fees are included as inspection and handling fees, the Bureau is specifically including draw fees in comment 37(f)–3 for greater clarity.

37(f)(6) Use of Addenda

The Bureau's Proposal

The Bureau proposed to add comment 37(f)(6)–3 to provide instruction for the addendum that would be used to disclose post-consummation construction loan inspection and handling fees. If, pursuant to proposed comment 37(f)–3, a creditor is required to disclose construction loan inspection and handling fees that will be collected after consummation, proposed comment 37(f)(6)–3 explained that the creditor discloses the total of such fees under the heading ''Inspection and Handling Fees Collected After Closing'' in an addendum. Proposed comment 37(f)(6)–3 also cross-referenced comment 19(e)(1)(i)–1 and explained that, if the amount of post-consummation inspection and handling fees is not known at the time the disclosures are provided, the disclosures in the addendum would be based upon the best information reasonably available. To provide additional clarity, proposed comment 37(f)(6)–3 also included an example of the best information reasonably available standard for purposes of disclosing post-consummation inspection and handling fees by providing such information could include amounts the creditor has previously charged in similar transactions.

Comments Received

The comments on the use of an addendum to disclose post-consummation inspection and handling fees collected after consummation focused on the technical aspects of the addendum and related software implementation issues. Comments from a trade association stated its members were split on the use of an addendum for disclosing construction loan inspection and handling fees. The commenter noted concerns that the use of addenda may result in some borrowers overlooking these fees, although use of an addendum and omitting the fees from the cash to close table seemed appropriate if the creditor permits the consumer to take advances on the construction loan to cover these fees. The commenter proposed that, if the creditor does not permit advances on the construction loan to cover these costs, creditors should disclose the fees and factor them into the cash to close table on the Loan Estimate, but for the Closing Disclosure the fees should be disclosed on a separate addendum because the Closing Disclosure only permits the disclosure of borrower-paid costs in columns labeled ''At Closing'' or ''Before Closing.''

Comments from a vendor's group asked for clarification of whether the heading ''Inspection and Handling Fees Collected After Closing'' should be formatted pursuant to comment 37(o)(5)–5, which requires that information disclosed on a separate page ''should be formatted similarly to form H–24 of appendix H to this part, so as not to affect the substance, clarity, or meaningful sequence of the disclosure'' or in any style of the creditor's choosing, so long as the heading meets the ''clear and conspicuous'' standards set forth in § 1026.37(o)(1) and associated commentary. The commenter noted proposed comment 37(f)(6)–3 makes reference to disclosing post-consummation inspection and handling fees on ''an addendum'' and asked the Bureau to clarify that this information may be included in any addendum provided in connection with the Loan Estimate, which contains other additional information, for example, pursuant to § 1026.37(f)(6), or whether this information should be disclosed in a separate addendum. The commenter also estimated that software development for disclosure of post-consummation inspection and handling fees on a separate section of the addendum would require significant time to implement.

A vendor commented that disclosure of post-consummation inspection and handling fees on a separate section of an addendum would require significant software development. Another vendor commented that it generally supports the effort to provide clarification regarding inspection and handling fees, but believed that the programming required to differentiate fees paid at, before, and after consummation for the disclosures would be extremely complicated. Technology companies would be required to reprogram their software to provide for a new category of closing costs, with new data points that would need to be integrated between the different software companies to ensure their proper disclosure. The commenter believed a better alternative would be to allow creditors to disclose fees collected after consummation using their own methods in documentation that is separate from the Loan Estimate and Closing Disclosure, such as in their cover letter to consumers or in a separate page.

The Final Rule

The Bureau is adopting comment 37(f)(6)–3 generally as proposed, but with some modifications in response to comments received on proposed comments 37(f)–3 and 37(f)(6)–3. Instead of referring to ''post-consummation charges'' as the proposed comment did, comment 37(f)(6)–3 as adopted is modified to emphasize that an addendum is used only if the fees are to be collected after consummation. This modification is made for consistency with comment 37(f)–3, which refers to inspection and handling fees collected at or before consummation and after consummation. This modification should also provide greater clarity because the use of ''post-consummation fees'' may create an impression that an addendum may be used for inspection and handling fees collected both at or before consummation and after consummation if the service that the fee covers is provided after consummation. If construction loan inspection and handling fees are collected at or before consummation, they are disclosed in the loan costs table and are counted for purposes of the calculating cash to close table. Only if the fees are expected to be collected after consummation are they disclosed in an addendum to the Loan Estimate and in an addendum to the Closing Disclosure and not counted for purposes of the calculating cash to close table. The Bureau considers when fees are collected to be a clearer determinant of when to use an addendum than if a creditor permits the consumer to take advances on the construction loan to cover these fees, as suggested by a commenter. An advance to cover these fees may be taken at or after consummation. If the advance is taken at consummation, the fee is collected at consummation and an addendum would not be used.

Thus, if a consumer pays inspection and handling fees in cash that is not from loan proceeds at consummation, or if the fees are financed at consummation, they are considered collected at consummation and are disclosed in the Loan Costs table. In a construction transaction, a fee is financed at consummation if an advance to cover the fee is taken at consummation. However, if the creditor permits the consumer to take advances after consummation to cover construction loan inspection and handling fees, the fees are collected after consummation and would be disclosed on a Loan Estimate addendum and a Closing Disclosure addendum. Further, because the creditor would have estimated the amount of inspection and handling fees for purposes of setting the commitment amount to allow for sufficient funds to be available for advances to cover inspection and handling fees, comment 37(f)(6)–3 is also amended to include such estimates as an additional example of the best information reasonably available for inspection and handling fee disclosures.

In response to commenters that requested additional clarification on the form of the addendum, comment 37(f)(6)–3 is further modified to specify that the total of construction loan inspection and handling fees is disclosed in an addendum, which may be the addendum pursuant to § 1026.37(f)(6) or any other addendum or additional page under § 1026.37. A cross-reference to comment 37(o)(1)–1, which explains the clear and conspicuous standard, is also added. Because comment 38(f)–2, discussed below, includes a reference to comment 37(f)(6)–3 for information on disclosing inspection and handling fees on the closing disclosure, a clarifying statement is added for consistency that for purposes of comment 38(f)–2, the addendum may be any addendum or additional page under § 1026.38.

To preserve a greater degree of consistency and clarity that such fees are included in the transaction, the Bureau is not adopting the suggestion from a commenter to allow creditors to disclose fees collected after consummation using their own methods in documentation that is separate from the Loan Estimate and Closing Disclosure. With respect to comments concerning the software development and implementation times estimated for these amendments, the Bureau refers to the discussion in part VI, below, regarding the final rule's effective date and optional compliance period.

37(g) Closing Cost Details; Other Costs

37(g)(4) Other

The Bureau's Proposal

Section 1026.37(g)(4) requires the disclosure of any other amounts (other than amounts disclosed under § 1026.37(g)(1) through (3)) in connection with the transaction that the consumer is likely to pay or has contracted, with a person other than the creditor or loan originator, to pay at consummation and of which the creditor is aware at the time of issuing the Loan Estimate. Comment 37(g)(4)–4 provides examples of items that are disclosed under § 1026.37(g)(4), including but not limited to commissions of real estate brokers or agents, additional payments to the seller to purchase personal property pursuant to the property contract, homeowner's association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer pursuant to the property contract. Currently, amounts for construction costs, payoff of existing liens, or payoff of unsecured debt may be, but are not required to be, disclosed under § 1026.37(g)(4). If such amounts are not disclosed under § 1026.37(g)(4), they are factored into the cash to close calculations but are not otherwise disclosed on the Loan Estimate. The Bureau proposed to revise comment 37(g)(4)–4 to require the disclosure of construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.37(a)(6), or payoff of unsecured debt under § 1026.37(g)(4), unless those items are disclosed under § 1026.37(h)(2)(iii) on the optional alternative calculating cash to close table.

It was expected that the proposed revisions to comment 37(g)(4)–4, together with the proposed revisions to comment 38(g)(4)–1 discussed in the section-by-section analysis of § 1026.38(g)(4), would create greater consistency between disclosures on the Loan Estimate and Closing Disclosure for the clear and conspicuous disclosure of these amounts, thus facilitating consumer understanding. The preamble of the proposed rule also stated the Bureau did not intend, by requiring disclosure under § 1026.37(g)(4) of amounts for construction costs, payoff of existing liens, and payoff of unsecured debt, to subject them to a different determination of good faith than currently provided for in § 1026.19(e)(3).

In proposing the revisions to comment 37(g)(4)–4, the Bureau noted that it had considered requiring the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt under the summaries of transactions table on the Closing Disclosure under § 1026.38(j)(1)(v), instead of as ''closing costs'' under §§ 1026.37(g)(4) and 1026.38(g)(4), but did not because the Loan Estimate does not have a comparable summaries of transactions table. The Bureau noted that disclosing these costs on the summaries of transactions table on the Closing Disclosure would not result in these costs being enumerated consistently on both the Loan Estimate and the Closing Disclosure and would interfere with the comparability between the Loan Estimate and the Closing Disclosure.

The Bureau also noted that it had considered requiring the disclosure of construction costs on an addendum, instead of as other closing costs under § 1026.37(g)(4) on the Loan Estimate and § 1026.38(g)(4) on the Closing Disclosure. The construction costs would then be factored into the calculating cash to close table calculations with the sale price to yield an accurate cash to close amount. However, the Bureau noted this approach could add complexity to the calculations required on the Closing Disclosure.

The proposed revision of comment 37(g)(4)–4 also cross-referenced proposed comment app. D–7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and proposed comment app. D–7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

Comments Received

Comments on the proposed revision of comment 37(g)(4)–4, while generally supportive of the attempt to clarify the disclosure of payoffs and construction costs, did not generally favor the proposed method of disclosure. Some commenters did support the proposal or requested that alternative methods of disclosure be allowed to continue. A multi-bank financial holding company commenter stated it supported the proposed change, but did not explain the basis of its support. A consumer organization supported the proposal, stating consumer understanding is enhanced when these amounts appear in corresponding tables on the Loan Estimate and Closing Disclosure. A compliance specialist commenter also supported the proposed required disclosure of the three items under § 1026.37(g)(4) or (h)(2)(iii) as applicable, stating the proposal would create a standardized disclosure framework for all creditors, but strongly opposed the disclosure of construction costs on an addendum.

A nonprofit housing organization commenter supported the proposed disclosures but noted that the Bureau did not directly address financed funds placed into escrow for repairs to be completed after closing. This commenter recommended adoption of a new line in the calculating cash to close table called ''Rehabilitation Escrow'' where funds financed for home rehabilitation can be disclosed, stating that such disclosure will allow consumers to see all of the funds for the transaction in the calculating cash to close table without inaccurately labeling the rehabilitation funds as loan costs or closing costs. Two state bank association commenters and two national industry association commenters requested that the Bureau permit alternative methods of disclosing construction costs including disclosure on the alternative form in the payoffs and payments table, so long as the method used discloses the costs and the cash to close table and summaries of transactions table balance. These commenters stated parties should not be required to change programming that is reasonable and for which significant time and expense were spent for an alternative means of disclosure that the commenters believed did not provide a positive gain for consumers.

However, a majority of the comments, including comments from financial institutions, title insurers, state and national industry associations, and software vendors all opposed the proposed required disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt under §§ 1026.37(g)(4) and 1026.38(g)(4).

Several commenters believed that significant confusion would result from the proposed revision of comment 37(g)(4)–4. A financial institution commenter stated the proposed changes would confuse consumers, creditors, settlement agents, and real estate agents who for decades have not considered the costs covered by the proposed comment as closing costs. The commenter believed that disclosing funds available to draw through construction under ''Other Costs'' would significantly overstate a borrower's ''Total Closing Costs,'' which the commenter believed to be contrary to the overall purpose of providing clear and conspicuous disclosure related to costs and terms associated with a loan transaction. A vendor commenter also believed that the proposed method of disclosing payoffs and holdbacks would likely be confusing to consumers. The commenter stated consumers expect that the disclosures will categorize fees and charges to obtain and close the loan separately from the costs that are directly or indirectly related to the purpose of their transaction, such as payoffs of a prior lien or unsecured debt, or construction costs in a construction loan.

Two trade association commenters stated the proposal will result in making the closing costs in many loans, including construction loans, appear to be enormous, causing concern and confusion on the part of consumers. A title insurer commenter and a vendor commenter were concerned that many consumers who see a large amount of closing costs on page one of the disclosures may be discouraged from continuing to the more detailed and technical information later in the disclosures. The commenters believed consumers may even decide not to move forward with a refinance or debt consolidation transaction that may be in their best interest, because they may believe the closing costs of the transaction to be prohibitively expensive.

A vendor commenter and a title insurer commenter stated that under the proposal the actual closing costs that a consumer could negotiate or shop for would be ''framed'' within a much larger amount of total closing costs. The commenters believed such a framing effect may cause the actual closing costs in the transaction to be more difficult to discern by consumers and would likely hinder consumers' ability to compare the actual closing costs between lenders when shopping for mortgage loans. These commenters also believed consumers may view the actual closing costs for which they can negotiate or shop as less significant, because they could represent a small percentage of the total closing costs. A mortgage creditor commenter pointed out that § 1026.37(g)(4)(iii) limits the number of items disclosed in section H of the Loan Estimate to five. If more than four items need to be disclosed, their charges are aggregated on the fifth line of section H of the Loan Estimate. The commenter stated that as a result of such aggregation, the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt would often disappear into the aggregate amount along with other charges.

A title insurer and a vendor commented that a consumer obtaining a mortgage loan for the purpose of consolidating credit card debt would likely be confused to see such credit card debt included in the amount of closing costs, because they would instead consider the payoffs of credit card debt to be a reason they are paying closing costs. A mortgage lender commenter stated that credit card debt paid at closing on a purchase transaction is distinctly different than a ''charge'' in connection with the transaction. A group of vendors commented that the proposed revision can lead to confusion and misapplication of the concept of ''third-party services'' by creditors. These commenters asked if a payoff is a ''third-party service not required by the creditor,'' what other types of costs could also be considered a ''third-party service not required by the creditor'' and subject to good faith tolerance rather than a more restrictive tolerance? A possible unintended outcome could be that consumers may end up paying more at consummation than what is permitted. While such overpayments may ultimately be refunded, consumers would still be inconvenienced because of such confusion.

Two trade association commenters, a financial institution commenter, a title insurer commenter, and a vendor commenter stated that varying the disclosure methodology between the standard and the alternative forms would be confusing to consumers, especially consumers comparing loans between creditors using the different versions of the disclosures. These commenters noted a creditor choosing to use the alternative form will show significantly lower closing costs than a creditor that uses the standard form.

Several commenters stated that the proposed required disclosure is not an approach that has been tested extensively with regard to consumers. A title insurer commenter and a trade association commenter noted that consumer testing prior to issuance of the TILA–RESPA Final Rule did not include the payoff of the prior mortgage loan as a closing cost. A vendor commenter believed that consumer testing of this proposed method of disclosure of payoffs and holdbacks as closing costs should be conducted before its finalization, in light of the change it represents from the original design and testing of the disclosures.

A group of vendors and an individual vendor commented that currently, all of their systems can support construction costs in ''Section H. Other.'' However, these commenters noted the payment of construction costs is the purpose for obtaining the loan, just as the purchase of the real estate is the purpose of obtaining a general purchase loan. The commenters also noted the Bureau is not proposing that the sale price must be disclosed in ''Section H. Other'' even though it is also a purpose for which loan proceeds must be used. The commenters asked whether consumers would understand why the construction costs are a closing cost but the sales price is not. The commenters agreed if the proposed disclosure is mandated for all lenders, results will be consistent when shopping, although that does not mean that it is clear to consumers why these disclosures are described as closing costs.

Two trade association commenters and a financial institution commenter stated the proposed revision of comment 37(g)(4)–4 can create both software and training issues, as loans with a seller would require entirely different instruction than those transactions where use of the alternate form is allowable. These commenters noted that creditors would be required to input the covered costs into their systems differently, depending on which version of the disclosures they were using, which will create software and staff training difficulties.

Three trade association commenters stated the proposed addition of a specific required method of disclosing construction costs would require significant re-programming to the cash to close, loan costs, and summary of transactions calculations. Two of these commenters noted that many different software systems may be involved in the origination of a loan and the production of the disclosures, including loan origination software, lender's document production software, title production software, and collaborative closing portals. The commenters pointed out that these software systems may program the disparate set of payoffs and construction costs between the standard and alternative disclosures differently. Some systems may require coding of such costs only as payoffs and then automatically place the data differently between the versions of the disclosure, while some may require the user to code such costs differently as payoffs or closing costs between the different forms. The commenters concluded the difference in data formats may increase costs and frustrate the industry's efforts to use uniform data standards.

A financial institution commenter disagreed with the comparability goal of the proposed revision, which would not have permitted disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt under the summaries of transactions table on the Closing Disclosure under § 1026.38(j)(1)(v) because the Loan Estimate does not have a comparable summaries of transactions table. This commenter believed the comparability goal should not be met at the expense of the goal of developing clear disclosures that help consumers understand the credit transaction and closing costs. A trade association commenter also took issue with the comparability goal of the proposal. This commenter stated disclosure on the summaries of transactions table is a method that is commonly used now by many creditors and closing agents to disclose construction costs or payoffs when the standard Closing Disclosure is used and is understood by consumers and settlements agents.

A title insurer, an asset manager, and a group of vendors noted that the proposal did not account for disclosure of payoffs of other types of secured debt, such as a loan secured by an automobile, which should be treated consistently with other payoffs. These commenters recommended that the disclosure for payoff of any existing debt be treated consistently.

Two trade association commenters urged excluding temporary construction financing transactions from coverage of the TILA–RESPA Rule, leaving only the permanent phase of a construction-permanent loan subject to the TILA–RESPA integrated disclosure requirements. These commenters noted the exclusion of such construction financing transactions from other Regulation Z requirements, such as those for high-cost mortgages and for making ability-to-repay determinations.

Several commenters stated that payoffs and holdbacks should not be disclosed as closing costs under §§ 1026.37(g)(4) and 1026.38(g)(4) and instead suggested alternative disclosures. A title insurer commenter, a vendor commenter, two trade association commenters, and three creditor commenters recommended these costs should be disclosed in the ''Adjustments and Other Credits'' row of the calculating cash to close table under § 1026.37(h)(1)(vii) on the Loan Estimate and under § 1026.38(i)(8) on the Closing Disclosure, and in the summaries of transactions table on the Closing Disclosure under § 1026.38 (j)(1)(v). The commenters noted current comment 38(j)(1)(v)–1 clarifies that, ''amounts paid to any existing holders of liens on the property in a refinance transaction'' are disclosed in the summaries of transactions table pursuant to § 1026.38(j)(1)(v). These commenters generally stated such disclosures would ensure that closing costs appear together on the forms, but separate from payoffs and construction costs, which consumers do not think of as closing costs. A mortgage lender commenter stated it would seem to be more appropriate to provide for the availability of a version of the payoffs and payments table for purchase transactions in a consistent manner with transactions that do not involve a seller.

Commenters also noted concerns with the reference to the ''bona fide cost of construction'' in proposed comment 37(g)(4)–4. A vendor group commenter requested that the language be modified to avoid any unintended consequences of stating that construction costs and payoffs are subject to good faith tolerance, subject to only whether the costs are bona fide or not. As an alternative, the commenter requested an explanation of how these costs are still subject to good faith tolerance as long as they are bona fide. An asset manager commenter stated the purpose behind the introduction of the ''bona fide'' requirement was not clear, and urged the Bureau to omit it from the final rule as it introduces confusion and uncertainty into the process.

The Final Rule

In response to the comments received, the Bureau is not adopting the revision of comment 37(g)(4)–4 as proposed. Instead of requiring disclosure under § 1026.37(g)(4) of construction costs in connection with the transaction, payoff of existing liens secured by the property identified under § 1026.37(a)(6), and payoff of other secured or unsecured debt, the final rule provides for the disclosure of such amounts under § 1026.38(j)(1)(v). Specifically, as discussed below in the section-by-section analysis of § 1026.38(j)(1)(v), comment 38(j)(1)(v)–2 as finalized identifies these amounts as examples of amounts that are disclosed under § 1026.38(j)(1)(v). The Bureau agrees with the commenters that noted payoffs of other types of secured debt, such as a loan secured by an automobile or another property, should be treated consistently with other payoffs.

In the preamble to the proposal, the Bureau noted that it had considered proposing disclosure of these amounts under § 1026.38(j)(1)(v) in the summaries of transactions table, but had been concerned that disclosure of the amounts under § 1026.38(j)(1)(v) would interfere with the comparability between the Loan Estimate and the Closing Disclosure.[78] However, the Bureau has been persuaded by the comments raising concerns about the potential confusion that may result were these amounts to be disclosed on the Loan Estimate as ''Other Costs'', and has concluded that the comparability goal should not override considerations of clarity. The Bureau is, therefore, providing for the disclosure of these amounts under § 1026.38(j)(1)(v).

In transactions subject to § 1026.37(h)(1)(iii)(A)(*2*) and (B), a creditor factors construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.37(a)(6), and payoff of other secured or unsecured debt into the funds for borrower calculations under § 1026.37(h)(1)(v). When these amounts are disclosed under § 1026.38(j)(1)(v) on the Closing Disclosure, they are included in existing debt that is factored into the funds for borrower calculation under § 1026.37(h)(1)(v). Comment 37(h)(1)(v)–2 explains that the total amount of all existing debt that is used in the funds for borrower calculation is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable.

This rule does not factor the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt into the adjustments and other credits calculation under § 1026.37(h)(1)(vii) for all transactions as requested by some of the commenters. The Bureau is concerned that including these amounts in the adjustments and other credits calculation would result in a very high estimated cash to close disclosure under § 1026.37(h)(1)(viii) because the loan amount is not factored into the calculation for the § 1026.37(h)(1)(vii) disclosure. As an example, including construction costs of $100,000 in adjustments and other credits on a Loan Estimate where the total closing costs under § 1026.37(h)(1)(i) are entirely offset by closing costs financed under § 1026.37(h)(1)(ii) and the disclosures under § 1026.37(h)(1)(iii) through (vi) are each calculated to be $0 would result in an estimated cash to close amount of $100,000.

However, there are circumstances when the payoff of other secured and unsecured debt would be included in the adjustments and other credits calculation under § 1026.37(h)(1)(vii) rather than in the funds for borrower calculation under § 1026.37(h)(1)(v). Because transactions using the down payment and funds for borrower calculation under § 1026.37(h)(1)(iii)(A)(*1*) do not also use the funds for borrower calculation under § 1026.37(h)(1)(v), these transactions account for payoffs of secured or unsecured debt by including such amounts in the adjustments and other credits calculation under § 1026.37(h)(1)(vii). Comment 37(h)(1)(vii)–6 includes payoffs of secured or unsecured debt in a purchase transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(*1*) as an example of amounts disclosed under § 1026.37(h)(1)(vii). This example is consistent with the revision made by this rule to § 1026.37(h)(1)(vii). Under the revision, amounts that are required to be paid by the consumer at closing in a transaction subject to § 1026.37(h)(1)(iii)(A)(*1*) are included in the § 1026.37(h)(1)(vii) calculation. A payoff of other secured or unsecured debt may be required to be paid in a purchase transaction subject to § 1026.37(h)(1)(iii)(A)(*1*), which is a transaction in which the loan amount does not exceed sale price. In such circumstances, the payoff amounts, such as for a car loan, are included in the § 1026.37(h)(1)(vii) calculation, rather than the § 1026.37(h)(1)(v) calculation.

The Bureau declines to exclude construction financing transactions from coverage as suggested by a set of commenters. Although such transactions are excluded from certain Regulation Z requirements, they have long been subject to Regulation Z disclosure requirements as evidenced by the history of Appendix D, which provides special procedures that creditors may use, at their option, to estimate and disclose the terms of multiple-advance construction loans. As stated in the TILA–RESPA Final Rule preamble, the Bureau believes that including construction-only loans within the scope of the integrated disclosure requirements effectuates the purposes of TILA under TILA section 105(a), because it would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute.[79] The ''bona fide'' language in proposed comment 37(g)(4)–4 is omitted in this final rule in response to the commenters that noted

[78] 81 FR 54317, 54340 (Aug. 15, 2016).

[79] 78 FR 79730, 79793 (Dec. 31, 2013).

it may lead to misunderstanding and confusion.

37(g)(6) Total Closing Costs

37(g)(6)(ii)

The Bureau's Proposal

Section 1026.37(g)(6)(ii) requires creditors to disclose the amount of any lender credits. Comment 37(g)(6)(ii)–1 cross-references comment 19(e)(3)(i)–5, which states that lender credits, as identified in § 1026.37(g)(6)(ii), represent the sum of non-specific lender credits and specific lender credits. However, comment 37(g)(6)(ii)–1 describes lender credits as payments from the creditor to the consumer that do not pay for a particular fee on the disclosures. To correct this inconsistency, the Bureau proposed to revise comment 37(g)(6)(ii)–1 to conform with the language in comment 19(e)(3)(i)–5. For the reasons discussed below, the Bureau is adopting the modifications to comment 37(g)(6)(ii)–1 as proposed.

Comments Received

The Bureau received comments on this proposal from industry individuals, a loan origination software vendor, a financial services advocacy organization, a large bank, a state bank trade association, a law firm, and a national credit union trade association. Generally commenters supported the proposal, and one industry commenter recommended implementing the proposal immediately. Some commenters stated that the proposal provides clearer guidance in regard to completion of § 1026.37(g)(6)(ii) on the Loan Estimate.

Several commenters did not oppose the proposal but posited other options for the Bureau to consider. An industry commenter requested the Bureau provide a concrete definition for ''specific lender credit'' and ''general lender credit.'' They further suggested that the Bureau provide an alternate method of disclosing lender credits. Other commenters noted that there is consumer confusion regarding disclosure of lender credits between the Loan Estimate and Closing Disclosure, due to the ''Paid by Others'' column, which only appears on the Closing Disclosure. An industry commenter recommended that § 1026.37(g)(6)(ii) be revised to allow the disclosure of lender credits for the interest rate chosen, separate from other lender credits.

Several commenters requested additional guidance from the Bureau on the tolerance implications of disclosing lender credits, including a request for additional guidance as to when it would be appropriate for a lender credit to decrease based on a changed circumstance or a borrower-requested change. Many commenters requested additional guidance for situations where the actual cost of a service increases from the estimate, and a creditor has provided a lender credit covering the entire estimated cost of a service. Commenters requested that comments 19(e)(3)(i)–5 and –6 be amended to state that where an actual cost decreases from the estimated cost provided to the consumer, a specific lender credit attached to that cost should be permitted to decrease with it.

The Final Rule

The Bureau is adopting the modifications to comment 37(g)(6)(ii)–1 as proposed. In response to the commenter question on the definition of ''specific'' lender credits and ''general'' lender credits, the Bureau references the definition in comment 19(e)(3)(i)–5, which states that specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to § 1026.19(e)(1). With respect to commenters who sought alternate methods for disclosing lender credits or who expressed concern about the ''Paid by Others'' column, the Bureau declines to make changes that were not proposed and that would require significant changes to the disclosure forms themselves. Wholesale changes to the manner in which costs are displayed on the forms would require substantial reprogramming and the Bureau believes that, for changes of this nature, it would be prudent to first test them for consumer understanding.

The Bureau also declines to make commenter-requested changes to comments 19(e)(3)(i)–5 and –6 to state that where an actual cost decreases from the estimated cost provided to the consumer, a specific lender credit attached to that cost should be permitted to decrease with it. In response to such request and other commenter requests for clarity on the tolerance implications of lender credits on the Loan Estimate, § 1026.19(e)(3)(iv) already provides when a creditor may use a revised estimate for purposes of the § 1026.19(e)(3) good faith determination. The section-by-section analysis of § 1026.19(e)(3)(i) in the TILA–RESPA Final Rule stated that, with respect to whether a changed circumstance or borrower-requested change can apply to the revision of lender credits, the Bureau believes that a changed circumstance or borrower-requested change can decrease such credits, provided that all of the requirements of § 1026.19(e)(3)(iv) are satisfied.[80] Generally, lender credits are determined by the terms of the legal obligation between the creditor and consumer. Comment 17(c)(1)–1 requires that the disclosures reflect the terms to which the consumer and creditor are legally bound at the outset of the transaction and comment 19(e)(1)(i)–1 requires disclosures based on the best information reasonably available at the time the disclosure is provided to the consumer. Comment 17(c)(1)–1 also specifies that the legal obligation between the creditor and consumer is determined by applicable State law or other law. Sales contracts, government program guidelines, or other requirements may be the basis for the legal obligation between the creditor and consumer. A creditor must retain evidence of compliance with the requirements of § 1026.19(e), including § 1026.19(e)(3)(iv), consistent with the record retention requirements in § 1026.25(c)(1)(i).

37(h) Calculating Cash to Close

The Bureau's Proposal

Section 1026.37(h) requires the disclosure of the calculation of an estimate of cash due from or to the consumer at consummation, under the heading ''Calculating Cash to Close,'' and permits the use of an optional alternative calculating cash to close table for transactions without a seller. The calculating cash to close table is designed to provide the consumer, using a standardized calculation methodology, with an estimate of the cash due from or to the consumer at consummation. The Bureau recognized when it adopted this requirement that the creditor may not know the amount of the deposit, payments to others, and funds that the consumer either will pay or will receive at consummation and required that the disclosures be based on the best information reasonably available.[81] In doing so, the Bureau acknowledged that the actual amount of cash to close at consummation could differ significantly from the amount disclosed on the Loan Estimate, but determined, nonetheless, that consumers would benefit from receiving an estimate of cash due from or to the consumer at consummation on the Loan Estimate. Notably, the amounts disclosed in the calculating cash to close table are not subject to the specific

[80] 78 FR 79730, 79824 (Dec. 31, 2013).

[81] 78 FR 79730, 79966–67 (Dec. 31, 2013).

tolerances under § 1026.19(e)(3) or § 1026.22(a).

The Bureau proposed amendments to § 1026.37(h) and its commentary to address many questions the Bureau has received from industry on the proper calculation of the various amounts disclosed on the calculating cash to close table and the variation among creditors in how the calculating cash to close disclosures are determined. The Bureau did not propose any amendments that would require modification of the Loan Estimate itself but did propose amendments that would clarify or amend calculations that impact the amounts disclosed on the calculating cash to close table. The Bureau also proposed similar amendments to § 1026.38(e) and (i), which contain the Closing Disclosure's alternative and standard calculating cash to close tables, respectively.

The Bureau sought comment on the calculating cash to close table for the Loan Estimate and the Closing Disclosure generally. The Bureau requested comments on possible alternative methods to determine the amounts disclosed on the calculating cash to close table, whether the proposed clarifications and revisions would result in more consistent calculation of the amounts on the calculating cash to close table, and other ways to simplify the calculating cash to close table while still providing the consumer with an estimate of the amount due from the consumer at consummation, consistent with the requirements of TILA section 128(a)(17) and the Bureau's goal of providing understandable and consistent information to consumers. The Bureau acknowledged that any redesign of the calculating cash to close table, including its components, could require extensive changes to existing processes and software investments by industry and sought comment on the extent of such changes that would be required by the Bureau's proposal, or by any other proposals suggested by commenters for revisions to the calculating cash to close table.

Comments Received

General comments on the calculating cash to close table for the Loan Estimate in § 1026.37(h) and for the Closing Disclosure in § 1026.38(e) and (i) are discussed below. Specific comments on the proposed amendments to § 1026.37(h) and § 1026.38(e) and (i) are discussed in more detail in the section-by-section analyses related to those specific amendments.

A variety of commenters, including trade associations, GSEs, a software vendor, a software vendor group, a mortgage company, a bank, and a financial holding company, acknowledged that the calculating cash to close tables provide important benefits to consumers and that the proposed revisions would improve the ability of creditors to comply with the calculating cash to close requirements and provide to consumers an accurate cash to close amount. Commenters argued that the calculating cash to close tables enable consumers to understand components of their cash to close amount without the need to wade through the detailed line items in the summaries of transactions or the payoffs and payments tables, and described the calculating cash to close tables as conducting many of the difficult calculations behind-the-scenes so that consumers can review the high-level components of the calculations, which generally mirror how they think about the transaction. Commenters acknowledged the cost of reprogramming, but nonetheless supported the proposals, stating that the revised disclosure requirements would facilitate creditors' interactions with consumers and result in more accurate calculating cash to close disclosures.

One mortgage company, which generally opposed the Bureau's proposals to make changes to the standard calculating cash to close tables, specifically noted that the alternative calculating cash to close tables function better, are less complicated, and present less information than the standard tables. Further, the commenter provided that the alternative calculating cash to close tables do not rely on mathematical formulas that bear no relationship to reality.

A trade association commenter stated that secondary market investors who purchase loans are requiring use of the alternative tables for refinance transactions and asked the Bureau to clarify that the standard disclosures may be used for refinance transactions. The commenter explained that it would be helpful if a single disclosure form could be utilized for all types of transactions.

A number of commenters, including other trade associations, mortgage companies, and a consumer group, stated that the standard calculating cash to close tables are confusing and complicated. Many commenters specifically identified the ''Closing Costs Financed (Paid from your Loan Amount)'' and ''Down Payment/Funds from Borrower'' labels and calculations as the main areas of concern, asserting that the mathematical formulas used to calculate these disclosures do not reflect how consumers understand those amounts in the context of a residential real estate transaction. One commenter also identified the ''Funds for Borrower'' disclosure as fundamentally flawed for the same reasons.

Commenters that opposed the proposed amendments suggested a variety of solutions, including that the Bureau remove the standard calculating cash to close tables, ''fix'' the tables completely, or leave the tables alone. Some commenters recommended that the Bureau remove the calculating cash to close tables on the Loan Estimate and Closing Disclosure, while others recommended that the table only be removed from the Closing Disclosure. Commenters that recommended that the calculating cash to close table be removed only from the Closing Disclosure asserted that the summaries of transactions table plays a duplicative role and results in a more accurate cash to close amount, rendering the Closing Disclosure's calculating cash to close table useless and a source of added confusion for consumers.

According to some commenters, ''fixing'' the calculating cash to close tables completely would involve a complete overhaul of the tables. A consumer group argued that none of the proposed changes and clarifications will make the table more understandable to consumers. The commenter provided examples of its proposed new format, which itemizes what the borrower must pay and what is paid by or for the borrower, and does not include the closing costs financed disclosure. The closing costs financed disclosure would instead be moved to the last page. Another commenter recommended that the calculating cash to close tables be expanded to identify each formula used and the values that are included in each calculation.

Other commenters suggested different solutions to ''fix'' the calculating cash to close tables. These commenters asserted that ''fixing'' the calculating cash to close tables completely would involve replacing the current formulas for the closing costs financed, down payment/funds from borrower, and, as requested by one commenter, the funds for borrower calculations, with instructions that will allow creditors to disclose amounts that consumers will better understand. Creditors stated that they are unable to explain the formulas, as they currently exist, in a manner that is understandable to consumers.

Some of these commenters also suggested revisions to the label for the closing costs financed and the down payment/funds from borrower disclosures to help alleviate consumer confusion. For example, one commenter suggested renaming the closing costs financed disclosure with what it viewed as a more appropriate label, such as ''Amount Resulting from § 1026.38(i)(3) Calculation.'' In addition, some commenters recommended that the Bureau relabel the down payment/funds from borrower disclosure to eliminate consumer confusion. One recommendation was for the Bureau to remove the label ''Down Payment'' on the Loan Estimate and Closing Disclosure so that the disclosure is simply labeled ''Funds from Borrower.'' Alternatively, commenters suggested the Bureau relabel the disclosure as ''Funds from Borrower'' for a transaction that does not involve a seller and ''Funds from Borrower (including Down Payment)'' or ''Down Payment & Funds from Borrower'' for a transaction involving a seller. The suggested labels for transactions with sellers would convey to the consumer that the amount disclosed includes the down payment, as the term is commonly understood, but may also include other amounts.

Commenters that recommended that the Bureau not amend the calculating cash to close tables contended that the proposed amendments will provide only marginal improvements to the tables without addressing the more significant concerns with the closing costs financed and down payment/funds from borrower calculations. These commenters argued that implementing the proposed amendments will result in significant costs related to programming, operational procedures, testing, training, developing policies, and internal auditing.

The Final Rule

After considering the comments, the Bureau is not in this final rule deviating significantly from the proposed amendments, which address many questions the Bureau has received from industry on the proper calculation of the various amounts disclosed on the calculating cash to close tables and the variation among creditors in how the calculating cash to close disclosures are determined. Removing the calculating cash to close table from the Loan Estimate or Closing Disclosure, as requested by some commenters, would be a significant change from the current disclosure requirements. The Bureau did not propose such a departure, nor did the Bureau receive comments on the effect on consumers of removing the calculating cash to close tables. The Bureau believes, as do a number of commenters, that the calculating cash to close tables provide important benefits to consumers. In addition to promoting the informed use of credit (which is a purpose of TILA), the calculating cash to close tables ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loan product, consistent with section 1032(a) of the Dodd-Frank Act. The tables conduct many of the difficult calculations behind-the-scenes so that consumers can review the high-level components of the calculation. The calculating cash to close tables contain disclosures required by TILA section 128(a)(17), including the amount of settlement charges included in the loan (closing costs financed disclosure) and the amount of charges the borrower must pay at closing (cash to close amount). The Bureau believes that the amendments, as finalized, will improve the ability of creditors to comply with the calculating cash to close requirements and provide to consumers a more accurate cash to close amount.

Similarly, making the revisions requested by some commenters would also be a significant change from the current disclosure requirements. As discussed above, some commenters requested that the Bureau amend the closing costs financed and down payment/funds from borrower formulas to more closely reflect consumers' understanding of these disclosure items. In response, the Bureau notes that each of the calculating cash to close disclosure components is designed to work in conjunction with the other calculating cash to close disclosures to yield the estimated amount of cash due from or to the borrower at closing for a wide variety of transaction types. Because money is fungible, in order to create standardized disclosures that can be utilized in a wide variety of transaction types, the Bureau had to create formulas that earmarked loan funds for specific disclosures, including the closing costs financed and down payment/funds from borrower disclosures. In addition, the Bureau designed the closing costs financed disclosure, which is a necessary component of the standard calculating cash to close tables, to satisfy the TILA section 128(a)(17) statutory requirement to disclose the amount of settlement charges included in the loan. Removing that disclosure from the standard calculating cash to close tables would result in an inaccurate disclosure of the amount due from the consumer at consummation, which would be inconsistent with another statutory requirement in TILA section 128(a)(17). One commenter even admitted that it tried to develop an alternative closing costs financed formula that would work for all transaction types but was unable to do so.

The Bureau recognizes that creating revised labels for the closing costs financed and down payment/funds from borrower disclosures, as suggested by some commenters, could alleviate confusion associated with the disclosures. Consumers would no longer associate the amount disclosed on the currently labeled ''Closing Costs Financed (Paid from your Loan Amount)'' line of the calculating cash to close table with the amount of closing costs they understand to be financed in their transactions, or the amount disclosed on the currently labeled ''Down Payment/Funds from Borrower'' line of the calculating cash to close table with the amount of the down payment they understand to be making in their transactions. However, as discussed in the proposal, the Bureau's focus in this rulemaking is to provide additional clarity to facilitate compliance on an expedited schedule. The labels on the Loan Estimate and Closing Disclosure forms were developed through consumer testing processes, and it is not feasible, on an expedited schedule, to reengage in consumer testing to validate revised labels. Although consumer testing of disclosures is not necessary in all instances, the Bureau considers that such testing is important in this context. The Bureau also notes that the down payment/funds from borrower disclosure required under § 1026.37(h)(1)(iii) equally emphasizes ''Down Payment'' and ''Funds from Borrower'' in its current display of ''Down Payment/Funds from Borrower.'' Its calculation is designed to encompass the down payment and other funds due from the borrower using a formula that can be applied to a variety of transaction types, including transactions with and without sellers.

The Bureau is not amending the calculating cash to close tables to include the formulas used to calculate the individual components, as suggested by one commenter. The tables intentionally conduct the calculations behind-the-scenes so that consumers can review the high-level components of the calculation. Consumers wishing to see the final details of their transaction can review the summaries of transactions table or the payoffs and payments table on the Closing Disclosure, as applicable.

The Bureau is also not completely overhauling the calculating cash to close tables, as suggested by a consumer group. The commenter's proposed new format would itemize what the borrower must pay and what is paid by or for the borrower, and would not include the closing costs financed disclosure, which would instead be moved to the last page. The examples ranged in length from 11 lines (for a refinance transaction) to 16 lines (for a purchase transaction), and were substantially longer than the current calculating cash to close tables, which are four lines on the alternative calculating cash to close tables, seven lines on the Loan Estimate's standard calculating cash to close table, and nine lines on the Closing Disclosure's standard calculating cash to close table. The Bureau believes the degree of itemization in the calculating cash to close tables proposed by the commenter is unnecessary and frustrates the benefits of the calculating cash to close tables identified by other commenters, including providing consumers with the high-level components of the cash to close calculation and enabling consumers to understand components of their cash to close amount without the need to wade through the detailed line items in the summaries of transactions or the payoffs and payments tables.

As discussed above, a trade association commenter asked the Bureau to clarify that the standard disclosures may be used for refinance transactions. The commenter is correct that, under the Bureau's regulations, the standard calculating cash to close tables may be used for refinance transactions. A refinance transaction may be disclosed using the optional alternative calculating cash to close table under § 1026.37(h)(2), but use of that table is not required. However, if the creditor previously disclosed the optional alternative calculating cash to close table under § 1026.37(h)(2), the alternative calculating cash to close table must also be disclosed under § 1026.38(e). At the same time, secondary market investors may decide, as a business practice, to impose additional requirements, such as requiring the use of the alternative disclosures for refinance transactions.

The Bureau believes that finalizing the proposed amendments, with some revisions as discussed in the applicable section-by-section analyses, is necessary in order to resolve issues that have arisen during the initial implementation of the TILA–RESPA Rule and on which industry has asked the Bureau for guidance. The Bureau has been, and remains, engaged in extensive efforts to support industry implementation, and finalizing proposed clarifications and amendments related to the calculating cash to close tables is one such effort.

The Bureau is finalizing the proposed amendments and additional revisions pursuant to the Bureau's authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau believes that finalizing the proposed amendments and additional revisions will effectuate the purposes of TILA by facilitating the informed use of credit. Providing consumers with information about the cash to close amount and its critical components helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand better the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(h)(1) for All Transactions

The Bureau's Proposal

Section 1026.37(h)(1) requires the disclosure of a calculation, yielding an estimate of the cash needed from the consumer at consummation of the transaction, based on seven components. Each of the seven components, disclosed under § 1026.37(h)(1)(i) through (vii), respectively, is determined by a prescribed calculation. The Bureau proposed to add comment 37(h)(1)–2 to clarify that, on the Loan Estimate for simultaneous subordinate financing, the sale price disclosed under § 1026.37(a)(7) would not be used in any of the § 1026.37(h)(1) calculations. The Bureau explained that omitting the sale price from the calculating cash to close table calculations required under § 1026.37(h)(1) for simultaneous subordinate financing transactions would result in a cash to close amount reflecting the proceeds of the simultaneous subordinate financing, itself included on the first-lien Loan Estimate in the disclosure under § 1026.37(h)(1)(vii).

In the proposal, with respect to the Closing Disclosure, the Bureau would have structured the calculating cash to close table calculations in § 1026.38(i) to use the sale price disclosed under § 1026.38(j)(1)(ii), and further would have provided in proposed comment 38(j)(1)(ii)–1 that for simultaneous subordinate financing transactions, the sale price would not be disclosed under § 1026.38(j)(1)(ii). Thus, these proposed amendments would have meant that for simultaneous subordinate financing, the sale price disclosed under § 1026.38(j)(1)(ii) would not be used in any of the § 1026.38(i) calculations.

Comments Received

A compliance professional supported the proposal to clarify that, on the Loan Estimate for simultaneous subordinate financing, the sale price disclosed under § 1026.37(a)(7) would not be used in any of the § 1026.37(h)(1) calculations. A financial holding company stated that if the sale price is removed from the calculating cash to close table calculations for simultaneous subordinate financing, the calculations do not work on the Loan Estimate or Closing Disclosure. A title insurance company noted that the Bureau did not make a corresponding change to the commentary to § 1026.38(i), so the change appears only to affect the Loan Estimate. A commenter explained that revisions which clarify how simultaneous subordinate financing is disclosed, including treatment of the sale price, require systems changes which will take a full software cycle to implement.

The Final Rule

For the reasons discussed below, the Bureau is finalizing comment 37(h)(1)–2 as proposed with technical and conforming revisions. The Bureau believes that excluding the sale price from the calculating cash to close calculations for simultaneous subordinate financing purchase transactions will result in a more accurate disclosure of the actual subordinate financing transaction and reduce consumer confusion. As discussed above, the Bureau explained in the section-by-section analysis of § 1026.37(h)(1) of the proposal that omitting the sale price from the cash to close calculations required under § 1026.37(h)(1) for simultaneous subordinate financing transactions would result in a cash to close amount reflecting the proceeds of the subordinate financing, itself included on the first-lien Loan Estimate in the disclosure under § 1026.37(h)(1)(vii). The Bureau notes that this statement is no longer accurate with respect to the final rule. As discussed in the section-by-section analysis of § 1026.38(j)(1)(v), the Bureau is making amendments in the final rule to permit creditors to reflect the proceeds of the subordinate financing that will be applied to the first-lien transaction in the summaries of transactions table on the subordinate financing Closing Disclosure. Amounts that will be disclosed under § 1026.38(j)(1)(v) on the Closing Disclosure will be factored into the Loan Estimate in one of two ways. In transactions subject to § 1026.37(h)(1)(iii)(A)(*2*) and (B), a creditor factors amounts that will be disclosed under § 1026.38(j)(1)(v) into the funds for borrower calculation under § 1026.37(h)(1)(v). However, in transactions subject to § 1026.37(h)(1)(iii)(A)(*1*), a creditor factors amounts that will be disclosed under § 1026.38(j)(1)(v) into the adjustments and other credits calculation under § 1026.37(h)(1)(vii).

The Bureau is also amending proposed comment 37(h)(1)–2 to refer to the sale price disclosure in § 1026.37(a)(7)(i) when referring to the sale price, for greater specificity. Section 1026.37(a)(7)(ii) provides for the disclosure of the estimated property value, and the Bureau does not intend to reference the estimated property value disclosure in final comment 37(h)(1)–2.

The Bureau does not agree with an assertion raised by one commenter that the calculating cash to close table calculations will not work if the sale price is omitted from the calculations for the simultaneous subordinate financing Loan Estimate and Closing Disclosure. Unless information specific to the first-lien transaction, including the loan amount, is accounted for in the simultaneous subordinate financing calculating cash to close table calculations, inclusion of the sale price in the subordinate financing cash to close calculations will result in a large cash to close amount owed by the consumer, instead of a cash to close amount specifically for the subordinate financing transaction. The Bureau believes it is less burdensome to subordinate-lien creditors to omit the sale price from the simultaneous subordinate financing cash to close calculations than to import various elements of the first-lien transaction into the simultaneous subordinate financing calculating cash to close table calculations. For greater clarity and ease of implementation, the Bureau is amending §§ 1026.37(h)(1)(iii) and 1026.38(i)(4)(ii) to provide that for simultaneous subordinate financing, the down payment/funds from borrower amount is determined in accordance with §§ 1026.37(h)(1)(v) and 1026.38(i)(6)(iv), respectively.

As discussed above, a title insurance company noted that the Bureau did not propose an amendment to the commentary to § 1026.38(i) similar to the amendment set forth in proposed comment 37(h)(1)–2, which caused the commenter to believe that the guidance regarding sale price and simultaneous subordinate financing only affects the Loan Estimate. The Bureau notes, however, that consistent with the proposal, the Bureau is structuring the calculating cash to close table calculations in § 1026.38(i) to use the sale price disclosed under § 1026.38(j)(1)(ii), and further is providing in final comment 38(j)(1)(ii)–1 that for simultaneous subordinate financing purchase transactions, the sale price is not disclosed under § 1026.38(j)(1)(ii). These final amendments mean that for simultaneous subordinate financing purchase transactions, because no sale price is disclosed under § 1026.38(j)(1)(ii), no sale price would be used in any of the § 1026.38(i) calculations. As a result, the Bureau does not believe that a provision corresponding to the one in final comment 37(h)(1)–2 is needed in the commentary to § 1026.38(i). Nonetheless, the Bureau is making additional revisions to the commentary to § 1026.38(i) to clarify that no sale price is used in any of the § 1026.38(i) calculations for simultaneous subordinate financing purchase transactions. As discussed in the section-by-section analysis of § 1026.38(i)(3), the Bureau is amending comment 38(i)(3)–1 to explain that for some loans, such as simultaneous subordinate financing purchase transactions, no sale price will be disclosed under § 1026.38(j)(1)(ii) in accordance with final comment 38(j)(1)(ii)–1. In addition, as discussed above and in the section-by-section analysis of § 1026.38(i)(4), the Bureau is revising § 1026.38(i)(4)(ii) and its commentary to make clear that on the simultaneous subordinate financing Closing Disclosure, the down payment/funds from borrower amount is determined in accordance with the formula in § 1026.38(i)(6)(iv).

The Bureau is providing industry sufficient time to implement all of the amendments related to simultaneous subordinate financing. As discussed in part VI below, the rule will be effective 60 days from publication in the **Federal Register**, but there will be an optional compliance period in effect until October 1, 2018.

37(h)(1)(i) Total Closing Costs

Section 1026.37(h)(1)(i) requires a creditor to disclose the amount of total closing costs disclosed under § 1026.37(g)(6) as a positive number, labeled ''Total Closing Costs.'' The Bureau did not propose any amendments to § 1026.37(h)(1)(i), but the Bureau did propose to address concerns regarding the required disclosure of negative and positive numbers elsewhere, including in § 1026.37(h)(1)(vii) and (2)(iii), and § 1026.38(e)(2)(ii) and (4)(ii). In addition, the Bureau received a comment from a software vendor requesting that the Bureau amend § 1026.37(h)(2)(ii), the alternative calculating cash to close table's companion provision to § 1026.37(h)(1)(i), to account for situations where the amount of total closing costs disclosed under § 1026.37(g)(6) is a negative number, and the Bureau is amending § 1026.37(h)(2)(ii) accordingly. Therefore, the Bureau believes it is also important to amend § 1026.37(h)(1)(i) to account for situations where the amount of total closing costs disclosed under § 1026.37(g)(6) is a negative number. As amended, § 1026.37(h)(1)(i) requires creditors to disclose under § 1026.37(h)(1)(i) the amount disclosed under § 1026.37(g)(6), labeled ''Total Closing Costs.'' While the Bureau notes that it is not common for the total closing costs disclosed under § 1026.37(g)(6) to be a negative number, the Bureau concludes that it is nonetheless necessary to amend § 1026.37(h)(1)(i) to address the limited circumstances in which a negative number is disclosed under § 1026.37(g)(6).

37(h)(1)(ii) Closing Costs Financed

The Bureau's Proposal

Comment 37(h)(1)(ii)–1 explains that the amount of closing costs financed disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed under § 1026.37(f) and (g) from the loan amount disclosed under § 1026.37(b)(1). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that it does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6). If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.37(h)(1)(ii). The Bureau proposed to revise comment 37(h)(1)(ii)–1 and add comment 37(h)(1)(ii)–2 to provide greater clarity regarding the sale price and loan amount in relation to the closing costs financed calculation.

The Bureau proposed to revise comment 37(h)(1)(ii)–1 to clarify that the sale price disclosed under § 1026.37(a)(7) may be included in the closing costs financed calculation as a payment to a third party not otherwise disclosed under § 1026.37(f) and (g). However, as explained in proposed comment 37(h)(1)–2, sale price would not have been used in any calculating cash to close table calculations on the

Loan Estimate for a simultaneous subordinate financing purchase transaction. Consistent with proposed revisions to comment 37(h)(1)(ii)–1, the Bureau also proposed to add comment 38(i)(3)–1 to provide similar guidance for the Closing Disclosure regarding the sale price in relation to the closing costs financed calculation.

In addition, the Bureau proposed to remove the word ''total'' from the phrase ''total loan amount'' in comment 37(h)(1)(ii)–1 because ''total loan amount'' is a defined term under § 1026.32(b)(4), and the Bureau intended only to reference the loan amount disclosed under § 1026.37(b)(1). The Bureau also proposed a technical revision in comment 37(h)(1)(ii)–1 to reference the absolute value of the amount disclosed under § 1026.37(h)(1)(ii) when that amount is negative in order for the calculation to work properly.

Proposed comment 37(h)(1)(ii)–2 explained that the loan amount disclosed under § 1026.37(b)(1) is the total amount the consumer will borrow, as reflected by the face amount of the note, consistent with proposed revisions to § 1026.37(b)(1). The comment further explained that financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount. The intent of this proposed comment was to clarify that, regardless of how the term ''loan amount'' is used by creditors or in relation to programmatic requirements of specific loan programs, for purposes of the Loan Estimate, the amount disclosed as the loan amount under § 1026.37(b)(1), and the basis for the calculating cash to close table calculations, is the total amount the consumer will borrow as reflected by the face amount of the note. This definition of loan amount under § 1026.37(b)(1) would not have affected how other agencies define or use similar terms for purposes of their own programmatic requirements. Consistent with proposed comment 37(h)(1)(ii)–2, the Bureau also proposed to add comment 38(i)(3)–2 to provide similar guidance for the Closing Disclosure regarding the loan amount in relation to the closing costs financed calculation.

Comments Received

A software vendor supported the proposed change to comment 37(h)(1)(ii)–1, while also noting that the problem it addresses was not a significant concern to the industry. A software vendor and software vendor group noted a slight inconsistency between the language describing the closing costs financed calculation for the Loan Estimate in the proposed revisions to comment 37(h)(1)(ii)–1 and the Closing Disclosure in proposed comment 38(i)(3)–1, which could permit creditors to use two different calculations for the closing costs financed disclosures. Specifically, commenters identified the inclusion of the word ''may'' in reference to the Loan Estimate's closing costs financed formula in the proposed revisions to comment 37(h)(1)(ii)–1, which would give creditors a discretionary option to include or exclude the sale price in the closing costs financed disclosure on the Loan Estimate's calculating cash to close table, whereas on the Closing Disclosure, proposed comment 38(i)(3)–1 would have required that the sale price disclosed under § 1026.38(j)(1)(ii) be included in the closing costs financed calculation.

A software vendor expressed support for the Bureau's proposed comment 37(h)(1)(ii)–2 to clarify that financed mortgage insurance premiums do not reduce the loan amount used in the calculation. A trade association commenter did not support requiring the loan amount disclosed in § 1026.37(b)(1) to be used in the closing costs financed calculation; instead, the commenter indicated that creditors should be permitted to use the ''base loan amount.''

The Final Rule

For the reasons discussed below, the Bureau is finalizing the proposed amendments to comments 37(h)(1)(ii)–1 and –2 with revisions. The Bureau's use of the phrase ''may include the sale price disclosed under § 1026.37(a)(7), if applicable'' in the proposed revisions to comment 37(h)(1)(ii)–1 was intended to address situations in which the standard calculating cash to close table is used for simultaneous subordinate financing, in which no sale price would be included, as described in proposed comment 37(h)(1)–2. However, the Bureau recognizes the need in final comment 37(h)(1)(ii)–1 for greater clarity and alignment with final comment 38(i)(3)–1 and is revising comment 37(h)(1)(ii)–1 accordingly. For the reasons discussed in the section-by-section analysis of § 1026.37(h)(1), the Bureau is also amending comment 37(h)(1)(ii)–1 to refer to the sale price disclosure in § 1026.37(a)(7)(i) when referring to the sale price. As revised, final comment 37(h)(1)(ii)–1 provides, in part, that the estimated total amount of payments to third parties includes the sale price disclosed under § 1026.37(a)(7)(i), if applicable, unless otherwise excluded under comment 37(h)(1)–2.

The Bureau is also amending comment 37(h)(1)(ii)–1 to include additional examples for consistency with existing comment 37(g)(4)–4, which is not being revised as proposed. As discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.37(g)(4). The closing costs financed disclosure under § 1026.37(h)(1)(ii) excludes payments to third parties disclosed under § 1026.37(f) and (g) from the calculation. Because amounts for construction costs, payoff of existing liens, and payoff of unsecured debt would be factored into either the funds for borrower calculation under § 1026.37(h)(1)(v) or the adjustments and other credits calculation under § 1026.37(h)(1)(vii), rather than disclosed under § 1026.37(f) or under § 1026.37(g), they will be included in the closing costs financed calculation as payments to third parties not otherwise disclosed under § 1026.37(f) and (g).

The Bureau believes its statement in proposed new comment 37(h)(1)(ii)–2 that the loan amount is the total amount the consumer will borrow as reflected by the face amount of the note is sufficiently clear and is therefore streamlining the comment by removing the example. The Bureau is also making a technical correction, but is not otherwise amending proposed comment 37(h)(1)(ii)–2 as requested by a commenter. The loan amount disclosed under § 1026.37(b)(1) is an integral part of the closing costs financed calculation, and the calculating cash to close table generally. Each of the calculating cash to close disclosures is designed to work in conjunction with the other calculating cash to close disclosures to yield the estimated amount of cash due from or to the consumer at closing for a wide variety of transaction types. The Bureau designed the calculations so that financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount. For purposes of the Loan Estimate, the amount disclosed as the loan amount under § 1026.37(b)(1), and the basis for the calculating cash to close table calculations, is the total amount the consumer will borrow as reflected by the face amount of the note. The Bureau emphasizes that this definition of loan amount under § 1026.37(b)(1) does not affect how other agencies may define or use similar terms for purposes of their own programmatic requirements. For example, the ''base loan amount'' and ''total loan amount,'' as those terms are used for loans made under programs of the Federal Housing Administration (FHA), may not be the same as the loan amount required to be disclosed under § 1026.37(b)(1).

37(h)(1)(iii) Down Payment and Other Funds From Borrower

The Bureau's Proposal

Section 1026.37(h)(1)(iii)(A) requires the down payment and funds from borrower amount in a purchase transaction as defined in § 1026.37(a)(9)(i) to be disclosed as a positive number. In these transactions, the amount is calculated as the difference between the purchase price of the property and the principal amount of the credit extended. The calculation does not capture the amount of any existing loans that the consumer is assuming or any loans subject to which the consumer is taking title to the property (assumed or taken subject to) that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv). Comment 37(h)(1)(iii)–1 explains that, in the case of a transaction other than a construction loan, where the loan amount exceeds the purchase price of the property, the amount disclosed must be $0. Section 1026.37(h)(1)(iii)(B) provides that, in all transactions other than purchase transactions as defined in § 1026.37(a)(9)(i), the amount of estimated funds from the consumer is determined in accordance with § 1026.37(h)(1)(v).

The Bureau proposed to revise § 1026.37(h)(1)(iii)(A) to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions. Proposed § 1026.37(h)(1)(iii)(A)(*1*) would have specified that, in a purchase transaction as defined in § 1026.37(a)(9)(i), the creditor subtracts the sum of the loan amount and any amount for loans assumed or taken subject to that will be disclosed on the Closing Disclosure from the sale price of the property, except when the sum of the loan amount and any amount for loans assumed or taken subject to that will be disclosed on the Closing Disclosure exceed the sale price of the property. Proposed § 1026.37(h)(1)(iii)(A)(*2*) would have provided that when the sum of the loan amount and any amount for loans assumed or taken subject to that will be disclosed on the Closing Disclosure exceeds the sale price of the property, the creditor calculates the estimated funds from the consumer in accordance with revised § 1026.37(h)(1)(v).

The Bureau also proposed to make conforming amendments to § 1026.37(h)(1)(iii)(B). As proposed, § 1026.37(h)(1)(iii)(B) would have provided that, for all other transactions, the estimated funds from the consumer is also calculated in accordance with the funds for borrower calculation in revised § 1026.37(h)(1)(v). The Bureau proposed to add new comment 37(h)(1)(iii)–2 to explain that the amount disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (B) is determined in accordance with the funds for borrower calculation in revised § 1026.37(h)(1)(v).

In addition, the Bureau proposed to replace current comment 37(h)(1)(iii)–1 with a new comment. As a result of the proposed revisions to § 1026.37(h)(1)(iii), current comment 37(h)(1)(iii)–1 would not have been accurate or necessary. The Bureau proposed to remove current comment 37(h)(1)(iii)–1 and to replace it with guidance on the calculation set forth in the proposed revisions to § 1026.37(h)(1)(iii). Proposed new comment 37(h)(1)(iii)–1 explained the calculation that must be followed for accurate disclosure under § 1026.37(h)(1)(iii). The proposed comment also provided guidance regarding minimum cash investments. Some loan programs require borrowers to provide minimum cash investments, which, under the regulations or requirements of those loan programs, may be referred to as ''down payments.'' The proposed comment explained that the minimum cash investments required of consumers and referred to as ''down payments'' under some loan programs would not necessarily be reflected in the disclosure, and disclosure of the calculated amount would not affect compliance or non-compliance with such loan programs' requirements.

Comments Received

In response to the Bureau's general solicitation of comment on the calculating cash to close table, many commenters raised concerns with the down payment and funds from borrower disclosure requirements. The Bureau discusses commenters' general concerns in the section-by-section analysis of § 1026.37(h). The comments summarized below are related to the Bureau's specific proposals under § 1026.37(h)(1)(iii) and its commentary.

A bank commenter and a compliance professional supported the Bureau's proposal to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions. The commenters stated that this change will allow the accurate reflection of proceeds due to the borrower at closing and urged the Bureau to adopt the proposal.

A secondary market participant, a trade association, software vendors, and a software vendor group objected to the Bureau's distinction between the Bureau's down payment disclosure calculation and minimum cash investments required of consumers under some loan programs, which may also be called ''down payments'' under those loan programs. Two commenters argued that creditors would be setting up a particular definition of down payment for §§ 1026.37 and 1026.38 that is different from the definition of down payment used by consumers, other Federal agencies, and GSEs. The commenters asserted that it is misleading to disclose to the consumer a down payment amount that does not coincide with the consumer's understanding of what the down payment amount should be, and recommended that the Bureau relabel the disclosure as ''Funds from Borrower'' instead of ''Down Payment/Funds from Borrower.'' Commenters also suggested variations of dynamic text such as ''Funds from Borrower (including Down Payment)'' and ''Down Payment & Funds from Borrower'' for transactions involving a seller. One commenter stated that the distinction drawn by the Bureau in proposed new comment 37(h)(1)(iii)–1 would be extremely confusing to a consumer. The commenter asserted that it will be difficult for first time home buyers to understand that the federally insured home loan for which they are applying requires a certain down payment, but the federally required disclosure does not reflect that down payment amount. The commenter asserted that it would also be difficult to compare a Loan Estimate for a federally insured home loan program with a Loan Estimate for a conventional home loan program.

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For the reasons discussed below, the Bureau is adopting, with revisions, the proposed amendments to § 1026.37(h)(1)(iii) and proposed comments 37(h)(1)(iii)–1 and –2. The Bureau is adopting the amendment to § 1026.37(h)(1)(iii) as proposed with revisions to clarify how § 1026.37(h)(1)(iii) applies to simultaneous subordinate financing purchase transactions and transactions with improvements to be made on the property. The Bureau is also amending § 1026.37(h)(1)(iii)(A)(*1*) and (*2*) to refer to the sale price disclosure in

§ 1026.37(a)(7)(i), specifically. The Bureau is making similar amendments to § 1026.38(i)(4)(ii)(A). The Bureau is making minor technical revisions to § 1026.37(h)(1)(iii)(B).

As discussed in more detail in the section-by-section analysis of § 1026.37(h)(1), under the proposal, in a simultaneous subordinate financing transaction, the sale price would have been omitted from the calculating cash to close table calculations, including under § 1026.37(h)(1)(iii). As a result, under the proposal, for simultaneous subordinate financing, proposed § 1026.37(h)(1)(iii)(A)(*2*) would have applied because the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) would have exceeded the sale price of the property disclosed under § 1026.37(a)(7). At least one commenter on the proposal to omit the sale price from the cash to close calculations of simultaneous subordinate financing transactions suggested that it was not clear that proposed § 1026.37(h)(1)(iii)(A)(*2*) would have applied to simultaneous subordinate financing. Therefore, the Bureau is amending proposed § 1026.37(h)(1)(iii)(A)(*2*) to explicitly provide that the down payment and funds from borrower amount for simultaneous subordinate financing is determined in accordance with § 1026.37(h)(1)(iii)(A)(*2*). The Bureau is making similar amendments to § 1026.38(i)(4)(ii)(A)(*2*).

The Bureau anticipates that there may be similar uncertainty regarding which subparagraph of § 1026.37(h)(1)(iii)(A) applies to purchase transactions that involve improvements to be made on the property. Therefore, the Bureau is also amending proposed § 1026.37(h)(1)(iii)(A)(*2*) to explicitly provide that the down payment and funds from borrower amount for purchase transactions that involve improvements to be made on the property is determined in accordance with § 1026.37(h)(1)(iii)(A)(*2*). The Bureau is making similar amendments to § 1026.38(i)(4)(ii)(A)(*2*).

The Bureau is adopting proposed comment 37(h)(1)(iii)–1 with revisions. As discussed above, commenters raised concerns with the Bureau's distinction between the down payment disclosure calculation and minimum cash investments required of consumers under some loan programs, which may also be called ''down payments'' under those loan programs. The commenters recommended that the Bureau revise the ''Down Payment/Funds from Borrower'' label to remove or deemphasize the ''Down Payment'' aspect of the label. The Bureau is not amending § 1026.37(h)(1)(iii) in response to these comments. The Bureau notes that the disclosure required under § 1026.37(h)(1)(iii) equally emphasizes ''Down Payment'' and ''Funds from Borrower'' with its current label, ''Down Payment/Funds from Borrower.'' Its calculation is designed to encompass the down payment and other funds from the borrower using a formula that can be applied to a variety of transaction types, including transactions with and without sellers. The Bureau is, however, amending proposed new comment 37(h)(1)(iii)–1 to make clear that the disclosure required under § 1026.37(h)(1)(iii)(A)(*1*) represents both the down payment and other funds from the borrower and to explain that the down payment and funds from borrower calculation is independent of any loan program or investor requirements. Because the Bureau is revising § 1026.37(h)(1)(iii)(A)(*1*) and (*2*) to refer to the sale price disclosure in § 1026.37(a)(7)(i), specifically, as discussed above, the Bureau is also making a conforming revision in comment 37(h)(1)(iii)–1.

The Bureau is adopting comment 37(h)(1)(iii)–2 as proposed with several revisions. The Bureau is revising proposed comment 37(h)(1)(iii)–2 for conformity with revisions made to § 1026.37(h)(1)(iii) discussed above and for clarity. The Bureau also is incorporating portions of the regulatory text and commentary from final § 1026.37(h)(1)(v) into comment 37(h)(1)(iii)–2 for additional clarity regarding the disclosure requirements when the funds for borrower formula under § 1026.37(h)(1)(v) is used in accordance with § 1026.37(h)(1)(iii)(A)(*2*) and (B).

37(h)(1)(v) Funds for Borrower

The Bureau's Proposal

Section 1026.37(h)(1)(v) provides that the amount of down payment and funds from the borrower disclosed under § 1026.37(h)(1)(iii)(B) and of funds for the borrower disclosed under § 1026.37(h)(1)(v) are calculated by subtracting the principal amount of the credit extended, excluding any closing costs financed disclosed under § 1026.37(h)(1)(ii), from the total amount of all existing debt being satisfied in the transaction, except to the extent the satisfaction of such existing debt is disclosed under § 1026.37(g). For purposes of the funds for borrower disclosure in § 1026.37(h)(1)(v) and the down payment/funds from borrower disclosure in § 1026.37(h)(1)(iii)(B), the calculation is made under § 1026.37(h)(1)(v). When the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(1)(iii)(B) as ''Down Payment/Funds from Borrower,'' and $0 is disclosed under § 1026.37(h)(1)(v) as ''Funds for Borrower.'' When the result of the calculation is negative, that amount is disclosed under § 1026.37(h)(1)(v) as ''Funds for Borrower,'' and $0 is disclosed under § 1026.37(h)(1)(iii)(B) as ''Down Payment/Funds from Borrower.'' When the result is $0, $0 is disclosed as ''Down Payment/Funds from Borrower'' and ''Funds for Borrower'' under § 1026.37(h)(1)(iii)(B) and (v), respectively. Current comment 37(h)(1)(v)–1 clarifies that the funds for borrower calculation under § 1026.37(h)(1)(v) is used in a non-purchase transaction to determine the amount disclosed under § 1026.37(h)(1)(iii) and labeled ''Down Payment/Funds from Borrower,'' and that, in a purchase transaction, other than a construction loan, the amount disclosed under § 1026.37(h)(1)(v) and labeled ''Funds for Borrower,'' will be $0, in accordance with § 1026.37(h)(1)(v)(A).

The Bureau proposed to revise § 1026.37(h)(1)(v) to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation in purchase transactions. As discussed in the section-by-section analysis of § 1026.37(h)(1)(iii) above, the Bureau proposed to amend the down payment/funds from borrower calculation under § 1026.37(h)(1)(iii) to specify in proposed § 1026.37(h)(1)(iii)(A)(*2*) that, in purchase transactions, when the sum of the loan amount and any amount for existing loans assumed or taken subject to that will later be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price, the funds for borrower calculation in § 1026.37(h)(1)(v), as proposed to be revised, will be used for the transaction. The Bureau proposed conforming revisions to § 1026.37(h)(1)(v) to reflect the proposed changes to § 1026.37(h)(1)(iii)(A)(*2*). The Bureau also proposed to revise comment 37(h)(1)(v)–1 to conform with proposed revisions to § 1026.37(h)(1)(iii)(A) and (v). The comment would have provided that, when the down payment is determined in accordance with § 1026.37(h)(1)(iii)(A)(*1*), $0 is disclosed under § 1026.37(h)(1)(v) as funds for borrower.

The Bureau also proposed to add comment 37(h)(1)(v)–2 to provide that the amounts disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (B), as applicable, and § 1026.37(h)(1)(v), are determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. Proposed comment 37(h)(1)(v)–2 further would have clarified that the phrase ''total amount of all existing debt being satisfied in the transaction'' includes amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau sought comment on whether defining the phrase ''total amount of all existing debt being satisfied in the transaction'' to mean specifically amounts that will be disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the ''total amount of all existing debt being satisfied by the transaction.'' Consistent with proposed revisions to § 1026.37(h)(1)(v) and comment 37(h)(1)(v)–1, and proposed comment 37(h)(1)(v)–2, the Bureau proposed similar provisions for the Closing Disclosure in § 1026.38(i)(6)(iv) and comment 38(i)(6)(ii)–1, and proposed comment 38(i)(6)(ii)–2.

Comments Received

A bank, a compliance professional, and a settlement agent supported the Bureau's proposed amendments to § 1026.37(h)(1)(v). Two commenters stated that the amendments will allow the accurate reflection of proceeds due to the borrower at closing and urged the Bureau to adopt the proposal. One commenter expressed support for the prescriptive nature of proposed comment 37(h)(1)(v)–2 to clarify that the amounts included as existing debt being satisfied in the transaction are the amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(ii), (iii), and (v), but cautioned that the proposed amendments to the commentary of § 1026.37(g)(4) regarding the payoff of amounts secured by the real property would have unintended consequences because under the proposal, the debt would not be disclosed under those paragraphs. A software vendor noted a slight wording difference between proposed comment 37(h)(1)(v)–2 pertaining to the Loan Estimate and proposed amendments to comment 38(i)(6)(ii)–1 pertaining to the Closing Disclosure. Specifically, proposed comment 37(h)(1)(v)–2 provided that the total amount of all existing debt being satisfied in the transaction includes the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. This commenter interpreted the word ''includes'' to mean ''includes, but is not limited to,'' whereas the proposed revisions to comment 38(i)(6)(ii)–1 make clear that for the Closing Disclosure, the total amount of all existing debt being satisfied in the transaction is the sum of the amounts disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. The commenter requested that the Bureau revise the comments for better consistency and alignment.

The Final Rule

For the reasons discussed below, the Bureau is adopting, with minor revisions and clarifications, the proposed amendments to § 1026.37(h)(1)(v) and comment 37(h)(1)(v)–1, and proposed comment 37(h)(1)(v)–2. The Bureau is adopting the amendments to § 1026.37(h)(1)(v) and comment 37(h)(1)(v)–1 as proposed with minor revisions to conform to the additional clarifications contained in final comment 37(h)(1)(iii)–1. As discussed in the section-by-section analysis of § 1026.37(h)(1)(iii), the Bureau is amending comment 37(h)(1)(iii)–1 to make clear that the disclosure required under § 1026.37(h)(1)(iii) represents both the down payment and other funds from the borrower. The Bureau is making similar amendments to § 1026.37(h)(1)(v) and comment 37(h)(1)(v)–1.

As discussed above, a commenter noted a slight wording difference between proposed comment 37(h)(1)(v)–2 pertaining to the Loan Estimate and the proposed revisions to comment 38(i)(6)(ii)–1 pertaining to the Closing Disclosure. The Bureau is revising comment 37(h)(1)(v)–2 to replace the word ''includes'' with the phrase ''is the sum of'' for consistency and alignment with final comment 38(i)(6)(ii)–1. The Bureau is also making minor technical revisions to comment 37(h)(1)(v)–2.

As discussed above, a commenter cautioned that the proposed amendments to the commentary of § 1026.37(g)(4) regarding the payoff of amounts secured by the real property would have unintended consequences for the proposal to define existing debt being satisfied in the transaction as the amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(ii), (iii), and (v). As discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.37(g)(4).

37(h)(1)(vi) Seller Credits

The Bureau's Proposal

Section 1026.37(h)(1)(vi) requires creditors to disclose the amount that the seller will pay for total loan costs as determined by § 1026.37(f)(4) and total other costs as determined by § 1026.37(g)(5), labeled ''Seller Credits,'' under the heading ''Calculating Cash to Close.'' Section 1026.37(f) and (g) requires creditors to disclose loan costs and other transaction costs under the headings ''Loan Costs'' and ''Other Costs,'' respectively. Current comments 37(h)(1)(vi)–1 and –2 contain guidance on disclosure of seller credits. The Bureau believes that under existing § 1026.37, creditors have the option to disclose specific seller credits either under § 1026.37(f) and (g) or under § 1026.37(h)(1)(vi). Nonetheless, the Bureau has received questions on this issue. Thus, the Bureau proposed to amend comments 37(h)(1)(vi)–1 and –2 to provide that specific seller credits may be disclosed in the calculating cash to close table under § 1026.37(h)(1)(vi) or, at the creditor's option, may be reflected within the amounts disclosed for those specific items in the Loan Costs and Other Costs tables, under § 1026.37(f) and (g), respectively. For the reasons discussed below, the Bureau is finalizing comments 37(h)(1)(vi)–1 and –2 substantially as proposed but with certain minor changes.

Comments Received

The Bureau received comments on these proposed changes from industry individuals, title companies, settlement agents, large banks, consumer groups, a large industry trade group, and non-banks. Generally commenters supported the proposal.

Some industry commenters stated that seller credits should only be disclosed as ''lump sum'' credits under § 1026.37(h)(1)(vi). Some of these commenters expressed the view that disclosing specific seller credits in the same location on each Loan Estimate creates consistency for consumers in comparing Loan Estimates. They further stated that requiring seller credits to be disclosed in the same location on each Loan Estimate under § 1026.37(h)(1)(vi) would create less confusion for other parties involved in the transaction, including due diligence companies and secondary market investors. Several commenters stated that the ''itemization'' of seller credits, the disclosure of specific seller credits within § 1026.37(f) and (g), is a significant pain point for the secondary market, as due diligence companies are flagging errors in the disclosure of seller credits, because, often a creditor may not have received a breakdown of any specific credits at the time the creditor provided the disclosure. One industry commenter stated that the disclosure of specific seller credits within § 1026.37(f) and (g) presents a burden on the creditor to adjust the disclosed amounts of affected closing costs, and masks the true amount of these settlement costs to the consumer. This commenter noted that the disclosure of seller credits within § 1026.37(f) and (g) could impact the calculation of good faith tolerance cures by lowering the disclosed costs of an individual service by the amount of the seller credit.

Some industry and consumer group commenters, stated that the Bureau should require creditors to disclose specific seller credits only in the Loan Costs and Other Costs tables under § 1026.37(f) and (g), respectively. They noted that requiring a single standard for disclosure of specific seller credits would allow consumers to more easily compare the Loan Estimate to the Closing Disclosure, as specific seller credits must be listed on the Closing Disclosures in the Loan Costs and Other Costs tables, under § 1026.38(i)(7), in the seller-paid column. The consumer group commenters further stated that consistent placement of seller credits on Loan Estimates would enhance consumer understanding during the shopping process by creating consistency in the disclosure of these credits.

Many industry commenters stated that the Bureau should retain the optionality for disclosing specific seller credits under § 1026.37(f) and (g), respectively, or under § 1026.37(h)(1)(vi). Some of these commenters noted that the optionality should be maintained because the application of seller credits is governed by contracts between buyers and sellers and government programs, such as the Veterans Affairs home loan program, which may dictate whether specific seller credits must be disclosed under § 1026.37(f) and (g), or under § 1026.37(h)(1)(vi). Commenters noted that requiring specific seller credits to be disclosed under § 1026.37(f) and (g) or § 1026.37(h)(1)(vi) would necessitate mortgage origination systems changes. An industry commenter noted that the Bureau should retain the optionality because the Bureau has not done any consumer testing to support taking away the optionality and that it is not clear that consumers are currently confused by the different approaches. Another industry commenter stated that it believes that mandating the manner in which specific seller credits are disclosed would remove the benefit of clarity the integrated disclosures were intended to provide. Another industry commenter noted that optionality should be retained to facilitate creditors' compliance with the good faith determination under § 1026.19(e)(3) and relevant tolerances.

A number of industry commenters requested additional clarification on disclosing specific seller credits on the Loan Estimate. One industry commenter specifically asked for clarification on situations where the actual cost for that service is less than the estimate. Other industry commenters requested clarification about whether a loan cost that is fully paid by a specific seller credit may be excluded from the Loan Costs and Other Costs tables entirely. A group of vendor commenters requested clarification on how flexibility in the disclosure of specific seller credits on the Loan Estimate affects the good faith determination under § 1026.19(e)(3) and the relevant tolerance for those costs. Beyond the proposed clarification regarding the Loan Estimate, one industry bank commenter encouraged the Bureau to provide flexibility in displaying seller credits on the Closing Disclosure.

The Final Rule

The Bureau has considered these comments and is finalizing amendments to comment 37(h)(1)(vi)–1 and finalizing amendments to comment 37(h)(1)(vi)–2 substantially as proposed with certain minor changes. The Bureau believes that final comments 37(h)(1)(vi)–1 and –2 are consistent with existing § 1026.37(h)(1)(vi), under which creditors already have the option to disclose seller credits in the calculating cash to close table under § 1026.37(h)(1)(vi) or within the amounts disclosed for specific items in the Loan Costs and Other Costs tables under § 1026.37(f) and (g). In response to commenter requests, the Bureau has added an additional example in comment 37(h)(1)(vi)–2 to provide clarification on circumstances where a seller credit covers the entire cost of a service. Final comment 37(h)(1)(vi)–2 provides the example that, if the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay half of a $100 required pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under § 1026.37(f) with a $50 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose the required pest inspection fee as $50 under § 1026.37(f), reflecting the specific seller credit in the amount disclosed for the pest inspection fee. If the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay the entire $100 pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under § 1026.37(f) with a $100 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose nothing under § 1026.37(f), reflecting that the specific seller credit will cover the entire pest inspection fee.

The Bureau declines to implement requests that specific seller credits be disclosed exclusively in the calculating cash to close table under § 1026.37(h)(1)(vi) or exclusively within the specific services in the Loan Costs and Other Costs tables under § 1026.37(f) and (g). Commenters provided arguments in support of both approaches, and many commenters supported preserving the optionality consistent with existing § 1026.37(h)(1)(vi). Since the Bureau believes that comments 37(h)(1)(vi)–1 and –2 are consistent with existing § 1026.37(h)(1)(vi), additional consumer testing is not necessary. In response to commenter requests for clarity on the disclosure of seller credits on the Loan Estimate, the Bureau provides the following discussion.

Generally, seller credits are determined by the terms of the legal obligation between the seller and consumer. Since the creditor is not setting the terms of the legal obligation between a seller and a consumer, the basis for the optionality in disclosure of seller credits is defined in comment 37(h)(1)(vi)–2. Comment 19(e)(1)(i)–1 requires disclosures based on the best information reasonably available at the time the disclosure is provided to the consumer.

Similar to the example provided in final comment 37(h)(1)(vi)–2, if consistent with the terms of the legal obligation between the seller and consumer, creditors may disclose the cost, in full, on the Loan Estimate in the Loan Costs or Other Cost tables, pursuant to § 1026.37(f) and (g), and disclose a seller credit pursuant to § 1026.37(h)(1)(vi), or creditors may just disclose the cost less the seller credit in the Loan Costs or Other Cost tables, pursuant to § 1026.37(f) and (g). For example, assume the terms of the legal obligation between the seller and consumer obligate the seller to provide a credit of $200 to the consumer to go towards the cost of the appraisal. The creditor may disclose the full cost of the appraisal, $500, on the Loan Estimate, under § 1026.37(f)(2), Services You Cannot Shop For, and include the specific seller credit for $200 under § 1026.37(h)(1)(vi). Alternatively, if consistent with the terms of the legal obligation, the creditor can show $300, *i.e.,* the amount of the appraisal fee less the specific seller credit, on the Loan Estimate, under § 1026.37(f)(2), Services You Cannot Shop For, and not include the specific seller credit pursuant to § 1026.37(h)(1)(vi).

In response to commenter requests for clarification on how disclosing seller credits on the Loan Estimate impacts the good faith determination under § 1026.19(e)(3) and relevant tolerances, the Bureau provides the following example. Assume a seller offers to provide a $500 credit to the consumer to cover the anticipated cost of the appraisal. The creditor discloses an appraisal fee of $500, under § 1026.37(f)(2), Services You Cannot Shop For, on the Loan Estimate and includes a seller credit of $500 under § 1026.37(h)(1)(vi). The actual cost of the appraisal is $750. Assume that a review of the terms of the legal obligation between the creditor and consumer indicates that the consumer has agreed to be charged for any amount above the estimated $500 for the appraisal. Given this set of facts, if the creditor wants to reset the appraisal tolerance for purposes of the good faith determination, the creditor must issue revised disclosures with the corrected appraisal fee of $750, subject to the requirements of § 1026.19(e)(3)(iv) and (e)(4).

Assume the same example above, except that the creditor chooses not to disclose an appraisal fee under § 1026.37(f)(2), Services You Cannot Shop For, on the Loan Estimate because the creditor assumed it would be covered by the $500 seller credit for the appraisal. Under these facts, and because the cost is in the zero tolerance category under § 1026.19(e)(3)(i), if the actual appraisal cost turns out to be $750, the creditor will not be able to reset the appraisal tolerance for purposes of the good faith determination under § 1026.19(e)(3), unless the creditor can otherwise establish a valid justification under § 1026.19(e)(3)(iv).

The Bureau declines to add further commentary in response to commenters requesting flexibility in disclosing seller credits on the Closing Disclosure, because, unlike the Loan Estimate, the Closing Disclosure has a seller-paid column.

37(h)(1)(vii) Adjustments and Other Credits

The Bureau's Proposal

Section 1026.37(h)(1)(vii) requires that the amount of all loan costs determined under § 1026.37(f) and other costs determined under § 1026.37(g) that are to be paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts that are required to be paid by the consumer at consummation pursuant to a purchase and sale contract, be disclosed as a negative number. This assumes that the amount required to be paid by the consumer at consummation pursuant to a purchase and sale contract will be less than the amount of credits, which, the Bureau understands, may not always be the case. Therefore, the Bureau proposed to revise § 1026.37(h)(1)(vii) to eliminate the requirement that the amount disclosed be a negative number. Also, as discussed below, the Bureau proposed to revise comments 37(h)(1)(vii)–1, –5, and –6.

Current comment 37(h)(1)(vii)–1 clarifies that amounts expected to be paid by third parties not involved in the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed under § 1026.37(h)(1)(vii), but the comment does not specify whether amounts received by the consumer prior to consummation must be included in the calculation. The Bureau proposed to revise comment 37(h)(1)(vii)–1 to distinguish between amounts paid by third parties at consummation and amounts given to consumers in advance of consummation. As proposed, the revision to comment 37(h)(1)(vii)–1 would have provided that amounts expected to be paid at consummation by third parties not involved in the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), would be included in the amount disclosed under § 1026.37(h)(1)(vii), although amounts expected to be provided to consumers in advance of consummation by third parties not otherwise involved in the transaction, including gifts from family members, would not be required to be included in the amount disclosed under § 1026.37(h)(1)(vii).

Current comment 37(h)(1)(vii)–5 clarifies that funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii), but the comment does not specify whether this requirement pertains to the first- or subordinate-lien transaction. The Bureau proposed to revise comment 37(h)(1)(vii)–5 to clarify that funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii) on the first-lien Loan Estimate. In the proposal, the Bureau explained that the funds that are provided to the consumer from the proceeds of subordinate financing and that will be applied to the first-lien transaction would not be included in the adjustments and other credits calculation on the simultaneous subordinate financing Loan Estimate. The Bureau sought comment on whether there are circumstances in which local or State housing assistance grants are applied to subordinate financing and not to the first lien.

Current comment 37(h)(1)(vii)–6 clarifies that adjustments that require additional funds from the consumer pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v), may be included in the amount disclosed under § 1026.37(h)(1)(vii) and would reduce the total amount disclosed. However, such amounts may have already been factored into calculations for prior components of the calculating cash to close table, thereby being counted twice. The Bureau proposed to revise comment 37(h)(1)(vii)–6 to clarify that amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) may be included in the adjustments and other credits amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), provided they are not also included in the calculation for revised § 1026.37(h)(1)(iii) or (v) as debt being satisfied in the transaction. Otherwise, such amounts would be factored into the cash to close calculations twice.

Comments Received

Industry commenters, including a trade association, a mortgage company, a compliance professional, and a financial holding company generally expressed support for the proposed amendments to § 1026.37(h)(1)(vii) and its commentary. One commenter specifically expressed support for the proposal to amend § 1026.37(h)(1)(vii) to remove the requirement that the adjustments and other credits amount be disclosed as a negative number, and another stated that eliminating the requirement to disclose amounts as positive or negative numbers throughout will go a long way in providing creditors with greater flexibility to complete the calculating cash to close table in a manner that can be explained to consumers and reflects the actual anticipated amount of cash needed to close. A credit union commenter stated generally that there is confusion surrounding the use of negative values on the form, but did not provide specific concerns. Two commenters expressed support for the clarification in comment 37(h)(1)(vii)–1 that amounts expected to be paid to consumers in advance of consummation are not required to be disclosed under § 1026.37(h)(1)(vii), although one commenter was concerned with the proposed clarification, noting that at the time of disclosure, it is typically not evident whether the borrower will receive gift funds before or at consummation. Two commenters supported the proposed amendments to comment 37(h)(1)(vii)–5 to clarify that funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii) on the first-lien Loan Estimate. Finally, one commenter supported the proposed revisions to comment 37(h)(1)(vii)–6 to clarify that amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) may be included in the adjustments and other credits amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii) only if they are not also included in the calculation for § 1026.37(h)(1)(iii) or (v) as existing debt being satisfied in the transaction.

A trade association commenter stated that in the absence of guidance on how to disclose certain amounts, such as loans assumed or taken subject to and the sale price of personal property, some creditors have been including these amounts in the adjustments and other credits disclosures under §§ 1026.37(h)(1)(vii) and 1026.38(i)(8) on the Loan Estimate and Closing Disclosure, respectively. The commenter stated that updating software systems to accommodate such proposals would require substantial reprogramming, which has both time and cost implications.

The Final Rule

For the reasons discussed below, the Bureau is finalizing proposed amendments to § 1026.37(h)(1)(vii) and comment 37(h)(1)(vii)–1 with revisions. The Bureau is amending comment 37(h)(1)(vii)–4 to conform to final comment 37(h)(1)(vi)–1. The Bureau is finalizing amendments to comment 37(h)(1)(vii)–5 as proposed and is finalizing amendments to comment 37(h)(1)(vii)–6 with revisions.

The Bureau is adopting the proposed amendments to § 1026.37(h)(1)(vii) that allow the adjustments and other credits amount to be disclosed as a positive number. The Bureau is further revising § 1026.37(h)(1)(vii) for consistency with comment 37(g)(4)–4, for which the proposed amendments are not being adopted. As discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.37(g)(4). For transactions disclosed using the calculations under § 1026.37(h)(1)(iii)(A)(*2*) and (B) and § 1026.37(h)(1)(v), which include certain purchase transactions (*e.g.,* ''cash back'' purchase transactions, simultaneous subordinate financing purchase transactions, and purchase transactions that involve improvements to be made on the property) and non-purchase transactions (*e.g.,* refinance transactions and construction-only transactions), any construction costs and payoffs of secured and unsecured debt will be factored into the down payment/funds from borrower and funds for borrower calculations in § 1026.37(h)(1)(iii)(A)(*2*) and (B) and § 1026.37(h)(1)(v). For purchase transactions disclosed using the down payment/funds from borrower calculation under § 1026.37(h)(1)(iii)(A)(*1*), however, payoffs of secured and unsecured debt will not be factored into the § 1026.37(h)(1)(iii)(A)(*1*) calculation, which only factors in the sale price, loan amount, and loans assumed or taken subject to. These purchase transactions do not use the § 1026.37(h)(1)(iii)(A)(*2*) and (B) and § 1026.37(h)(1)(v) calculations where such payoffs would be factored in. Therefore, for purchase transactions disclosed using the calculation under § 1026.37(h)(1)(iii)(A)(*1*), payoffs of secured and unsecured debt will be factored into the adjustments and other credits disclosure under § 1026.37(h)(1)(vii). To enable these payoffs to be factored into the adjustments and other credits disclosure under § 1026.37(h)(1)(vii) for transactions disclosed under § 1026.37(h)(1)(iii)(A)(*1*), the Bureau is also revising § 1026.37(h)(1)(vii) for this subset of transactions to remove the condition that amounts that are required to be paid by the consumer at closing and disclosed in the adjustments and other credits row of the calculating cash to close table must be amounts pursuant to a purchase and sale contract. For additional clarity, § 1026.37(h)(1)(vii) is also revised to specify that other amounts that are required to be paid by the consumer at closing in a transaction disclosed under § 1026.37(h)(1)(iii)(A)(*1*) or pursuant to a purchase and sale contract do not include amounts that are disclosed under § 1026.37(f) and (g). Final comment 37(h)(1)(vii)–6, discussed in more detail below, explains that amounts included in the calculation for § 1026.37(h)(1)(iii)(A)(*2*) or (B) or § 1026.37(h)(1)(v) as existing debt being satisfied in the transaction are not also included in the adjustments and other credits calculation under § 1026.37(h)(1)(vii).

Final comment 37(h)(1)(vii)–1 clarifies that amounts expected to be paid at consummation by third parties not otherwise associated with the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed under § 1026.37(h)(1)(vii), although amounts expected to be provided in advance of consummation by third parties, including family members, not otherwise associated with the transaction are not required to be disclosed under § 1026.37(h)(1)(vii). The Bureau does not believe that additional clarification is needed with respect to a creditor not knowing at the time disclosures are provided whether a consumer will receive gift funds before or at consummation. The Bureau notes that current comment 19(e)(1)(i)–1 provides that if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer, consistent with § 1026.17(c)(2)(i).

The Bureau is removing the word ''verbally'' in comment 37(h)(1)(vii)–4. In comment 37(h)(1)(vi)–1, the Bureau proposed and finalized the removal of the word ''verbally'' in the phrase ''verbally from the consumer'' that was provided as an example of a way in which the creditor may obtain information regarding the amount of seller credits that will be paid in the transaction, finding the word to be unnecessary. For consistency, the Bureau is removing from comment 37(h)(1)(vii)–4 the word ''verbally'' in the example of ways in which the creditor may obtain information regarding items to be disclosed under § 1026.37(h)(1)(vii).

As discussed above, the Bureau is finalizing the amendments to comment 37(h)(1)(vii)–6 as proposed with revisions for clarity and conformity with final § 1026.37(h)(1)(vii). Final comment 37(h)(1)(vii)–6 provides that adjustments that require additional funds from the consumer in a transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(*1*) or pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v), are only included in the amount disclosed under § 1026.37(h)(1)(vii) if such amounts are not included in the calculation under § 1026.37(h)(1)(iii)(A)(*2*) or (B) or § 1026.37(h)(1)(v) as debt being satisfied in the transaction. The comment provides additional examples of such adjustments, including payoffs of secured or unsecured debt in a purchase transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(*1*) or prorations for property taxes and homeowner's association dues.

The Bureau understands that creditors have been disclosing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) differently absent definitive commentary from the Bureau. The amendments discussed in the section-by-section analyses of § 1026.37(h)(1)(iii) and (v), and § 1026.38(i)(4) and (6), which include loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) in those calculating cash to close calculations, are intended to address the variation among creditors in how this amount is disclosed. As to the commenter's assertion that the disclosure requirements for the sale price of personal property were unclear, current comment 37(g)(4)–4 provides the sale price of personal property as an example of an amount that would be disclosed under § 1026.37(g)(4). The Bureau recognizes that the industry has taken varying approaches to disclosing the amount of loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) absent definitive commentary from the Bureau and is providing sufficient time for reprogramming. As discussed in part VI below, the rule will be effective 60 days from publication in the **Federal Register,** but there will be an optional compliance period in effect until October 1, 2018.

37(h)(2) Optional Alternative Calculating Cash To Close Table for Transactions Without a Seller or for Simultaneous Subordinate Financing

Section 1026.37(h)(2) only permits the use of the optional alternative calculating cash to close table in transactions without a seller. The Bureau has provided informal guidance that, in purchase transactions with simultaneous subordinate financing, the optional alternative calculating cash to close table may be used for the simultaneous subordinate financing Loan Estimate if the first-lien Closing Disclosure will record the entirety of the seller's transaction and the seller did not contribute to the subordinate financing. The Bureau proposed to amend § 1026.37(h)(2) and comment 37(h)(2)–1 to permit creditors to use the optional alternative calculating cash to close table for the disclosure of simultaneous subordinate financing purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau specifically sought comment on whether it is appropriate to limit use of the optional alternative calculating cash to close table for disclosure of simultaneous subordinate financing purchase transactions to situations in which the first-lien Closing Disclosure will record the entirety of the seller's transaction.

Commenters include a title insurance company, software vendors, a bank, and a state housing finance agency. Most commenters supported the Bureau's proposal to allow the use of the optional alternative calculating cash to close table if the first-lien Closing Disclosure will record the entirety of the seller's transaction. As discussed more fully in the section-by-section analysis of § 1026.37(d)(2), one commenter questioned what disclosures should be used when the optional alternative tables were initially used for the simultaneous subordinate financing, but a seller later agrees to contribute to the costs of the subordinate financing, making continued use of the alternative tables impermissible under the proposal. Another commenter noted that the proposal could lead to variation among creditors and a commenter stated that the UCD may not allow the use of the alternative tables for any transactions with sellers.

For the reasons discussed below, the Bureau is finalizing the proposed amendments to § 1026.37(h)(2) and comment 37(h)(2)–1 with minor technical revisions. As discussed in the section-by-section analysis of § 1026.37(d)(2), the Bureau appreciates the commenter's question regarding how to proceed under the proposal when the alternative table was properly used on the Loan Estimate, or even the Closing Disclosure, but a subsequent event causes the continued use of the alternative table to be impermissible. The Bureau is directly addressing this concern by adding new comment 38(k)(2)(vii)–1, amending comments 38(d)(2)–1 and 38(j)–3, and amending proposed new comments 38(t)(5)(vii)(B)–1 and –2 as discussed in the section-by-section analysis of § 1026.37(d)(2).

The Bureau recognizes that allowing the use of the optional alternative tables for simultaneous subordinate financing purchase transactions may cause variability in disclosure among creditors but concludes that consumers will not be harmed by such optionality. In addition, the Bureau understands that investor requirements may be more restrictive than the optionality provided by the Bureau. However, the Bureau believes flexibility is beneficial to some creditors, and the Bureau will continue to provide the option for creditors to use the alternative tables for simultaneous subordinate financing transactions with sellers.

37(h)(2)(ii) Total Closing Costs

Section 1026.37(h)(2)(ii) requires a creditor to disclose the amount of total closing costs disclosed under § 1026.37(g)(6) as a negative number, labeled ''Total Closing Costs.'' The Bureau did not propose any amendments to § 1026.37(h)(2)(ii), but the Bureau did propose to address concerns regarding the required disclosure of negative and positive numbers elsewhere, including in §§ 1026.37(h)(1)(vii) and (2)(iii), and 1026.38(e)(2)(ii) and (4)(ii). In addition, the Bureau received a comment from a software vendor requesting that the Bureau amend § 1026.37(h)(2)(ii) to account for situations where the amount of total closing costs disclosed under § 1026.37(g)(6) is a negative number. While the Bureau notes that it is not common for the total closing costs disclosed under § 1026.37(g)(6) to be a negative number, the Bureau agrees with the commenter that an amendment is necessary to address the limited circumstances in which a negative number is disclosed under § 1026.37(g)(6) as total closing costs. Therefore, the Bureau is amending § 1026.37(h)(2)(ii) to provide that, under § 1026.37(h)(2)(ii), the creditor discloses the amount disclosed under § 1026.37(g)(6) as a negative number if the amount disclosed under § 1026.37(g)(6) is a positive number and as a positive number if the amount disclosed under § 1026.37(g)(6) is a negative number, labeled ''Total Closing Costs.''

37(h)(2)(iii) Payoffs and Payments

The Bureau's Proposal

Section 1026.37(h)(2)(iii) requires the disclosure of the total of all payments to third parties not otherwise disclosed under § 1026.37(f) and (g) as a negative number. The requirement to disclose a negative number, however, does not account for the limited circumstances in which funds provided by third parties and the proceeds of subordinate financing exceed the total amount of payoffs and payments to third parties. Comment 37(h)(2)(iii)–1 provides examples of payoffs and payments, including payoff of existing liens secured by the property identified under § 1026.37(a)(6). The Bureau proposed to revise § 1026.37(h)(2)(iii) to remove the requirement to disclose as a negative number the total of all payments to third parties not otherwise disclosed under § 1026.37(f) or (g). The Bureau also proposed to revise comment 37(h)(2)(iii)–1 for conformity with proposed revisions to comment 37(g)(4)–4, which would have permitted disclosure of certain payoffs under § 1026.37(g)(4) instead of requiring them to be included in the payoffs and payments disclosure under § 1026.37(h)(2)(iii). The proposed revisions to comment 37(h)(2)(iii)–1 would have also added construction costs as an example of an amount included in the payoffs and payments disclosure under § 1026.37(h)(2)(iii) and explained that credits could be included in the payoffs and payments disclosure. Finally, the Bureau proposed to add comment 37(h)(2)(iii)–2 to clarify that on a first-lien Loan Estimate that uses the optional alternative tables, the proceeds of simultaneous subordinate financing, if any, would be included, as a positive number, in the total amount disclosed under § 1026.37(h)(2)(iii). The Bureau explained that the funds from the subordinate financing that will be applied to the first-lien transaction would not have been included in the estimated total payoffs and payments amount on the simultaneous subordinate financing Loan Estimate.

Comments Received

A trade association commenter commended the Bureau for permitting credits to be included in the payoffs and payments disclosure under revised § 1026.37(h)(2)(iii) and comment 37(h)(2)(iii)–1, but requested that the Bureau allow industry sufficient time to reprogram the forms accordingly. Another trade association commenter stated that eliminating the requirement to disclose amounts as positive or negative numbers throughout will go a long way in providing creditors with greater flexibility to complete the calculating cash to close table in a manner that can be explained to consumers and reflects the actual anticipated amount of cash needed to close. A credit union stated generally that there is confusion surrounding the use of negative values on the forms, but did not provide specific concerns. In response to the proposed revisions to comment 37(h)(2)(iii)–1, a title insurance company requested that the Bureau only permit creditors to disclose construction costs and the payoff of existing liens secured by the property in the payoffs and payments table under § 1026.37(h)(2)(iii), instead of providing creditors with the option of disclosing these costs under § 1026.37(g)(4), as proposed. A law firm expressed concern with the inclusion of construction costs for construction purpose loans in the example of permissible payoffs and payments, noting that the example seemed to be limited to transactions where the loan purpose is construction in accordance with § 1026.37(a)(9)(iii) and would not cover a refinance transaction that has a construction loan component. The commenter requested that the Bureau clarify that the example regarding construction costs in comment 37(h)(2)(iii)–1 will apply to any transaction with a construction loan component in which the creditor is otherwise permitted to use the alternative calculating cash to close table.

Commenters supported the Bureau's proposed comment 37(h)(2)(iii)–2 which would have clarified that the proceeds of simultaneous subordinate financing would be required to be included, as a positive number, in the total amount disclosed under § 1026.37(h)(2)(iii) on the first-lien Loan Estimate that is disclosed using the alternative tables. The commenters stated that the revisions will improve the ability of creditors to comply with the calculating cash to close table requirements and provide an accurate cash to close amount to consumers, and stated that the table provides important benefits to consumers. As discussed in the section-by-section analysis of § 1026.37(d)(2), commenters asserted that most creditors prefer that the Loan Estimate for the simultaneous subordinate financing include a disclosure of the amount of proceeds that will be applied to the first-lien loan, and asked the Bureau to permit this practice and clarify the provision under which the disclosure should be made.

The Final Rule

For the reasons discussed below, the Bureau is adopting the amendments to § 1026.37(h)(2)(iii) as proposed, adopting the proposed amendments to comment 37(h)(2)(iii)–1 in part and with revisions, adopting proposed comment 37(h)(2)(iii)–2 with clarifying revisions and renumbering it as comment 37(h)(2)(iii)–2.i, and adding a new comment 37(h)(2)(iii)–2.ii. The Bureau appreciates commenters' support of the proposal to permit disclosure of a positive number under § 1026.37(h)(2)(iii). This amendment to eliminate the requirement that the total payoffs and payments amount be disclosed as a negative number permits the inclusion of credits and proceeds from simultaneous subordinate financing in the payoffs and payments table. Creditors are required to disclose under final § 1026.37(h)(2)(iii) the total amount of payoffs and payments to be made to third parties not otherwise disclosed under § 1026.37(f) and (g), labeled ''Total Payoffs and Payments.''

The Bureau is adopting the proposed amendments to comment 37(h)(2)(iii)–1 in part with revisions to the construction lending example. As discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau is not finalizing the proposal that would have required certain costs and payoffs to be disclosed under § 1026.37(g)(4) unless included in the payoffs and payments disclosure under § 1026.37(h)(2)(iii). Therefore, the Bureau is not finalizing the proposed conforming revision in comment 37(h)(2)(iii)–1, which would have permitted creditors to disclose these amounts under § 1026.37(g)(4) instead of requiring creditors to include them in the § 1026.37(h)(2)(iii) payoffs and payments disclosure. The Bureau is revising the construction lending example in the proposed revisions to comment 37(h)(2)(iii)–1 as requested by a commenter. While the examples of amounts incorporated into the total payoffs and payments disclosed under § 1026.37(h)(2)(iii) are intended to be informative, they are not intended to cover the entire range of possibilities. Nonetheless, the Bureau is taking the opportunity to broaden the example regarding construction loans in the proposed revisions to comment 37(h)(2)(iii)–1 to all loans with a construction component in which the creditor is otherwise permitted to use the optional alternative calculating cash to close table, regardless of whether the loans have a construction purpose under § 1026.37(a)(9)(iii). Final comment 37(h)(2)(iii)–1 explains that examples of the amounts incorporated in the total amount disclosed under § 1026.37(h)(2)(iii) include, but are not limited to: Payoffs of existing liens secured by the property identified under § 1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmen's liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; construction costs associated with the transaction that the consumer will be obligated to pay in any transaction in which the creditor is otherwise permitted to use the alternative calculating cash to close table; and payments to other third parties for outstanding debts of the consumer (but not for settlement services) as required to be paid as a condition for the extension of credit.

The Bureau is renumbering proposed comment 37(h)(2)(iii)–2 as comment 37(h)(2)(iii)–2.i and revising the comment for greater clarity. Proposed comment 37(h)(2)(iii)–2 explained that on the Loan Estimate for a first-lien transaction disclosed under § 1026.37(h)(2) that also has simultaneous subordinate financing, the proceeds of the subordinate financing are included in the payoffs and payment disclosure. In final comment 37(h)(2)(iii)–2.i, the Bureau adds the heading ''First-lien Loan Estimate,'' provides a refinance transaction as an example of a first-lien transaction that could be disclosed under § 1026.37(h)(2) and that also has simultaneous subordinate financing, and makes technical revisions for greater clarity.

The Bureau is adding comment 37(h)(2)(iii)–2.ii to permit creditors to include, in the payoffs and payments disclosure on the simultaneous subordinate financing Loan Estimate, the proceeds of the subordinate financing that will be applied to the first-lien transaction. Final comment 37(h)(2)(iii)–2.ii responds to commenters' questions about how to disclose the simultaneous subordinate financing proceeds that will be applied to the first lien on the simultaneous subordinate financing Loan Estimate. The commenters asserted that most creditors prefer that the simultaneous subordinate financing Loan Estimate include a disclosure of the amount of loan proceeds that will be applied to the first-lien loan, and asked the Bureau to permit this common practice. In the proposal, the Bureau noted that the funds that are provided to the consumer from the proceeds of simultaneous subordinate financing and that will be applied to the first-lien transaction would not be included in the total payoffs and payments amount on the simultaneous subordinate financing Loan Estimate. As a result, the cash to close amount disclosed under § 1026.37(h)(2)(iv) would have represented the loan proceeds as ''cash out'' to the borrower. The Bureau understands from the comments that a common industry practice may be to include the loan proceeds from the simultaneous subordinate financing as a payoff on the Loan Estimate and Closing Disclosure for the simultaneous subordinate financing transaction, which is inconsistent with the Bureau's proposal.

The Bureau believes that consumers may benefit from allowing creditors to continue this apparently common practice. This practice may help consumers better understand the simultaneous subordinate financing transaction and its relation to the first-lien loan. It provides a way for the simultaneous subordinate financing Loan Estimate to include a disclosure of the amount of proceeds that will be applied to the first-lien loan. Because, under this practice, the cash to close amount disclosed under § 1026.37(h)(2)(iv) would not include the loan proceeds, the cash to close amount may better represent to consumers the cash, if any, they will owe or receive from the subordinate-lien loan that will not be applied directly to the first-lien loan. The Bureau is making similar amendments in commentary to § 1026.38(j)(1)(v) and (t)(5)(vii)(B).

As discussed in part VI below, the Bureau is providing sufficient time for industry to reprogram the forms to permit credits to be disclosed. The rule will be effective 60 days from publication in the **Federal Register**, but there will be an optional compliance period in effect until October 1, 2018.

37(k) Contact Information

The Bureau proposed a technical, non-substantive, amendment to comment 37(k)–3 to replace the current reference to § 1026.38(k)(2) with a reference to § 1026.37(k)(2) to correct a typographical error. Commenters did not provide any statements concerning this typographical correction, other than to request that the correction of typographical errors be effective as quickly as possible and be applied retroactively.

The Bureau is adopting the revision to comment 37(k)–3 as proposed. Although this revision is not retroactive, the Bureau considers the current reference to § 1026.38(k)(2) to be a scrivener's error that should be interpreted as a reference to § 1026.37(k)(2).

37(l) Comparisons

37(l)(1) In Five Years

37(l)(1)(i)

The Bureau proposed to make a technical, non-substantive amendment, to comment 37(l)(1)(i)–1 to correct a typographical error. The Bureau proposed to replace the word ''fractional'' with ''functional'' in comment 37(l)(1)(i)–1 to conform to the language of comment 37(c)(1)(i)(C)–1. The Bureau received no comments on the proposed change and is adopting as proposed the modification to the comment.

37(l)(3) Total Interest Percentage

The Bureau's Proposal

Section 1026.37(l)(3) requires creditors to disclose the total interest percentage (TIP) and provides that the TIP is the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the principal of the loan. The Bureau explained in the TILA–RESPA Final Rule that prepaid interest is included in the TIP calculation.[82] The Bureau proposed to amend comment 37(l)(3)–1 to clarify further that prepaid interest is included when calculating the TIP.

Comments Received

Several industry commenters supported the clarifications in the proposed comment. Two industry commenters requested that the Bureau delete disclosure of the TIP from the disclosures required under §§ 1026.37 and 1026.38.

Several industry commenters requested additional clarifications related to the TIP. Several industry commenters requested that the Bureau modify the proposed comment to clarify whether the prepaid interest included in the TIP should only include the borrower-paid prepaid interest, or whether all prepaid interest should be included, regardless of which party is paying. Two industry commenters requested clarification on the impact of a negative prepaid interest amount on the calculation, namely whether the negative balance should be used or

[82] 78 FR 79730, 79982 (Dec. 31, 2013).

whether a $0 value should be assigned to the prepaid interest component of the calculation. One industry commenter indicated that the Bureau should clarify that the TIP is considered accurate if the finance charge is considered accurate because the TIP is comprised solely of a finance charge (consumer-paid interest).

One industry commenter indicated that there appears to be a discrepancy between the TILA statute and Regulation Z as to when the amount of prepaid interest disclosed under § 1026.37 is accurate. The commenter indicated that that discrepancy can impact the accuracy of the TIP. This commenter requested additional clarification on this issue.

The Final Rule

The Bureau is adopting comment 37(l)(3)–1 as proposed with several revisions. As proposed, the Bureau is adopting final comment 37(l)(3)–1 to provide that prepaid interest is included when calculating the TIP. In response to comments received, the Bureau also is amending comment 37(l)(3)–1 to clarify that it is the prepaid interest that the consumer will pay which is included when calculating the TIP. This clarification is consistent with § 1026.37(l)(3), which defines the TIP as the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended. In addition, in response to comments received, the Bureau also is revising comment 37(l)(3)–1 to clarify that prepaid interest that is disclosed as a negative number under §§ 1026.37(g)(2) or 1026.38(g)(2) must be included as a negative value when calculating the TIP.

As discussed above, one industry commenter indicated that the Bureau should clarify that the TIP is considered accurate if the finance charge is considered accurate because the TIP is comprised solely of a finance charge (consumer-paid interest). The Bureau is not addressing this issue in the final rule. The Bureau notes that total interest is a component of the finance charge but is not the same as the finance charge.

As discussed above, one industry commenter indicated that there appears to be a discrepancy between the TILA statute and Regulation Z as to when the amount of prepaid interest disclosed under § 1026.37 is accurate. The commenter notes TILA section 121(c), which provides that in the case of any consumer credit transaction a portion of the interest on which is determined on a per-diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of TILA if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction. This TILA section is implemented in § 1026.17(c)(2)(ii). The commenter also notes that § 1026.19(e)(3)(iii) provides that the prepaid interest disclosure must be consistent with the best information reasonably available to the creditor at the time it is disclosed. Thus, § 1026.17(c)(2)(ii) provides that the prepaid interest disclosure is accurate if it is based on information known to the creditor at the time the disclosure is ''prepared,'' while § 1026.19(e)(3)(iii) provides that the prepaid interest disclosure is accurate if it is based on the best information reasonably available to the creditor at the time it is ''disclosed.'' The commenter indicated that that discrepancy can impact the accuracy of the TIP and asked for additional clarity on this issue.

The Bureau does not believe that additional clarification is needed. In the TILA–RESPA Final Rule, the Bureau made clear that the standard for accuracy for prepaid interest disclosures set forth in TILA section 121(c), as implemented by § 1026.17(c)(2)(ii), does not apply to transactions subject to § 1026.19(e) and (f). Specifically, comment 17(c)(2)(ii)–1 provides that for purposes of transactions subject to § 1026.19(e) and (f), the creditor shall disclose the actual amount of per-diem interest that will be collected at consummation, subject only to the disclosure rules in § 1026.19(e) and (f). The Bureau notes that for disclosures of per-diem interest in the Loan Estimate, § 1026.19(e)(3)(iii) provides that the prepaid interest disclosure must be consistent with the best information reasonably available to the creditor at the time it is disclosed. For disclosure of per-diem interest in the Closing Disclosure provided at or before consummation, comment 19(f)(1)(i)–2 provides that creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii) using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i). See the section-by-section analysis of § 1026.19(f)(2)(iii) for a discussion of the disclosure of per-diem interest in post-consummation disclosures required under § 1026.19(f)(2)(iii).

37(o) Form of Disclosures

37(o)(4) Rounding

The Bureau's Proposal

Section 1026.37(o)(4)(i)(A) requires the disclosure of rounded amounts for the amounts disclosed pursuant to § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l), except that the per-diem amount required to be disclosed by § 1026.37(g)(2)(iii) and the monthly amounts required to be disclosed by § 1026.37(g)(3)(i) through (iii) and (g)(3)(v) shall not be rounded. Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed pursuant to § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(3) to be disclosed up to two or three decimal places and the percentage amount disclosed pursuant to § 1026.37(l)(2) to be disclosed up to three decimal places. The Bureau, through informal guidance, received many inquiries regarding rounding requirements. Based on these inquiries the Bureau understands that there is confusion and uncertainty regarding the rounding requirements under § 1026.37(o)(4). In response, the Bureau proposed revisions to § 1026.37(o)(4)(i)(A) and (ii) and to comments 37(o)(4)(i)(A)–1 and 37(o)(4)(ii)–1 to simplify the rounding and disclosure requirements under § 1026.37(o)(4).

The proposed revisions to § 1026.37(o)(4)(i)(A) would have provided that the disclosure of the per-diem amount under § 1026.37(g)(2)(iii) and the monthly amounts under § 1026.37(g)(3)(i) through (iii) and (g)(3)(v) are rounded to the nearest cent and disclosed to two decimal places. The proposed revision to comment 37(o)(4)(i)(A)–1 would have added clarifying language and an illustrative example of the disclosure of per-diem interest.

Proposed revisions to § 1026.37(o)(4)(ii) would have simplified the rounding requirements for amounts described in § 1026.37(o)(4)(ii). Proposed § 1026.37(o)(4)(ii) provides that the percentage amounts required to be disclosed under § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), (l)(2), and (l)(3) must be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point. Proposed comment 37(o)(4)(ii)–1 illustrates the requirements of proposed § 1026.37(o)(4)(ii) with examples.

Comments Received

A mortgage company commenter and a software vendor commenter agreed with the proposed revisions that would simplify rounding requirements. A trade association commenter stated that the Bureau should not revise § 1026.37(o)(4)(i)(A). This commenter believes that § 1026.37(o)(4)(i)(A) and related commentary clearly provide that the per diem and monthly amounts are not rounded, but the creditor must disclose the amounts to two decimal places and truncate partial cents. This commenter indicated that its software is programmed to disclose these amounts to two decimal places, because it believes partial cents are not disclosed.

A bank holding company commenter stated that rounding on the Loan Estimate in contrast to providing exact amounts on the Closing Disclosure is confusing to the consumer. The commenter suggested that the Bureau require the disclosure of exact unrounded amounts on the Loan Estimate and the Closing Disclosure. A mortgage company commenter supported the proposed revision, but asked that the Bureau reconsider the requirement to round certain amounts under § 1026.37(f), (g), and (h). The commenter noted that the disclosures under these sections are subject to the good faith tolerance provisions under § 1026.19(e)(3) and that creditors are required to keep a separate record of the unrounded amounts for the estimates disclosed pursuant to § 1026.37(f), (g), and (h). The commenter further stated that providing unrounded numbers for these sections would help consumers, auditors and investors easily determine cost increases and reduce paperwork.

Two software vendors believed that the proposed revisions to § 1026.37(o)(4)(i) would require the use of rounded numbers when calculating certain aggregated amounts. One of these commenters provided an example showing the range between calculations for per-diem interest using rounded amounts and unrounded amounts.

A commenter representing a bank stated that the proposed revisions to § 1026.37(o)(4)(ii) and comment 37(o)(4)(ii)–1 would impose significant burden. This commenter asserted that many in the industry would have to invest significant resources into reprogramming their systems for a change that would not benefit the consumer. The commenter asserts that disclosing ''8%'' instead of ''8.00%'' would not increase the consumers understanding of the disclosure, but it would require significant effort from the creditor to reprogram its systems.

The Final Rule

The Bureau is adopting the proposed amendments to § 1026.37(o)(4)(i)(A) and (ii) and to comments 37(o)(4)(i)(A)–1 and 37(o)(4)(ii)–1 with several revisions to § 1026.37(o)(4)(i)(A) and comment 37(o)(4)(i)(A)–1 to clarify the requirements under these provisions. Section 1026.37(o)(4)(i)(A) is being revised to include the word ''dollar amounts'' instead of ''amounts'' and to require that the per-diem and monthly dollar amounts not be rounded. Comment 37(o)(4)(i)(A)–1, as proposed, is being revised to explain that partial cents are not disclosed for dollar amounts and that partial cents shall be rounded or truncated to the nearest whole cent.

Although one commenter asserted that § 1026.37(o)(4)(i)(A) clearly provides that the per-diem and monthly amounts are disclosed to two decimal places, the Bureau notes that it received several inquiries from industry, namely software vendors, expressing uncertainty regarding whether it is permissible to disclose partial cents for certain dollar amounts under § 1026.37(o)(4)(i)(A). As discussed above, the Bureau is adding the option to round or truncate partial cents which would not affect the commenter's current method for disclosing certain dollar amounts pursuant to § 1026.37(o)(4)(i)(A).

As discussed above, two commenters asserted that the proposed revisions to § 1026.37(o)(4)(i) would require the use of rounded numbers when calculating certain aggregate amounts. The Bureau notes that these final revisions discussed above would not change the method for calculating the total dollar amounts that are required to be rounded under § 1026.37(o)(4)(i). The amendments in this final rule do not change what is provided under comment 37(o)(4)–2, which explains that if a dollar amount that is required to be rounded by § 1026.37(o)(4)(i) on the Loan Estimate is a total of one or more dollar amounts that are not required or permitted to be rounded, the total amount must be rounded consistent with § 1026.37(o)(4)(i), but such component amounts used in the calculation must use such unrounded numbers. As discussed above, a commenter asserted that the proposed revision to § 1026.37(o)(4)(ii) and comment 37(o)(4)(ii)–1 would be burdensome because it would require the reprogramming and testing of systems and that requiring the disclosure of ''8%'' instead of ''8.00%'' would be a change that would not provide any benefit to consumers. Section 1026.37(o)(4)(ii) and comment 37(o)(4)(ii)–1 currently provide that whole numbers are truncated at the decimal point, and this particular provision should, therefore, not require reprogramming. In addition, as noted above, the Bureau believes too many numbers on the Loan Estimate may lead to information overload for the consumer. Dropping trailing zeros reduces information overload and thereby increases a consumer's comprehension of the disclosures.

As explained above, two commenters stated that rounding should not be permitted on the Loan Estimate for various reasons. As the Bureau explained in the TILA–RESPA Final Rule, consumer testing showed that it was easier for consumers to quickly identify and evaluate the rounded amounts as opposed to unrounded amounts described under § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l).[83] Based on consumer testing, the Bureau determined that providing a large number of exact amounts for every disclosure could lead to information overload and thereby reduce the effectiveness of the disclosures.[84] The Bureau continues to believe that rounding certain amounts described under § 1026.37(o)(4) is more beneficial than the disclosure of exact amounts.[85]

Section 1026.38 Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

The Bureau's Proposal

Section 1026.38 sets forth the content of the Closing Disclosure required by § 1026.19(f) to be provided to the consumer. Comments 38–1 to 38–3 are applicable generally to § 1026.38. The Bureau proposed to add comment 38–4, which would have provided options for the disclosure of reductions in principal balance (principal curtailments) to satisfy the refund requirements of § 1026.19(f)(2)(v), when contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the consumer. The proposal would have provided creditors the option to disclose principal curtailments in the other costs table under § 1026.38(g)(4), in the summaries of transactions table under § 1026.38(j)(4)(i), in the payoffs and payments table under § 1026.38(t)(5)(vii)(B), or on an additional page (addendum) under § 1026.38(t)(5)(ix). The principal curtailment disclosure would have contained a statement that the principal

[83] *See* 78 FR 79730, 79995 (Dec. 31, 2013).

[84] *See id.*

[85] *See id.*

curtailment amount includes a refund for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3) and the amount of such refund. The Bureau sought comment on whether there would be sufficient space in the corresponding rows on the Closing Disclosure for such a statement and whether the Bureau should prescribe a specific statement or permit creditors discretion in developing such statement. For the reasons discussed below, the Bureau is revising and broadening proposed comment 38–4 to address principal reductions (curtailments) that are and are not paid for from closing funds, to clarify that the disclosure of a principal reduction is permissible regardless of whether contractual or other legal obligations of the creditor prevent the creditor from refunding cash to the consumer, and to limit where principal reductions may be disclosed on the Closing Disclosure.

Comments Received

The Bureau received comments on this proposal from a variety of commenters, including a law firm, a mortgage company, a title insurance company, a software vendor, a software vendor group, a bank, a financial holding company, a housing finance agency, GSEs, and other industry commenters. Commenters generally appreciated that the Bureau proposed to provide guidance on the disclosure of principal curtailments, but provided significant feedback and sought clarification on many aspects of the proposal.

An industry group recommended that the Bureau use the phrase ''principal reduction'' instead of ''principal curtailment,'' noting that consumers would be more familiar with the recommended phrase. The Bureau appreciates the suggestion to use the phrase ''principal reduction'' instead of ''principal curtailment,'' and is revising the commentary accordingly. As explained in final comment 38–4, when referring to principal reductions on the Closing Disclosure, creditors are permitted to use other similar phrases.

Many industry commenters requested that the Bureau permit the use of principal curtailments for situations other than when a creditor is providing a credit for a tolerance refund or to meet loan program or investor requirements. An industry commenter and a law firm commenter expressed concern that proposed comment 38–4 could be interpreted to limit the use of principal curtailments to only those circumstances where contractual or other legal obligations of the creditor prevent the creditor from refunding cash to the consumer. Commenters stated that consumers benefit more from a principal curtailment than from a refund in the form of cash because it reduces the principal balance of the loan on which a consumer is charged interest, and pointed to the TILA–RESPA Final Rule in which the Bureau explicitly declined to prescribe how refunds are made to consumers.[86]

In the proposal, the Bureau sought to address the particular issue of how to disclose a principal reduction that is used to provide a tolerance refund, but did not intend to propose to limit the use of principal reductions to situations where a creditor is providing a tolerance refund under § 1026.19(f)(2)(v). As noted above, the Bureau is revising and restructuring comment 38–4 to provide greater clarity regarding the disclosure of principal reductions, including the disclosure of principal reductions that are not used to provide tolerance refunds. Final comment 38–4 does not contain the language identified by commenters as potentially restricting the use of principal reductions to only those circumstances where contractual or other legal obligations of the creditor prevent the creditor from refunding cash to the consumer.

Many commenters, including an industry group, mortgage company, title insurance company, and software vendor, noted a discrepancy between the commentary, which stated that the principal curtailment would be disclosed as a negative number, and the preamble, which stated that the principal curtailment would be marked as ''Paid Outside of Closing'' or ''P.O.C.'' The commenters asked the Bureau to clarify the disclosure requirements. Because whether a principal reduction is disclosed as a negative or positive number and with or without the label ''Paid Outside of Closing'' or ''P.O.C.'' is dependent upon the purpose of the principal reduction, the Bureau is revising comment 38–4 and restructuring the comment according to the purpose for which the principal reduction is used. Final comment 38–4.i covers situations in which a principal reduction is not paid for with closing funds, whereas final comment 38–4.ii covers situations in which a principal reduction is paid for with closing funds. In addition, the Bureau is not prescribing whether the principal reduction is disclosed as a negative number or as a positive number. The Bureau is taking a similar approach in other sections of this final rule to provide for flexibility as to the disclosure of negative and positive numbers because the Bureau recognizes that mandating a negative number or mandating a positive number for a particular disclosure may not be suitable for all transaction types. See, for example, the section-by-section analyses of § 1026.37(h)(1)(i), (1)(vii), and (2)(iii), and § 1026.38(e)(2)(ii) and (4)(ii).

The proposal would have provided that a principal curtailment may be disclosed under § 1026.38(j)(4)(i), which provides requirements for the disclosure of costs that are not paid from closing funds. A software vendor, industry group, and title insurance company requested additional clarity regarding the disclosure of a principal curtailment pursuant to § 1026.38(j)(4)(i). Specifically, the commenters asked where in the summaries of transactions table to disclose the principal curtailment, since § 1026.38(j)(4)(i) contains the requirement to disclose costs that are not paid from closing funds but would otherwise be disclosed pursuant to § 1026.38(j) marked with the phrase ''Paid Outside of Closing'' or ''P.O.C.,'' but does not itself provide a specific location for the principal curtailment disclosure. The commenters suggested that the appropriate location within the summaries of transactions table is under § 1026.38(j)(1)(v), as an amount due from the consumer. For principal reductions disclosed in the summaries of transactions table, the Bureau intended the disclosure to be made under § 1026.38(j)(1)(v) and is revising comment 38–4 to, among other things, specifically reference § 1026.38(j)(1)(v) instead of § 1026.38(j)(4)(i). The Bureau will continue to reference § 1026.38(j)(4)(i) only for the requirement to mark costs that are not paid from closing funds but would otherwise be disclosed pursuant to § 1026.38(j) with the phrase ''Paid Outside of Closing'' or ''P.O.C.''

A title insurance company, a bank, a financial holding company, a software vendor, and GSEs raised concerns with the various options for disclosing a principal curtailment proposed by the Bureau. One commenter supported the flexibility that the Bureau proposed to provide for the disclosure of principal curtailments under § 1026.38(g)(4), (j)(4)(i), (t)(5)(vii)(B) and (t)(5)(ix), but cautioned that some lending programs may not permit the disclosure of principal curtailments on an addendum pursuant to § 1026.38(t)(5)(ix). Some commenters asserted that a principal curtailment should not be disclosed as a closing cost under § 1026.38(g)(4)

[86] Commenters appear to be referencing the TILA–RESPA Final Rule at 78 FR 79730, 79883 (Dec. 31, 2013).

because closing costs should only include fees and charges that the consumer must pay to obtain and close the loan. Commenters also stated that disclosing a principal curtailment as a closing cost would limit the ability of consumers to compare the closing costs on the Loan Estimate to the closing costs on the Closing Disclosure and would cause consumer confusion. Commenters asserted that systems are not programmed to provide under § 1026.38(g)(4) the label ''Paid Outside of Closing'' or ''P.O.C.,'' or lengthy text statements. Another commenter requested that the Bureau limit the disclosure of principal curtailments to § 1026.38(g)(4) or (t)(5)(vii)(B), unless there is insufficient space, at which time disclosure under § 1026.38(t)(5)(ix) would be permissible. One commenter requested that the Bureau limit disclosure of principal curtailments to § 1026.38(j)(4)(i) or an addendum pursuant to § 1026.38(t)(5)(ix), while another commenter asked the Bureau to limit the disclosure of principal curtailments to § 1026.38(j)(1)(v) on the standard disclosure and to § 1026.38(t)(5)(vii)(B) on the alternative disclosure. Finally, one commenter requested that the Bureau prescribe only one location for the disclosure of principal curtailments on the standard and alternative disclosures. Commenters who requested that the Bureau limit the disclosure options stated that a uniform disclosure method for principal curtailments would reduce compliance burden for the industry, aid consumer understanding of the transaction, and aid the utilization of a uniform data standard for the industry.

While the Bureau intended for the proposal to provide the flexibility for the disclosure of principal reductions discussed in the Bureau staff's informal April 2016 webinar, the Bureau appreciates commenters' assertions that a uniform disclosure method for principal reductions would reduce compliance burden, aid consumer understanding, and aid the utilization of a uniform data standard. The Bureau is therefore revising proposed comment 38–4 to limit the disclosure of principal reductions to § 1026.38(j)(1)(v) on the standard Closing Disclosure and § 1026.38(t)(5)(vii)(B) on the alternative Closing Disclosure. The Bureau notes, however, that creditors are permitted to disclose principal reductions under any currently permissible provision prior to the mandatory compliance date of this provision, October 1, 2018, as discussed in part VI, below. For an informal summary of the permissible disclosure options that are currently in effect and will remain in effect until the mandatory compliance date of this rule, please consult the Bureau staff's April 2016 webinar.

Many commenters responded to the Bureau's request for comment on whether there is sufficient space in the corresponding rows on the Closing Disclosure for creditors to provide a statement explaining that the principal curtailment includes a tolerance refund for exceeding the limitations on increases in closing costs and whether the Bureau should prescribe a specific statement or permit creditors discretion in developing such statement. A title insurance company, housing finance agency, and financial holding company requested that the Bureau prescribe a specific statement for uniformity, and two of the commenters suggested statements that they asserted would have fit in all proposed disclosure locations. Other commenters requested that the Bureau permit creditors discretion in developing the statement but provide an example of a permissible statement or a model statement that would be deemed to be in compliance with the disclosure requirements. A creditor opposed the requirement to make a statement that the amount imposed exceeds the limitations on increases in closing costs, identifying concerns with space limitations. The creditor requested that if the requirement to disclose such a statement is finalized, the Bureau allow creditors discretion in developing the statement. One commenter stated that there is a moderate amount of space for such a statement under § 1026.38(g)(4), limited space under § 1026.38(j)(1)(v), and sufficient space under § 1026.38(t)(5)(vii)(B) and (ix). The same commenter also requested that the Bureau permit the disclosure of the principal curtailment to refer the consumer to an addendum, which would provide the required statement concerning the tolerance refund for exceeding the limitations on increases in closing costs.

While some commenters requested that the Bureau prescribe specific disclosure language, others appreciated the flexibility provided in the proposal to develop their own disclosure language. The commenters also were not consistent as to whether there is sufficient space in the corresponding rows on the Closing Disclosure for the required disclosure, particularly when the disclosure must convey that the principal reduction is being provided to offset charges that exceed the legal limits. Because of potential space constraints anticipated by the Bureau and raised by some commenters, the Bureau is permitting creditors to develop their own disclosure language that contains the required elements using any language that meets the clear and conspicuous standard under § 1026.38(t)(1)(i). The revised commentary contains examples of disclosure statements that would meet the requirements of comment 38–4.

A financial holding company stated that under Texas law, the principal curtailment disclosure requirements could trigger cash-out stipulations which would force creditors to provide principal reductions instead of providing cash refunds to borrowers. Absent additional information, the Bureau is unable to respond to this comment. However, the Bureau notes that creditors have always had the option of using a principal reduction to provide a tolerance refund or for other purposes. Comment 38–4 is being added merely to provide clarity on how to disclose a principal reduction.

A software vendor group explained that implementing proposed comment 38–4 will require significant reprogramming and software changes that will take up to nine months to complete. As discussed in part VI, below, the final rule will be effective 60 days from publication in the **Federal Register,** but compliance will be optional until October 1, 2018, giving industry sufficient time to reprogram systems.

The Final Rule

For the reasons discussed above, the Bureau is revising and broadening proposed comment 38–4 to address principal reductions that are and are not paid for from closing funds, to clarify that the disclosure of a principal reduction is permissible regardless of whether contractual or other legal obligations of the creditor prevent the creditor from refunding cash to the consumer, and to limit where principal reductions may be disclosed on the Closing Disclosure. The introductory paragraph to final comment 38–4 provides only for the disclosure of a principal reduction on the standard disclosure under § 1026.38(j)(1)(v) or on the alternative disclosure under § 1026.38(t)(5)(vii)(B) and contains a list of the elements that must be provided in the principal reduction disclosure. Final comment 38–4.i covers situations in which a principal reduction is not paid from closing funds. Final comment 38–4.ii covers situations in which a principal reduction is paid from closing funds.

Final comment 38–4 provides that the disclosure of a principal reduction must include the following elements: (1) The amount of the principal reduction; (2) the phrase ''principal reduction'' or a similar phrase; (3) for a principal reduction disclosure under § 1026.38(t)(5)(vii)(B) only, the name of the payee; (4) if applicable to the transaction, the phrase ''Paid Outside of Closing'' or ''P.O.C.'' and the name of the party making the payment; and (5) if the principal reduction is used to satisfy the requirements of § 1026.19(f)(2)(v), a statement that the principal reduction is being provided to offset charges that exceed the legal limits.

Final comment 38–4 also provides that if there is insufficient space under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) for the creditor to disclose certain elements of the principal reduction disclosure, the creditor may omit these elements from the § 1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure and provide a complete disclosure, including these elements, under an appropriate heading on an addendum, in accordance with § 1026.38(j) and (t)(5)(ix), as applicable, with a reference to the abbreviated principal reduction disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B). In this case, the elements that must be included in the abbreviated principal reduction disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) are the amount of the principal reduction, the phrase ''principal reduction'' or a similar phrase, the phrase ''Paid Outside of Closing'' or ''P.O.C.'' if applicable, and for the abbreviated principal reduction disclosure under § 1026.38(t)(5)(vii)(B) only, the name of the payee. The elements that may be omitted from the abbreviated principal reduction disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) and included in the complete principal reduction disclosure on an addendum are, if applicable to the transaction, the name of the party making the payment and a statement that the principal reduction is being provided to offset charges that exceed the legal limits. The revised commentary contains examples of principal reduction disclosures that would meet the requirements of comment 38–4.

38(a) General Information

38(a)(3) Closing Information

38(a)(3)(iii) Disbursement Date

Section 1026.38(a)(3)(iii) requires disclosure of the disbursement date. In a purchase transaction under § 1026.37(a)(9)(i), the disbursement date is the date the amounts disclosed under § 1026.38(j)(3)(iii) (cash to close from or to borrower) and § 1026.38(k)(3)(iii) (cash from or to seller) are expected to be paid to the consumer and seller. In a non-purchase transaction, the disbursement date is the date the amounts disclosed under § 1026.38(j)(2)(iii) (loan amount) or § 1026.38(t)(5)(vii)(B) (payoffs and payments) are expected to be paid to the consumer or a third party. The Bureau proposed to revise § 1026.38(a)(3)(iii) to provide that the disbursement date in non-purchase transactions is the date some or all of the loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party, and to add comment 38(a)(3)(iii)–1 to clarify that the disbursement date for simultaneous subordinate financing is the date some or all of the loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party. For the reasons discussed below, the Bureau is adopting the amendments to § 1026.38(a)(3)(iii) and new comment 38(a)(3)(iii)–1 substantially as proposed, but is revising § 1026.38(a)(3)(iii) to accommodate purchase transactions where funds are disbursed to the borrower and seller on different dates, and revising § 1026.38(a)(3)(iii) and comment 38(a)(3)(iii)–1 to provide additional clarity regarding disbursement to third parties in certain transactions.

Commenters stated that the proposed amendments would provide needed clarity, but some requested additional revisions. A trade association, software vendor, and title insurance company requested that the Bureau clarify that the disbursement date in purchase transactions is the date funds are expected to be paid to either the consumer or the seller, because in some states disbursement to the consumer and seller may occur on different dates. A title insurance company and trade association requested that the Bureau clarify that in non-purchase transactions and for simultaneous subordinate financing transactions, the disbursement date is the date funds are disbursed from the settlement agent to the consumer or third party, and not the date funds are disbursed from the creditor to the settlement agent. Commenters were concerned that settlement agents are considered to be third parties. A software vendor noted that in construction transactions, the initial disbursement date may not be known at closing and asked the Bureau to provide additional clarity regarding how to disclose the disbursement date in these transactions.

After considering the comments, the Bureau is adopting the amendments to § 1026.38(a)(3)(iii) and new comment 38(a)(3)(iii)–1 as proposed with revisions. The Bureau recognizes that in some states, funds may be disbursed to the borrower and seller on different dates. The Bureau is revising § 1026.38(a)(3)(iii) to provide that in a purchase transaction where funds are disbursed to the borrower and seller on different dates, it is acceptable to disclose either date under § 1026.38(a)(3)(iii). The Bureau is also adding a cross-reference to comment 38(a)(3)(iii)–1 which contains a different standard for simultaneous subordinate financing transactions. Further, as it pertains to non-purchase transactions and simultaneous subordinate financing, the Bureau intended in the proposal for the disbursement date to reflect the date that some or all of the loan amount is paid to the consumer or a third party, but not the date some or all of the loan amount is paid to the settlement agent. Because a settlement agent is actually a third party to the credit transaction, the Bureau is revising § 1026.38(a)(3)(iii) and comment 38(a)(3)(iii)–1 to clarify that in a non-purchase or a simultaneous subordinate financing transaction, the disbursement date disclosure reflects the date funds are expected to be paid to the consumer or a third party other than a settlement agent.

The Bureau declines to add commentary to explain how to disclose the disbursement date in construction transactions where the date of the initial disbursement is unknown to the creditor. Under final § 1026.38(a)(3)(iii), the disbursement date in a transaction with a construction purpose under § 1026.37(a)(9)(iii) is the date that some or all of the loan amount is paid to the consumer or a third party other than the settlement agent. Depending on the facts and circumstances of the transaction, the disbursement date may be, for example, the date closing costs are paid with loan proceeds or the date of the first scheduled draw. If these dates are not known at the time the creditor provides the Closing Disclosure, the Bureau concludes that comment 19(f)(1)(i)–2 provides sufficient guidance to creditors regarding the disclosure of unknown information. Comment 19(f)(1)(i)–2 provides that creditors may estimate disclosures using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are provided, consistent with § 1026.17(c)(2)(i).

38(a)(3)(vii) Sale Price

In a transaction where there is no seller, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. Comment 38(a)(3)(vii)–1 explains that, to comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine loan approval or, if none has been obtained, the estimated value of the property. In the latter case, the creditor may use the estimate provided by the consumer at application, or, if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, it may disclose that estimate. The Bureau proposed to revise comment 38(a)(3)(vii)–1 to clarify that, if the creditor has performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose the estimate it used for purposes of approving the credit transaction.

One industry commenter requested that with respect to a transaction involving construction where there is no seller, the Bureau clarify that the creditor must disclose under § 1026.37(a)(7)(ii) the value of the underlying lot at the time of issuing the Loan Estimate, irrespective of what the projected value of the property may be after construction is finished, because the value of the land would be the value of the property at the time the Loan Estimate is given. This commenter also asked the Bureau to clarify the disclosure requirement on the Closing Disclosure under § 1026.38(a)(3)(vii) for the appraised value for a transaction involving construction where there is no seller. The commenter asked for clarification on whether the creditor must disclose only the value of the underlying lot, or instead must disclose the projected value of the completed project after construction is finished that was used to determine approval of the credit transaction.

The Bureau is adopting proposed comment 38(a)(3)(vii)–1 with revisions. As discussed in more detail below, the Bureau is adopting the proposed change to final comment 38(a)(3)(vii)–1. Also, in response to the comment discussed above, the Bureau is revising comment 38(a)(3)(vii)–1 to provide an example of how the guidance in comment 38(a)(3)(vii)–1 applies to transactions involving construction where there is no seller.

Current comment 38(a)(3)(vii)–1 provides that in transactions where there is no seller, such as in a refinancing, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. To comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine approval of the credit transaction. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to ''Estimated Prop. Value.'' The creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, disclose that estimate provided that it was the estimate the creditor used to determine approval of the credit transaction. Consistent with the proposal, the Bureau is revising comment 38(a)(3)(vii)–1 to clarify that in circumstances where a creditor may use an estimate of the value of the property as discussed above, if the creditor has performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose its own estimate it used for purposes of approving the credit transaction, rather than disclose the estimate provided by the consumer at application.

In response to a commenter's request for additional clarification on how the guidance in comment 38(a)(3)(vii)–1 applies to transactions involving construction where there is no seller, the Bureau is revising comment 38(a)(3)(vii)–1 to clarify that for those transactions, the creditor must disclose the value of the property that is used to determine the approval of the credit transaction, including improvements to be made on the property if those improvements are used to determine the approval of the credit transaction. As discussed above, current comment 38(a)(3)(vii)–1 provides that for transactions where there is no seller, a creditor must disclose under § 1026.38(a)(3)(vii)(B) the value of the property the creditor used to determine approval of the credit transaction. Consistent with the standard that is currently set forth in comment 38(a)(3)(vii)–1, for transactions involving construction where there is no seller, the value of the property disclosed under § 1026.38(a)(3)(vii)(B) must include the improvements to be made on the property if those improvements are used in determining the approval of the credit transaction.

Thus, if a creditor includes improvements to be made on a property in determining the approval of a credit transaction involving construction where there is no seller, the creditor must include the improvements in the disclosure of the value of the property on the Closing Disclosure under § 1026.38(a)(3)(vii). As discussed in the section-by-section analysis of § 1026.37(a)(7), final comment 37(a)(7)–1 allows a creditor the flexibility to include the improvements into the estimated value of the property disclosed on the Loan Estimate under § 1026.37(a)(7), which allows the creditor the option of maintaining consistency between the disclosure that is given on the Loan Estimate under § 1026.37(a)(7) and the disclosure that will be given on the Closing Disclosure under § 1026.38(a)(3)(vii) by including improvements to be made in both disclosures. On the other hand, if a creditor does not include improvements to be made on the property in determining the approval of a credit transaction involving construction where there is no seller, the creditor must not include the improvements in the disclosure of the value of the property on the Closing Disclosure under § 1026.38(a)(3)(vii). Final comment 37(a)(7)–1 allows a creditor the flexibility not to include the improvements into the estimated value of the property disclosed on the Loan Estimate under § 1026.37(a)(7), which allows the creditor the option of maintaining consistency between the disclosure that is given on the Loan Estimate under § 1026.37(a)(7) and the disclosure that will be given on the Closing Disclosure under § 1026.38(a)(3)(vii) by not including improvements to be made in both disclosures.

38(a)(4) Transaction Information

The Bureau's Proposal

Section 1026.38(a)(4) requires the disclosure of specific information about the transaction, including the name and address of the seller. Comment 38(a)(4)–2 clarifies that, in transactions where there is no seller, such as in a refinancing or home equity loan, the disclosure of the seller's name and address required by § 1026.38(a)(4)(ii) may be left blank. The Bureau proposed to revise comment 38(a)(4)–2 to include a simultaneous subordinate financing purchase transaction as a transaction for which a creditor may leave the § 1026.38(a)(4)(ii) disclosure blank, but only if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau specifically sought comment on whether the consumer or seller would benefit if the Closing Disclosure for the simultaneous subordinate financing purchase transaction contains the seller's name and address even if the first-lien Closing Disclosure will record the entirety of the seller's transaction, including the seller's name and address.

Section 1026.38(a)(4)(i) also requires the consumer's name and mailing address, labeled ''Borrower.'' Section 1026.2(a)(11) defines ''consumer'' as a natural person to whom consumer credit is offered or extended. The definition further provides that, for purposes of rescission under §§ 1026.15 and 1026.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. Proposed comment 38(a)(4)–4 would have required that, in rescindable transactions, pursuant to § 1026.38(a)(4)(i), creditors disclose the name and mailing address of each natural person in whose principal dwelling a security interest is or will be retained or acquired, labeled ''Borrower,'' if that person's ownership interest in the dwelling is or will be subject to the security interest and regardless of whether that person is an obligor.

Simultaneous Subordinate Financing

Comments Received

A title insurance company and a compliance professional expressed support for the proposal. Commenters argued that there is no benefit to the borrower or seller in requiring the disclosure of the seller's name and address in the simultaneous subordinate financing purchase transaction Closing Disclosure because the first-lien Closing Disclosure will already have the seller's name and address. The first-lien Closing Disclosure will be the document to which consumers and sellers will refer to find this information. One commenter also stated that because most simultaneous subordinate financing transactions are handled in files separate from the first-lien transaction, data entry on the part of creditors and settlement agents will be reduced.

The Final Rule

The Bureau is finalizing the proposed amendments to comment 38(a)(4)–2. The Bureau concludes that there is no substantial benefit to the borrower or seller in requiring the disclosure of the seller's name and address on the simultaneous subordinate financing purchase transaction Closing Disclosure if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau also believes that the amendments to comment 38(a)(4)–2 will reduce industry burden.

Consumers Disclosed With the Label ''Borrower''

Comments Received

Several industry commenters supported proposed comment 38(a)(4)–4, which would have required that creditors disclose, using the label ''Borrower,'' the name and mailing address of each natural person in whose principal dwelling a security interest is or will be retained or acquired, regardless of whether that person is an obligor. Vendors and an individual compliance professional commented that the proposal provided helpful guidance for determining which names and addresses should be disclosed under current § 1026.38(a)(4)(i). A vendor group stated that proposed comment 38(a)(4)–4 is consistent with informal guidance previously provided by the Bureau.

However, other industry commenters opposed proposed comment 38(a)(4)–4. Several creditors and trade associations asserted that it is contradictory to disclose non-obligors with the label ''Borrower'' and that doing so may result in consumer confusion. A creditor commented that the requirement would probably lead to a significant decline in the volume of rescindable transactions involving non-obligor property owners; current Federal regulations, including Regulation Z, do not require disclosing non-obligors as ''Borrowers''; and current § 1026.37(a)(5) limits disclosure of ''Applicants'' on the Loan Estimate to only include the name and mailing address of consumers applying for the credit. A trade association and a secondary market investor stated that proposed comment 38(a)(4)–4 would require substantial reprogramming of many loan origination systems; the investor also expressed concern that the proposal may increase the likelihood of disclosure errors. Industry commenters suggested various alternatives to disclosing non-obligors with the label ''Borrower,'' including replacing the label ''Borrower'' on the Closing Disclosure form with another label such as ''consumer''; limiting the term ''consumer'' in § 1026.38(a)(4)(i) to exclude persons who are not contractually liable for repayment of the debt; or using an addendum, acknowledgement statement, or non-categorized signature line for disclosing non-obligors who have recession rights.

An individual commenter requested clarification regarding how to document non-obligors' receipt of the Closing Disclosure. A secondary market investor requested clarification as to which disclosures must be provided to consumers who have recession rights.

The Final Rule

For the reasons discussed below, the Bureau is not adopting comment 38(a)(4)–4 as proposed and, instead, is revising comment 38(a)(4)–4 so that only the name and mailing address of persons to whom the credit is offered or extended are disclosed pursuant to § 1026.38(a)(4)(i) and labeled ''Borrower.'' After considering commenters' concerns, the Bureau concludes that, for purposes of § 1026.38(a)(4)(i), limiting the term ''consumer'' to persons to whom the credit is offered or extended will promote meaningful disclosure of credit terms and informed use of credit and will facilitate compliance. By disclosing the name and mailing address only of persons to whom the credit is offered or extended pursuant to § 1026.38(a)(4)(i), the Bureau concludes that, as finalized, comment 38(a)(4)–4 yields a disclosure that is more consistent with the label ''Borrower'' and presents less potential for consumer confusion. As finalized, comment 38(a)(4)–4 is also consistent with current § 1026.37(a)(5), which limits disclosure of ''Applicants'' on the Loan Estimate to only include the name and mailing address of consumers applying for the credit. With respect to a vendor group's statement that informal guidance previously provided by the Bureau was consistent with proposed comment 38(a)(4)–4, the Bureau understands that there has been uncertainty regarding rescindable transactions as to whether current § 1026.38(a)(4)(i) requires disclosing, with the label ''Borrower,'' the name and mailing address of each natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. As finalized in this rule, comment 38(a)(4)–4 will provide helpful guidance for determining which names and addresses should be disclosed under § 1026.38(a)(4)(i). Comment 38(a)(4)–4 does not change the definition of ''consumer'' in § 1026.2(a)(11) nor does it change the requirements of § 1026.23, including disclosure delivery requirements.

Regarding a commenter's request for clarification regarding how to document non-obligors' receipt of the Closing Disclosure, current § 1026.38(s) permits a creditor, at its option, to include a line for the signatures of the consumers in the transaction—and current § 1026.2(a)(11) provides that, for purposes of rescission under §§ 1026.15 and 1026.23, the term ''consumer'' also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. If the creditor opts to provide a line for consumers' signatures, current § 1026.38(s) requires that the creditor disclose, above the signature line, that consumers do not have to accept the loan because they signed or received the form. With respect to the comment requesting clarification as to which disclosures must be provided to consumers who have recession rights, guidance for closed-end credit can be found in current § 1026.23 and its associated commentary.

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the **Federal Register,** but there will be an optional compliance period in effect until October 1, 2018.

38(d) Costs at Closing

38(d)(2) Alternative Table for Transactions Without a Seller or for Simultaneous Subordinate Financing

The Bureau's Proposal

Section 1026.38(d)(2) permits creditors to use the alternative table on the Closing Disclosure in a transaction without a seller only where the creditor disclosed the optional alternative table under § 1026.37(d)(2) on the Loan Estimate. The Bureau has provided informal guidance that, in purchase transactions with simultaneous subordinate financing, the alternative table may be used for the simultaneous subordinate financing Closing Disclosure if the first-lien Closing Disclosure records the entirety of the seller's transaction and the seller did not contribute to the subordinate financing. The Bureau proposed to amend § 1026.38(d)(2) and comment 38(d)(2)–1 to explicitly permit the use of the alternative table for simultaneous subordinate financing purchase transactions if the first-lien Closing Disclosure records the entirety of the seller's transaction. The Bureau specifically sought comment on whether it is appropriate to limit use of the alternative table for disclosure of simultaneous subordinate financing purchase transactions to situations in which the first-lien Closing Disclosure records the entirety of the seller's transaction.

Comments Received

Commenters included a title insurance company, software vendors, and a bank. Generally commenters supported the Bureau's proposal to allow the use of the alternative table if the first-lien Closing Disclosure records the entirety of the seller's transaction. As discussed more fully in the section-by-section analysis of § 1026.37(d)(2), one commenter questioned what disclosures should be used when the alternative tables were initially used for the simultaneous subordinate financing, but a seller later agrees to contribute to the costs of the subordinate financing, making continued use of the alternative tables impermissible under the proposal. One commenter noted that the proposal could lead to variation among creditors and another commenter stated that the UCD may not allow the use of the alternative disclosures for any transactions with sellers.

The Final Rule

For the reasons discussed below, the Bureau is finalizing the proposed amendments to § 1026.38(d)(2) with minor technical revisions, and finalizing proposed amendments to comment 38(d)(2)–1 with a minor technical revision and revisions to cross-reference related requirements, including those that pertain to first-lien disclosures. The Bureau appreciates the commenter's question regarding how to proceed under the proposal when the alternative table was properly used on the Loan Estimate, or even the Closing Disclosure, but a subsequent event causes the continued use of the alternative table to be impermissible. For the reasons discussed in the section-by-section analysis of § 1026.37(d)(2), the Bureau is directly addressing this concern by adding new comment 38(k)(2)(vii)–1, amending comments 38(d)(2)–1 and 38(j)–3, and amending proposed new comments 38(t)(5)(vii)(B)–1 and –2 to require the disclosure of the seller's contributions to the subordinate financing, if any, in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure and the summaries of transactions table on the first-lien Closing Disclosure, when the alternative tables are used for the simultaneous subordinate financing. As discussed in more detail in the section-by-section analysis of § 1026.38(k)(2), the first-lien Closing Disclosure must include, in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii), any contributions toward the simultaneous subordinate financing from the seller that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B), thereby recording the entirety of the seller's transaction on the first-lien Closing Disclosure. Final comment 38(d)(2)–1 includes a cross-reference to comments 38(j)–3 and 38(k)(2)(vii)–1 for related disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing purchase transaction and a seller contributes to the costs of the subordinate financing. Final comment 38(d)(2)–1 also includes a cross-reference to comments 38(t)(5)(vii)(B)–1 and –2 for the requirement to disclose the seller's contributions toward the subordinate financing in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure.

The Bureau recognizes that allowing the use of the alternative disclosures for simultaneous subordinate financing purchase transactions may cause variability in disclosure among creditors, but concludes that consumers are unlikely to be harmed by such optionality. In addition, the Bureau understands that investor requirements may be more restrictive than the optionality provided by the Bureau. However, the Bureau believes flexibility is beneficial to some creditors, and the Bureau will continue to provide the option for creditors to use the alternative disclosures for simultaneous subordinate financing transactions with sellers.

38(e) Alternative Calculating Cash to Close Table for Transactions Without a Seller or for Simultaneous Subordinate Financing

The Bureau's Proposal

Section 1026.38(e) provides for the disclosure of an alternative calculation of cash or other funds due from or due to the consumer at consummation for transactions without a seller, using the heading ''Calculating Cash to Close.'' Specifically, § 1026.38(e) only permits the use of the alternative calculating cash to close table for a transaction without a seller and requires a creditor to disclose the alternative calculating cash to close table when the creditor disclosed the optional alternative calculating cash to close table on the Loan Estimate under § 1026.37(h)(2). As discussed in the section-by-section analysis of § 1026.37(h) above, the Bureau sought comment on the calculating cash to close table generally. The Bureau has provided informal guidance that, in simultaneous subordinate financing purchase transactions, the alternative calculating cash to close table may be used for the simultaneous subordinate financing Closing Disclosure if the first-lien Closing Disclosure records the entirety of the seller's transaction and the seller did not contribute to the subordinate financing.

The Bureau proposed to amend § 1026.38(e) and comment 38(e)–1 to explicitly permit the use of the alternative calculating cash to close table for simultaneous subordinate financing purchase transactions if the first-lien Closing Disclosure records the entirety of the seller's transaction. The Bureau also proposed to add comment 38(e)–6 to specify which amounts are disclosed under the subheading ''Loan Estimate'' on the Closing Disclosure's alternative calculating cash to close table. Proposed comment 38(e)–6 clarified that the amounts disclosed under the subheading ''Loan Estimate'' pursuant to § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer, regardless of whether those amounts reflected updated amounts provided for informational purposes only or the amounts used for purposes of determining good faith under § 1026.19(e)(3). The Bureau sought comment on whether that approach provides a helpful comparison to consumers with the final amounts disclosed on the Closing Disclosure and sought comment on other alternatives to provide consumers a comparison of estimated and final amounts.

Comments Received

As noted above and discussed more fully in the section-by-section analysis of § 1026.37(h), the Bureau sought comment on the calculating cash to close tables generally. A commenter asserted that the alternative calculating cash to close tables function better, are less complicated, and present less information than the standard tables. Commenters also stated that the calculating cash to close tables provide important benefits to consumers and assist consumers in understanding their transactions by providing them with a high-level view of how their cash to close amounts are determined. See the section-by-section analysis of § 1026.37(h) for a more detailed discussion of those comments that relate to §§ 1026.37(h)(2) and 1026.38(e) generally.

A mortgage banker and software vendor supported proposed revisions to § 1026.38(e) and related commentary. The commenters stated that these proposed revisions, if implemented, will improve the ability of creditors to comply with the calculating cash to close table and provide a more accurate cash to close amount to consumers.

Software vendors, a bank, and a state housing finance agency also commented on the Bureau's proposed amendments to § 1026.38(e) and comment 38(e)–1. Most commenters supported the Bureau's proposal to allow the use of the alternative calculating cash to close table if the first-lien Closing Disclosure records the entirety of the seller's transaction. As discussed more fully in the section-by-section analysis of § 1026.37(d)(2), one commenter questioned what disclosures should be used when the optional alternative tables were initially used for the simultaneous subordinate financing, but a seller later agrees to contribute to the costs of the subordinate financing, making continued use of the alternative tables impermissible under the proposal. One commenter noted that the proposal could lead to variation among creditors and another commenter stated that the UCD may not allow the use of the alternative disclosures for any transactions with sellers. Finally, a commenter suggested a technical revision to proposed § 1026.38(e).

A compliance professional and a financial holding company supported the proposal to clarify that the amounts disclosed under the subheading ''Loan Estimate'' under § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer, regardless of whether those amounts reflect updated amounts provided for informational purposes only or the amounts to be used for purposes of determining good faith under § 1026.19(e)(3). One of the commenters stated that the comparison of amounts from the most recent Loan Estimate to the current Closing Disclosure is helpful to consumers and that there do not appear to be other viable alternatives. A software vendor and software vendor group noted that the proposal will help to settle industry differences of opinion, but raised concerns with the proposal, discussed below.

A software vendor, a software vendor group, a credit union, and trade associations questioned the usefulness of the comparison. Commenters cited concerns that the table does not identify tolerance violations for consumers' awareness and does not record amounts on any Closing Disclosures provided to the consumer between the last provided Loan Estimate and the current corrected Closing Disclosure. One commenter asked the Bureau to clarify whether comparison between the ''Loan Estimate'' and ''Final'' columns affects the tolerance provisions under § 1026.19(e)(3). Another commenter stated that good faith was difficult to determine based on a comparison of the amounts disclosed on the last provided Loan Estimate and current Closing Disclosure. In the context of the Bureau's companion proposal in comment 38(i)–5, industry commenters offered alternative approaches to help consumers evaluate changes between disclosures. For a more detailed discussion of these related comments, please see the section-by-section analysis of § 1026.38(i).

A trade association commenter stated that secondary market investors who purchase loans are requiring use of the alternative table for refinances and asked the Bureau to clarify that the standard disclosures may be used for refinance transactions. The commenter argued that it would be helpful if a single disclosure form could be utilized for all types of transactions.

The Final Rule

For the reasons discussed below, the Bureau is finalizing with minor technical revisions the proposed amendments to § 1026.38(e) and comment 38(e)–1 and proposed comment 38(e)–6. The Bureau is also amending comment 38(e)–3 for conformity with final comment 38(i)–2. Final § 1026.38(e) provides that for transactions that do not involve a seller or for simultaneous subordinate financing, if the creditor disclosed the optional alternative calculating cash to close table under § 1026.37(h)(2), the creditor is required also to disclose the alternative calculating cash to close table under § 1026.38(e). Final comment 38(e)–1 explains that the alternative calculating cash to close table may be provided by a creditor in a transaction without a seller, or for a simultaneous subordinate financing purchase transaction only if the first-lien Closing Disclosure records the entirety of the seller's transaction, and must be used in conjunction with the alternative disclosure under § 1026.38(d)(2).

As discussed in the section-by-section analysis of § 1026.37(d)(2), the Bureau appreciates the commenter's question regarding how to proceed under the proposal when the optional alternative calculating cash to close table was initially used, but a subsequent event causes the continued use of the alternative calculating cash to close table to be impermissible. The Bureau is directly addressing this concern by adding new comment 38(k)(2)(vii)–1, amending comments 38(d)(2)–1 and 38(j)–3, and amending proposed new comments 38(t)(5)(vii)(B)–1 and –2 as discussed in the section-by-section analysis of § 1026.37(d)(2).

The Bureau did not propose amendments to comment 38(e)–3, but is making non-substantive amendments for conformity with final comment 38(i)–2. As discussed in the section-by-section analysis of § 1026.38(i) below, the Bureau proposed to revise comment 38(i)–2 to streamline the comment. Although comment 38(i)–2 pertains to § 1026.38(i) and comment 38(e)–3 pertains to § 1026.38(e), the comments are otherwise identical. Therefore, for consistency, the Bureau is making the same revisions to comment 38(e)–3 as it is making to comment 38(i)–2.

The Bureau is finalizing comment 38(e)–6 as proposed with a minor technical revision. Final comment 38(e)–6 provides that the amounts disclosed under the subheading ''Loan Estimate'' under § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer. The Bureau believes that the comparison of amounts from the last provided Loan Estimate to the current Closing Disclosure, as required by final comment 38(e)–6, is helpful to consumers, and there are not viable alternatives absent completely restructuring the alternative calculating cash to close tables; at this time, restructuring the calculating cash to close tables would be inconsistent with the Bureau's focus in this rulemaking on providing additional clarity in an expeditious manner. The comparison, as part of the Closing Disclosure's alternative calculating cash to close table, illustrates how such amounts changed from the estimated amounts disclosed on the Loan Estimate, which helps to ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The table is not intended to identify every single change over the course of the real estate transaction; it is intended to compare the most recent estimated amounts represented to the consumer with the amounts reflecting the actual terms of the transaction. As discussed in the proposal, the amounts disclosed on the Closing Disclosure's alternative calculating cash to close table under the subheadings ''Loan Estimate'' and ''Final'' are not, in and of themselves, subject to the § 1026.19(e)(3) good faith standard. These amounts are disclosed based on the best information reasonably available to the creditor at the time the disclosure is provided. Any increases or changes to the amounts, based on the best information reasonably available to the creditor at the time the disclosure is provided, do not result in any separate violation of any standard under Regulation Z. The amounts used for determining good faith may be disclosed over multiple Loan Estimates, or even corrected Closing Disclosures, depending upon the facts and circumstances of the transaction. Accordingly, good faith cannot be determined based on a comparison of the amounts disclosed under the subheadings ''Loan Estimate'' and ''Final'' on the Closing Disclosure's alternative calculating cash to close table.

In disclosing amounts under § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i), when there are multiple Loan Estimates provided to a consumer, the current regulatory provisions do not specify a particular Loan Estimate to use. Therefore, it is currently permissible to disclose amounts from any Loan Estimate provided to the consumer in the ''Loan Estimate'' column of the Closing Disclosure's alternative calculating cash to close table, and will remain permissible until the mandatory compliance date of this final rule, October 1, 2018. For a discussion of the effective and mandatory compliance dates, see part VI, below.

The trade association commenter is correct that, under the Bureau's regulations, the standard disclosures may be used for refinance transactions. A refinance transaction must be disclosed pursuant to § 1026.38(e) if the creditor previously disclosed the optional alternative table under § 1026.37(h)(2), but use of the optional alternative table under § 1026.37(h)(2) is not required. At the same time, secondary market investors may decide, as a business practice, to impose additional requirements, such as requiring the use of the alternative disclosures for refinance transactions.

38(e)(2) Total Closing Costs

38(e)(2)(ii)

For transactions using the alternative calculating cash to close table, § 1026.38(e)(2)(ii) requires the creditor to disclose the amount of total closing costs disclosed under § 1026.38(h)(1). The total amount of closing costs disclosed under § 1026.38(e)(2)(ii) generally represents an amount owed by the consumer; therefore, the Bureau specified that the total closing costs be disclosed as a negative number. However, lender credits disclosed under § 1026.38(h)(3) may sometimes exceed the subtotal of closing costs under § 1026.38(h)(2), resulting in a net credit to the consumer. In that case, the total closing costs disclosed under § 1026.38(e)(2)(ii) should be disclosed as a positive number to reflect the expected credit to the consumer. Therefore, the Bureau proposed to revise § 1026.38(e)(2)(ii) to explain that the amount disclosed under that paragraph is disclosed as a negative number if the amount disclosed under § 1026.38(h)(1) is a positive number and is disclosed as a positive number if the amount disclosed under § 1026.38(h)(1) is a negative number.

A software vendor, compliance professional, and trade association commenter praised the proposal. One commenter stated that eliminating the requirement to disclose amounts as positive or negative numbers throughout will go a long way in providing creditors with greater flexibility to complete the calculating cash to close table in a manner that can be explained to consumers and reflects the actual transaction. Another commenter stated that there are a minority of loans which are generated in the industry where total closing costs are actually negative (the consumer will not be paying any closing costs, but will also be receiving some cash back) and this change will enable accurate closing costs to be reflected in the calculating cash to close table. The commenter also requested that the Bureau make a similar change to § 1026.37(h)(2)(ii). A credit union stated generally that there is confusion surrounding the use of negative values on the form, but did not provide specific concerns.

The Bureau is finalizing as proposed the amendments to § 1026.38(e)(2)(ii). The Bureau concludes that this amendment is necessary for closing costs to be accurately reflected in the calculating cash to close table. In response to the comment about § 1026.37(h)(2)(ii), the Bureau notes that it is amending that provision, as discussed in the section-by-section analysis of § 1026.37(h)(2)(ii) above.

38(e)(2)(iii)

Section 1026.38(e)(2)(iii)(A)(*3*) provides that if the amount of closing costs actually charged to the consumer exceeds the limitations on increases in closing costs under § 1026.19(e)(3), the creditor must provide a statement that such increase exceeds the legal limits by the dollar amount of the excess and, if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under § 1026.38(h)(3). The Bureau proposed to add comment 38–4, which explained how to disclose a principal curtailment to provide a refund under § 1026.19(f)(2)(v). The comment would have provided that a principal curtailment would be disclosed under § 1026.38(g)(4) or (t)(5)(vii)(B) for transactions using the alternative calculating cash to close table under § 1026.38(e). Accordingly, the Bureau proposed to revise § 1026.38(e)(2)(iii)(A)(*3*) and comment 38(e)(2)(iii)(A)–3 to allow a creditor to provide a statement directing the consumer to the disclosure of the principal curtailment under § 1026.38(g)(4) or (t)(5)(vii)(B), rather than directing the consumer to the disclosure of a refund under § 1026.38(h)(3).

As discussed in more detail in the section-by-section analysis of § 1026.38 pertaining to comment 38–4 above, some industry commenters raised concerns with the various options for disclosing principal curtailments proposed by the Bureau, including disclosure as a closing cost under § 1026.38(g)(4). In addition, an industry group recommended that the Bureau use the phrase ''principal reduction'' instead of ''principal curtailment,'' noting that consumers would be more familiar with the recommended phrase.

For the reasons discussed below, the Bureau is revising the proposed amendments to § 1026.38(e)(2)(iii)(A)(*3*) and comment 38(e)(2)(iii)(A)–3, and is making conforming amendments to comments 38(e)(2)(iii)(A)–2.i and –2.iii. As discussed in the section-by-section analysis of § 1026.38 pertaining to comment 38–4 above, the Bureau appreciates the suggestion to use the phrase ''principal reduction.'' The Bureau also explained that it is revising proposed comment 38–4 to limit the disclosure of principal reductions on the alternative disclosure to § 1026.38(t)(5)(vii)(B). Therefore the Bureau is revising the proposed amendments to § 1026.38(e)(2)(iii)(A)(*3*) and comment 38(e)(2)(iii)(A)–3 to reflect the phrase ''principal reduction'' and to remove the cross-reference to § 1026.38(g)(4).

As discussed in the section-by-section analysis of § 1026.19(e)(3)(i), the Bureau is amending comment 19(e)(3)(i)–1 to conform with final § 1026.19(e)(3)(iii), which provides exceptions to the general rule that an estimated closing cost is in good faith if the charge paid by or imposed on the consumer does not exceed the estimate for the cost as disclosed on the Loan Estimate. As a result, the Bureau is making conforming amendments in final comments 38(e)(2)(iii)(A)–2.i and –2.iii. Specifically, final comment 38(e)(2)(iii)(A)–2.i clarifies that certain closing costs (*e.g.,* fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor) are generally subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i); however, § 1026.19(e)(3)(iii) provides exceptions to the general rule for certain charges. Final comment 38(e)(2)(iii)(A)–2.iii clarifies that, for a charge listed on the Loan Estimate under the subheading ''Services You Can Shop For,'' such charge would generally be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor; however, § 1026.19(e)(3)(iii) provides exceptions to the general rule for certain charges.

38(e)(3) Closing Costs Paid Before Closing

38(e)(3)(iii)

38(e)(3)(iii)(B)

Comment 38(e)(3)(iii)(B)–1 explains the circumstances under which the creditor gives a statement that the amount under the subheading ''Final'' pursuant to § 1026.38(e)(3)(ii) is equal to the amount disclosed under the subheading ''Loan Estimate'' pursuant to § 1026.38(e)(3)(i) and, in so doing, refers to an amount of ''$0'' under the subheading ''Final.'' The Bureau proposed two technical revisions in comment 38(e)(3)(iii)(B)–1. First, the Bureau proposed to change ''$0'' to ''$0.00'' to reflect the disclosure of a dollar amount of zero to two decimal places. Second, the reference to ''settlement agent'' would be removed from comment 38(e)(3)(iii)(B)–1 because, as the introductory paragraph to § 1026.38(e) makes clear, the responsibility to provide the § 1026.38(e) disclosures lies with the creditor, not the settlement agent.

The Bureau did not receive any specific comments on this proposal and is finalizing the amendment to remove the reference to ''settlement agent'' from comment 38(e)(3)(iii)(B)–1, but is not finalizing the amendment to change ''$0'' to ''$0.00.'' The Bureau's proposal would have changed ''$0'' to ''$0.00'' in many places in § 1026.38(e) and (i), and the associated commentary, so that dollar amounts of zero would be disclosed consistently in the ''Final'' column of the Closing Disclosure's calculating cash to close table. Generally, unless amounts are required to be rounded by § 1026.38(t)(4), amounts are disclosed on the Closing Disclosure as exact numerical amounts, using decimal places. Section 1026.38(t)(4) provides for exceptions to this general rule. Upon further consideration, the Bureau is not finalizing the proposed approach, and is instead changing the few instances of ''$0.00'' to ''$0.'' The Bureau believes this approach will achieve the consistency intended by the proposal, but will be less burdensome to creditors because § 1026.38(e) and (i), and the associated commentary, currently refer to dollar amounts of zero in the ''Final'' column of the calculating cash to close table as ''$0'' most of the time.

38(e)(4) Payoffs and Payments

38(e)(4)(ii)

Section 1026.38(e)(4)(ii) provides that the total amount of payoffs and payments made to third parties disclosed under § 1026.38(t)(5)(vii)(B), to the extent known, is disclosed as a negative number. The requirement to disclose a negative number under § 1026.38(e)(4)(ii) supposes that the total amount disclosed under § 1026.38(t)(5)(vii)(B) will always be a positive number. The Bureau proposed to revise § 1026.38(e)(4)(ii) such that the amount disclosed under § 1026.38(e)(4)(ii) is disclosed as a negative number if the total amount disclosed under § 1026.38(t)(5)(vii)(B) is a positive number, signifying amounts owed by the consumer, and is disclosed as a positive number if the total amount disclosed under § 1026.38(t)(5)(vii)(B) is a negative number, signifying amounts due to the consumer.

A trade association commented that permitting the disclosure of negative or positive amounts will go a long way in providing creditors with greater flexibility to complete the calculating cash to close table in a manner that reflects the actual transaction. A credit union stated generally that there is confusion surrounding the use of negative values on the form, but did not provide specific concerns.

For the reasons discussed below, the Bureau is finalizing the proposed amendments to § 1026.38(e)(4)(ii) with minor technical revisions. In response to the proposed revision of § 1026.38(e)(4)(ii) and other provisions of the proposal, the Bureau received positive feedback that being less prescriptive about whether amounts must be disclosed as negative or positive numbers will enable more accurate disclosure for different types of transactions. The Bureau believes this amendment will facilitate compliance with the Bureau's disclosure requirements.

38(f) Closing Cost Details; Loan Costs

The Bureau proposed to add comment 38(f)–2. Consistent with proposed comments 37(f)–3 and 37(f)(6)–3, proposed comment 38(f)–2 provided that construction loan inspection and handling fees are loan costs associated with the transaction for purposes of the Closing Disclosure under § 1026.38(f). The proposed new comment also added a cross-reference to proposed comments 37(f)–3, 37(f)(6)–3, and app. D–7.viii, making those comments' discussions of inspection and handling fees for the staged disbursement of construction loan proceeds explicitly applicable to the disclosures required by § 1026.38(f).

The Bureau did not receive any comments on proposed comment 38(f)–2. Having received no comments regarding this proposed revision, the Bureau is finalizing comment 38(f)–2 as proposed, except to make a conforming change to renumber comment app. D–7.viii as comment app. D–7.vii.

38(g) Closing Cost Details; Other Costs

38(g)(1) Taxes and Other Government Fees

Section 1026.38(g)(1) requires creditors to disclose an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees, including recording fees. Closing Disclosure form H–25(A) of appendix H illustrates such disclosures on a line labeled ''Recording Fees,'' with the additional labels ''Deed'' and ''Mortgage,'' respectively. The Bureau proposed to revise § 1026.38(g)(1) to clarify that the total amount of fees for recording deeds and the total amount of fees for recording security instruments must each be disclosed on the first line under the subheading ''Taxes and Other Government Fees'' before the columns described in § 1026.38(g) and to clarify that the total amounts paid for recording fees (including but not limited to fees for recording deeds and security instruments) must be disclosed in the applicable column described in § 1026.38(g). In addition, the Bureau proposed to add new comment 38(g)(1)–3 to clarify the labels for recording fees on form H–25(A) of appendix H.

Commenters generally indicated support for the revision and new comment. Several industry commenters sought additional clarification on the use of the term ''itemization'' in the first paragraph of proposed revisions to § 1026.38(g)(1). Other industry commenters submitted that § 1026.38(g)(1) should be revised to allow for a full itemization of the recording fees charged to consumers in the transaction to obviate the need for a separate settlement statement that may be provided by settlement agents.

For the reasons stated below, the Bureau is adopting as proposed the revisions to § 1026.38(g)(1) and new comment 38(g)(1)–3. In response to commenters seeking clarification of the use of the term ''itemization'' the first time it appears in § 1026.38(g)(1), the Bureau notes that § 1026.38(g)(1) requires disclosing recording fees separately from transfer taxes. Also, the Bureau notes that transfer taxes are required to be itemized separately pursuant to § 1026.38(g)(1)(ii). In contrast, § 1026.38(g)(1)(i), relating to recording fees, does not include the term ''itemization.''

As to some industry commenters' request to permit the full itemization of each document recorded in the transaction, the Bureau notes that permitting such a break out for the recording cost of each recordable document would, in some instances, require many more lines, potentially more than could be accommodated on a maximum of two pages, as limited by § 1026.38(t)(5)(iv)(B) and is unlikely to improve consumer understanding of the Closing Disclosure.[87] While not present in all residential mortgage transactions, the list of separate documents that could be required to be recorded depending on State law requirements can include, but is not limited to, certificates of satisfaction or partial satisfaction, contracts, deeds transferring ownership of various types, leases, modification agreements, mortgages or deeds of trust, easements, assumption agreements, covenants, declarations, liens, judgments, and powers of attorney. However, the Bureau notes that the creditor is permitted to provide a further listing of recording fees, at its discretion, as information used locally in real estate settlements pursuant to § 1026.38(t)(5)(ix) in order to comprehensively describe the cost of each document included in the recording fees disclosed under § 1026.38(g)(1)(i). Since commenters otherwise generally supported the this proposal, the Bureau is adopting the proposed revisions to § 1026.38(g)(1) and new comment 38(g)(1)–3 as proposed.

38(g)(2) Prepaids

Current comment 38(g)(2)–3 provides that $0 must be disclosed if interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment. The Bureau proposed to revise comment 38(g)(2)–3 to require $0.00 to be disclosed if interest is not collected for a portion of a month or other period between closing and the date from which the interest will be collected with the first monthly payment. The Bureau explained that the amount required to be disclosed under § 1026.38(g)(2) is disclosed to two decimal places in accordance with § 1026.2(b)(4) and comment 38(t)(4)–1.

The Bureau received two comments regarding the proposed revision to comment 38(g)(2)–3. A commenter representing a large bank asserted that the revision would impose significant burden to reprogram and test its systems. The commenter also asserted that the revision would realize little or no benefit to the consumer. A compliance professional asserted that prepaid interest should be left blank, like other amounts, when the value for prepaid interest is zero.

The Bureau is finalizing comment 38(g)(2)–3 as proposed. To remain consistent with the other disclosed dollar amounts under the closing cost details column the Bureau is requiring the disclosure of $0.00 under § 1026.38(g)(2) when prepaid interest is not collected. This requirement is also consistent with § 1026.2(b)(4) and comment 38(t)(4)–1 which requires the disclosure of dollar amounts to include cents even when the value for cents is zero, unless otherwise provided.

The Bureau believes that the reprogramming cost for this revision will not be significant given that creditors have until October 1, 2018, to come into compliance with this provision and in light of other programming changes that creditors will be making in response to other provisions in this final rule. In response to the commenter that suggested that prepaid interest should be left blank, the label for prepaid interest on the Closing Disclosure form shows components of the prepaid interest equation, including the amount of prepaid interest to be paid per day, and thus the Bureau declines to offer an option to leave blank the amount required to be disclosed by § 1026.38(g)(2).

38(g)(4) Other

The Bureau's Proposal

Comment 38(g)(4)–1 clarifies that the charges for services disclosed under § 1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate transaction but not required by the creditor or disclosed elsewhere in § 1026.38. Currently, amounts for construction costs, payoff of existing liens, or payoff of unsecured debt may be, but are not required to be, disclosed under § 1026.38(g)(4). As discussed in more detail below and in

[87] 78 FR 79730, 80011 (Dec. 31, 2013).

the section-by-section analysis of § 1026.37(g)(4), above, the Bureau proposed to revise comment 38(g)(4)–1 to require that construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.38(a)(3)(vi), and payoff of unsecured debt be disclosed under § 1026.38(g)(4), unless those items are disclosed under § 1026.38(t)(5)(vii)(B) on the optional alternative calculating cash to close table. Proposed comment 38(g)(4)–1.iii would also have included a reference to comment 38–4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under § 1026.38(g)(4).

In proposing to revise comment 38–4, the Bureau noted that it expected consumer understanding to be enhanced by the clear and conspicuous disclosure of these amounts in corresponding tables on the Loan Estimate and Closing Disclosure, which would have also created greater consistency between the Loan Estimate and Closing Disclosure.

In the preamble to the proposal, the Bureau noted that it also had considered requiring the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt on the summaries of transactions table on the Closing Disclosure under § 1026.38(j)(1)(v) instead of as ''closing costs'' under §§ 1026.37(g)(4) and 1026.38(g)(4). The Bureau noted that disclosing these costs on the summaries of transactions table would not provide for comparability between the Loan Estimate and Closing Disclosure, however, because the Loan Estimate does not have a summaries of transactions table.

The Bureau also noted in the preamble to the proposal that it had considered requiring the disclosure of construction costs only on an addendum, instead of under § 1026.37(g)(4) on the Loan Estimate and § 1026.38(g)(4) on the Closing Disclosure. The construction costs would then be factored into the calculating cash to close table calculations in conjunction with the sale price to yield an accurate cash to close amount. However, the Bureau believed this approach could add more complexity to the calculations required on the Closing Disclosure than disclosure under § 1026.38(g)(4).

The Bureau also proposed to revise comment 38(g)(4)–1 to cross-reference proposed comment app. D–7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and proposed comment app. D–7.viii for an explanation of the disclosure of construction loan inspection and handling fees. The Bureau proposed to revise comment 38(g)(4)–1 to clarify that inspection fees disclosed under § 1026.38(g)(4) are for pre-consummation inspection fees, not post-consummation inspection fees, such as those often associated with construction loans. As discussed in the section-by-section analysis of § 1026.38(f), post-consummation inspection fees are to be disclosed in an addendum attached as an additional page after the last page of the Closing Disclosure. Revised comment 38(g)(4)–1 would have also clarified that, if amounts for construction costs are contracted to be paid at closing, even though they will be disbursed after closing, they are disclosed in the paid ''At Closing'' column.

Comments Received

Comments on the proposed revision of comment 38(g)(4)–1 were generally made together with comments submitted on the proposed revision of comment 37(g)(4)–4 and, similarly, were generally unfavorable. Commenters believed that significant confusion would result from the proposed revision of comment 38(g)(4)–1, which the commenters said would make the closing costs in many loans, including construction loans, appear to be enormous. Commenters stated that consumers would be concerned that loans were prohibitively expensive upon seeing such high ''closing costs.'' Commenters also noted that consumer testing had not been conducted for the proposed required disclosures, and disagreed with what they perceived as giving a greater priority to comparability between the Loan Estimate and the Closing Disclosure than to consumer understanding. Significant staff training and systems reprogramming were also cited as concerns by commenters. A fuller presentation of these comments is in the discussion of comment 37(g)(4)–4 above in the section-by-section analysis of § 1026.37(g)(4).

However, some commenters also pointed out an issue that was specific to proposed comment 38(g)(4)–1. Comments from individual vendors, a group of vendors and a trade association focused on proposed comment 38(g)(4)–1.i, which would have provided that the amounts disclosed under § 1026.38(g)(4) must be placed in either the paid ''Before Closing'' or in the paid ''At Closing'' column under the subheading ''H. Other.'' These commenters noted that because proposed comment 38(g)(4)–1.i would have applied to all amounts disclosed under § 1026.38(g)(4), all ''Section H'' fees would need to appear in these four columns and cannot appear in the ''Paid by Others'' column. The commenters asked if the result was that fees disclosed under § 1026.38(g)(4) cannot be paid for by anyone other than the borrower or the seller or that fees disclosed under § 1026.38(g)(4) can be paid for by others, but the fee would have to be disclosed in an inappropriate column. One of the commenters contrasted proposed comment 38(g)(4)–1.i with proposed comment 38(g)(4)–1.ii, which explicitly states that ''construction costs'' should be disclosed under the paid ''At Closing'' column if such costs are contracted to be paid at closing.

As noted in the discussion of comment 38–4, above, in the section-by-section analysis of § 1026.38 pertaining to comment 38–4, commenters raised concerns regarding the disclosure of principal reductions under § 1026.38(g)(4).

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Consistent with the amendments described in connection with the discussion of proposed comment 37(g)(4)–4, above, the Bureau is not adopting the revision of comment 38(g)(4)–1 as proposed but is instead providing for the disclosure of construction costs in connection with the transaction, payoff of existing liens secured by the property identified under § 1026.37(a)(6), and payoff of other secured or unsecured debt under § 1026.38(j)(1)(v). As noted below, the Bureau is amending comment 38(j)(1)(v)–2 to include construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified in § 1026.37(a)(6), and payoff of other secured and unsecured debt as amounts disclosed under § 1026.38(j)(1)(v). Such amounts are disclosed in the summaries of transactions table on the Closing Disclosure under § 1026.38 (j)(1)(v) and factored into the calculating cash to close table calculations.

The Bureau agrees with the commenters who noted that payoffs of other types of secured debt, such as a loan secured by an automobile or another property, should be treated consistently with other payoffs, and comment 38(j)(1)(v)–2 is further amended to cover such other secured debt.

Proposed comment 38(g)(4)–1.iii, which referred to comment 38–4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under § 1026.38(g)(4), is also not included in this rule. As explained above in the section-by-section analysis of § 1026.38 pertaining to comment 38–4, the Bureau is revising comment 38–4 to limit the disclosure of principal reductions to § 1026.38(j)(1)(v) and (t)(5)(vii)(B), making the reference to comment 38–4 in comment 38(g)(4)–1 unnecessary.

38(h) Closing Cost Totals

38(h)(3)

Current § 1026.38(h)(3) uses a cross-reference to require disclosure of the amount described in § 1026.37(g)(6)(ii) as a negative number, labeled ''Lender Credits.'' Current § 1026.37(g)(6)(ii) requires disclosure of the amount of any lender credits. As detailed in the section-by-section analysis of § 1026.37(g)(6)(ii), while current comment 37(g)(6)(ii)–1 describes lender credits as payments from the creditor to the consumer that do not pay for a particular fee on the disclosures, final comment 37(g)(6)(ii)–1 provides that lender credits under § 1026.37(g)(6)(ii) include non-specific lender credits as well as specific lender credits. In contrast with final comment 37(g)(6)(ii)–1, current comment 38(h)(3)–1 provides that a credit from the creditor that is attributable to a specific loan cost or other cost is not disclosed under § 1026.38(h)(3) (but rather is reflected in the Paid by Others column in the Closing Cost Details tables under § 1026.38(f) or (g)). To conform with the amendment to comment 37(g)(6)(ii)–1, the Bureau is amending § 1026.38(h)(3) to remove the cross-reference to § 1026.37(g)(6)(ii).

38(i) Calculating Cash To Close

The Bureau's Proposal

Section 1026.38(i) requires the disclosure of the calculation of cash needed from the consumer at consummation of the transaction, using the heading ''Calculating Cash to Close.'' The Bureau proposed amendments to § 1026.38(i) and its commentary regarding the calculating cash to close table on the Closing Disclosure pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau stated that it believed that the amendments would effectuate the purposes of TILA by facilitating the informed use of credit. Providing consumers with information about the cash to close amount, its critical components, and how such amounts changed from the estimated amounts disclosed on the Loan Estimate helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). As discussed more fully in the section-by-section analysis of § 1026.37(h) above, the Bureau sought comment on the calculating cash to close table generally.

As discussed in more detail below, the Bureau proposed to revise comments 38(i)–2 and 38(i)–3, and to add comment 38(i)–5. Under § 1026.38(i), the calculating cash to close table sets forth three subheadings: ''Loan Estimate,'' ''Final,'' and ''Did this change?.'' Current comment 38(i)–2 provides guidance on comparing the amounts that are disclosed under the subheadings ''Loan Estimate'' and ''Final'' on the Closing Disclosure's calculating cash to close table. The Bureau proposed to revise comment 38(i)–2 to streamline the comment. Current comment 38(i)–3 provides that § 1026.38(i)(4)(iii)(A), (5)(iii)(A), (7)(iii)(A), and (8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(j) and provides examples of those statements in appendix H, including an example related to the seller credits disclosure on the calculating cash to close table. The Bureau proposed to revise comment 38(i)–3 for consistency with proposed changes to § 1026.38(i)(7), the seller credits disclosure in the calculating cash to close table.

The Bureau proposed to add comment 38(i)–5 to clarify that the amounts disclosed under the subheading ''Loan Estimate'' pursuant to § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer, regardless of whether the amounts on the most recent Loan Estimate provided to the consumer reflect updated amounts provided for informational purposes only or the amounts to be used for purposes of determining good faith under § 1026.19(e)(3). The Bureau explained that the disclosures on the Closing Disclosure's calculating cash to close table under the subheadings ''Loan Estimate'' and ''Final'' are not, in and of themselves, subject to the § 1026.19(e)(3) good faith standard. These amounts are disclosed based on the best information reasonably available to the creditor at the time the disclosure is provided and any increases or changes to the amounts based on the best information reasonably available to the creditor do not result in any separate violation of any standard under Regulation Z. For purposes of determining good faith under § 1026.19(e)(3), the amounts used are the amounts disclosed under § 1026.37, and may be disclosed over multiple Loan Estimates, or even corrected Closing Disclosures, depending upon the facts and circumstances of the transaction. Accordingly, good faith cannot be determined based on a comparison of the amounts disclosed under the subheadings ''Loan Estimate'' and ''Final'' on the Closing Disclosure's calculating cash to close table. The Bureau sought comment on this approach. In particular, the Bureau sought comment on whether the disclosure of the amounts on the most recent Loan Estimate on the calculating cash to close table provides a helpful comparison to consumers with the final amounts disclosed on the Closing Disclosure. The Bureau also sought comment on other alternatives to provide consumers with a comparison of estimated and final amounts.

Comments Received

As noted above and discussed more fully in the section-by-section analysis of § 1026.37(h), the Bureau sought comment on the calculating cash to close tables generally. A variety of commenters acknowledged that the calculating cash to close tables provide important benefits to consumers and that the proposed revisions would improve the ability of creditors to comply with the calculating cash to close requirements and provide to consumers a more accurate cash to close amount. Commenters stated that the calculating cash to close tables enable consumers to understand components of their cash to close amount without the need to wade through the detailed line items in the summaries of transactions table, and described the calculating cash to close tables as conducting many of the difficult calculations behind-the-scenes so that consumers can review the high-level components of the calculations, which generally mirror how they think about the transaction. However, a number of other commenters stated that the standard calculating cash to close tables are confusing and complicated. Many commenters specifically identified the ''Closing Costs Financed (Paid from your Loan Amount)'' and ''Down Payment/Funds from Borrower'' labels and calculations as the main areas of concern, asserting that the mathematical formulas used to calculate the disclosures do not reflect how consumers understand those amounts in the context of a residential real estate transaction. Commenters opposing the proposed amendments suggested a variety of solutions, including that the Bureau remove the standard calculating cash to close tables, ''fix'' the tables completely, or leave the tables alone. See the section-by-section analysis of § 1026.37(h) for a more detailed discussion of those comments that relate to §§ 1026.37(h) and 1026.38(i) generally.

The Bureau did not receive comments on its proposal related to comments 38(i)–2 and 38(i)–3, but received several comments on proposed comment 38(i)–5. In particular, a mortgage company supported the Bureau's proposal to add comment 38(i)–5 to clarify that the amounts disclosed under the subheading ''Loan Estimate'' under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer, regardless of whether the amounts on the most recent Loan Estimate provided to the consumer reflect updated amounts provided for informational purposes only or the amounts to be used for purposes of determining good faith under § 1026.19(e)(3). The commenter stated that it is beneficial for the consumer to be able to compare the amounts disclosed on the most recent Loan Estimate to the amounts disclosed on the Closing Disclosure, and that most creditors are likely following this practice already. However, the commenter also noted this clarification might require reprogramming for some creditors, and recommended that the Bureau provide creditors with six months to implement final comment 38(i)–5. A software vendor and software vendor group noted that the proposal will help to settle industry differences of opinion, but raised concerns with the proposal, discussed below.

A software vendor, a software vendor group, a credit union, mortgage companies, and trade associations questioned the usefulness of the comparison. Commenters cited concerns that the table does not identify tolerance violations for consumers' awareness and does not record amounts on any Closing Disclosures provided to the consumer between the last provided Loan Estimate and the current corrected Closing Disclosure. One commenter asked the Bureau to clarify whether comparison between the ''Loan Estimate'' and ''Final'' columns affects the tolerance provisions under § 1026.19(e)(3). Another commenter stated that good faith was difficult to determine based on a comparison of the amounts disclosed on the last provided Loan Estimate and current Closing Disclosure.

Industry commenters offered alternative approaches to help consumers evaluate changes between disclosures. A mortgage company commented that the best alternative, for purposes of consumer comparisons between the Loan Estimate and the current Closing Disclosure, is for consumers to simply lay the most recent Loan Estimate next to the Closing Disclosure, and then compare the closing costs that are disclosed on each disclosure. The commenter asserted that the calculating cash to close tables were not necessary for this purpose, and that consumer testing and the Bureau's similar design for closing costs on the Loan Estimate and Closing Disclosure already supports this alternative. A trade association recommended that the Bureau remove the comparison aspect of the table and instead require a comparison of loan costs and lender credits that can be used to identify tolerance violations. A trade association, software vendor, and software vendor group suggested the comparison instead be between amounts disclosed on the last disclosure, whether it be a Loan Estimate or Closing Disclosure, and the current Closing Disclosure, which would provide the consumer with timely updates and information as to why costs increased or decreased between the two disclosures and a history of why things changed from one disclosure to the next.

The Final Rule

After considering the comments, the Bureau is not in this final rule deviating significantly from the proposed amendments, which address many questions the Bureau has received from industry on the proper calculation of the various amounts disclosed on the calculating cash to close tables and the variation among creditors in how the calculating cash to close disclosures are determined. The Bureau believes that finalizing the proposed amendments to the calculating cash to close table, with some revisions as discussed in the applicable section-by-section analyses, is necessary in order to resolve issues that have arisen during the initial implementation of the TILA–RESPA Rule and on which industry has asked the Bureau for guidance. The Bureau has been, and remains, engaged in extensive efforts to support industry implementation, and finalizing proposed clarifications and amendments related to the calculating cash to close tables is one such effort. See the section-by-section analysis of § 1026.37(h) for a discussion of the Bureau's rationale for not following some commenters' recommendations to remove the calculating cash to close tables, significantly revise the tables, or not finalize the proposed amendments to the tables.

For the reasons discussed in this section, the Bureau is adopting comment 38(i)–2 as proposed to clarify how amounts are disclosed under the subheading ''Loan Estimate'' on the Closing Disclosure's calculating cash to close table, with minor technical revisions. The Bureau also is adopting comment 38(i)–3 as proposed with revisions to conform to final § 1026.38(i)(7) and other minor technical revisions. The Bureau concludes these amendments to comments 38(i)–2 and –3 are necessary and will aid in compliance.

The Bureau is finalizing comment 38(i)–5 as proposed. Final comment 38(i)–5 provides that the amounts disclosed in the ''Loan Estimate'' column of the calculating cash to close table under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer. The Bureau believes that the comparison of amounts from the last provided Loan Estimate to the current Closing Disclosure, as required by final comment 38(i)–5, is helpful to consumers, and there are not viable alternatives absent completely restructuring the calculating cash to close tables; at this time, restructuring the calculating cash to close tables would be inconsistent with the Bureau's focus in this rulemaking on providing additional clarity in an expeditious manner. The comparison, as part of the Closing Disclosure's calculating cash to close table, illustrates how such amounts changed from the estimated amounts disclosed on the Loan Estimate, which helps to ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The table is not intended to identify every single change over the course of the real estate transaction; it is intended to compare the most recent estimated amounts represented to the consumer with the amounts reflecting the actual terms of the transaction. As discussed in the proposal, the amounts disclosed on the Closing Disclosure's calculating cash to close table under the subheadings ''Loan Estimate'' and ''Final'' are not, in and of themselves, subject to the

§ 1026.19(e)(3) good faith standard. These amounts are disclosed based on the best information reasonably available to the creditor at the time the disclosure is provided. Any increases or changes to the amounts, based on the best information reasonably available to the creditor at the time the disclosure is provided, do not result in any separate violation of any standard under Regulation Z. The amounts used for determining good faith may be disclosed over multiple Loan Estimates, or even corrected Closing Disclosures, depending upon the facts and circumstances of the transaction. Accordingly, good faith cannot be determined based on a comparison of the amounts disclosed under the subheadings ''Loan Estimate'' and ''Final'' on the Closing Disclosure's calculating cash to close table.

In disclosing amounts under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i), when there are multiple Loan Estimates provided to a consumer, the current regulatory provisions do not specify a particular Loan Estimate to use. Therefore, it is currently permissible to disclose amounts from any Loan Estimate provided to the consumer in the ''Loan Estimate'' column of the Closing Disclosure's calculating cash to close table, and will remain permissible until the mandatory compliance date of this final rule, October 1, 2018. For a discussion of the effective date and optional compliance period, see part VI, below.

38(i)(1) Total Closing Costs

38(i)(1)(iii)

The Bureau's Proposal

Section 1026.38(i)(1)(iii)(A) specifies that, if the amount of closing costs disclosed under the subheading ''Final'' in the row labeled ''Total Closing Costs (J)'' is different than the estimated amount of such costs as shown on the Loan Estimate (unless the difference is due to rounding), the creditor must state, under the subheading ''Did this change?,'' that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5) and include a reference to such disclosures, as applicable. Section 1026.38(i)(1)(iii)(A)(*3*) also requires a statement that an increase in closing costs exceeds legal limits (*i.e.,* under § 1026.19(e)(3)) by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) if a credit is provided under § 1026.19(f)(2)(v). Comments 38(i)(1)(iii)(A)–2.i, –2.iii, and –3 provide guidance regarding these statements. The Bureau proposed to revise § 1026.38(i)(1)(iii)(A)(*3*) and comment 38(i)(1)(iii)(A)–3 to provide additional options for disclosing refunds to consumers. Specifically, the Bureau proposed to clarify that a reduction in principal balance (principal curtailment) may be disclosed under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix) to provide a tolerance refund under § 1026.19(f)(2)(v). Proposed revisions to § 1026.38(i)(1)(iii)(A)(*3*) and comment 38(i)(1)(iii)(A)–3 would have allowed a creditor to provide a statement directing the consumer to the disclosure of a principal curtailment under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix) if a principal curtailment, instead of a lender credit, was used to provide such refund. As a result of these proposed amendments, the Bureau also proposed to revise comment 38(i)(1)(iii)(A)–3 to clarify that the examples of statements provided by form H–25(F) of appendix H only relate to statements provided under § 1026.38(h)(3).

Comments Received

As discussed in more detail in the section-by-section analysis of § 1026.38 pertaining to comment 38–4 above, some industry commenters raised concerns with the various options for disclosing principal curtailments proposed by the Bureau. Commenters also requested additional clarity regarding the disclosure of a principal curtailment pursuant to § 1026.38(j)(4)(i). Specifically, the commenters questioned where in the summaries of transactions table the disclosure is to be made, since § 1026.38(j)(4)(i) contains the requirement to disclose costs that are not paid from closing funds but would otherwise be disclosed pursuant to § 1026.38(j) marked with the phrase ''Paid Outside of Closing'' or ''P.O.C.,'' but does not provide a specific location for the principal curtailment disclosure. In addition, an industry group recommended that the Bureau use the phrase ''principal reduction'' instead of ''principal curtailment,'' noting that consumers would be more familiar with the recommended phrase. A title insurance company requested that the Bureau update the sample forms to reflect the disclosure of principal curtailments, similar to how form H–25(F) of appendix H contains examples of the required statements under § 1026.38(h)(3), which is referenced in comment 38(i)(1)(iii)(A)–3.

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For the reasons discussed below, the Bureau is adopting amendments to § 1026.38(i)(1)(iii)(A)(*3*) and comment 38(i)(1)(iii)(A)–3 as proposed with technical and conforming revisions, and amending comments 38(i)(1)(iii)(A)–2.i and –2.iii. The Bureau is revising § 1026.38(i)(1)(iii)(A)(*3*) and comment 38(i)(1)(iii)(A)–3 to use the phrase ''principal reduction'' for clarity. As discussed in the section-by-section analysis of § 1026.38 pertaining to comment 38–4 above, the Bureau is revising comment 38–4 to clarify that principal reductions disclosed in the summaries of transactions table are disclosed under § 1026.38(j)(1)(v), not § 1026.38(j)(4)(i), and to limit the disclosure of principal reductions to § 1026.38(j)(1)(v) on the standard Closing Disclosure. As a result, the Bureau is making conforming amendments in final § 1026.38(i)(1)(iii)(A)(*3*) and final comment 38(i)(1)(iii)(A)–3 to remove the proposed references to § 1026.38(g)(4), (j)(4)(i), and (t)(5)(ix) and to instead only refer to § 1026.38(j)(1)(v). The Bureau declines to update the sample forms at this time as requested by a commenter. Doing so would be inconsistent with the Bureau's focus in this rulemaking on providing additional clarity in an expeditious manner.

As discussed in the section-by-section analysis of § 1026.19(e)(3)(i), the Bureau is modifying comment 19(e)(3)(i)–1 to conform to final § 1026.19(e)(3)(iii), which provides exceptions to the general rule that an estimated closing cost is in good faith (*i.e.,* does not exceed legal limits) if the charge paid by or imposed on the consumer does not exceed the estimate for the cost as disclosed on the Loan Estimate. As a result, the Bureau is making conforming amendments in final comments 38(i)(1)(iii)(A)–2.i and –2.iii. Specifically, final comment 38(i)(1)(iii)(A)–2.i clarifies that certain closing costs (*e.g.,* fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor) are generally subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i); however, § 1026.19(e)(3)(iii) provides exceptions to the general rule for certain charges. Final comment 38(i)(1)(iii)(A)–2.iii clarifies that, for a charge listed on the Loan Estimate under the subheading ''Services You Can Shop For,'' such charge would generally be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor; however, § 1026.19(e)(3)(iii) provides exceptions to the general rule for certain charges.

38(i)(2) Closing Costs Paid Before Closing

38(i)(2)(iii)

38(i)(2)(iii)(B)

Comment 38(i)(2)(iii)(B)–1 discusses the circumstances under which the creditor gives a statement that the amount disclosed under the subheading ''Final'' under § 1026.38(i)(2)(ii) is equal to the amount disclosed under the subheading ''Loan Estimate'' under § 1026.38(i)(2)(i) and, in so doing, refers to an amount of ''$0'' under the subheading ''Final.'' The Bureau proposed to change $0 to $0.00 to reflect the disclosure of a dollar amount of zero to two decimal places. The Bureau did not receive comments specific to this proposal. However, for the reasons discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau is not finalizing the proposed amendment to comment 38(i)(2)(iii)(B)–1.

38(i)(3) Closing Costs Financed

The Bureau's Proposal

Section 1026.38(i)(3) requires the disclosure of the actual amount of the closing costs that are to be paid out of loan proceeds, as a negative number, and a comparison of the estimated and actual amounts of the closing costs that are to be paid out of loan proceeds. If the amount under the subheading ''Final'' in the row labeled ''Closing Costs Financed (Paid from your Loan Amount)'' is different than the estimated amount (unless the excess is due to rounding), the creditor must state under the subheading ''Did this change?'' that the consumer included these closing costs in the loan amount, which increased the loan amount.

The Bureau proposed to add comment 38(i)(3)–1 to explain that the amount of closing costs financed disclosed under § 1026.38(i)(3) is determined by subtracting the total amount of payments to third parties not otherwise disclosed under § 1026.38(f) and (g) from the loan amount disclosed under § 1026.38(b). The proposed comment explained that the total amount of payments to third parties includes the sale price of the property disclosed under § 1026.38(j)(1)(ii). Proposed comment 38(i)(3)–1 also explained that if the result of the calculation is zero or negative, the amount of $0.00 would be disclosed under § 1026.38(i)(3); if the result of the calculation is positive, that amount would be disclosed as a negative number under § 1026.38(i)(3), but only to the extent that the absolute value of the amount disclosed under § 1026.38(i)(3) does not exceed the total amount of closing costs disclosed under § 1026.38(h)(1).

Consistent with proposed comment 37(h)(1)(ii)–2, the Bureau proposed to add comment 38(i)(3)–2 to clarify that the loan amount disclosed under § 1026.38(b) is the total amount the consumer will borrow, as reflected by the face amount of the note. The proposed comment explained that financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount. The intent of this proposed comment was to clarify that regardless of how the term ''loan amount'' is used by creditors or in relation to programmatic requirements of specific loan programs, for purposes of the Closing Disclosure, the amount disclosed as the loan amount under § 1026.38(b), and the basis for the calculating cash to close table calculations, is the total amount the consumer will borrow as reflected by the face amount of the note. This definition of loan amount under § 1026.38(b) would not have affected how other agencies define or use similar terms for purposes of their own programmatic requirements. For example, the ''base loan amount'' and ''total loan amount,'' as those terms are used for loans made under FHA programs, may not be the same as the loan amount required to be disclosed under § 1026.38(b).

Comments Received

The Bureau received several comments on proposed comment 38(i)(3)–1. As discussed in the section-by-section analysis of § 1026.37(h)(1)(ii), two industry commenters noted a slight inconsistency between the language describing the closing costs financed calculations for the Loan Estimate in comment 37(h)(1)(ii)–1 and the Closing Disclosure in comment 38(i)(3)–1. Such inconsistency could permit creditors to use two different calculations for the closing costs financed disclosures.

A title insurance company requested that the Bureau update the sample forms to reflect $0.00 instead of $0 because the proposed new commentary would require disclosure of $0.00 if the result of the closing costs financed calculation was zero or negative.

A software vendor group stated that, in the absence of a method for calculating the closing costs financed on the Closing Disclosure, some lending platforms have been completing the closing costs financed disclosure on the Closing Disclosure by entering the amount of closing costs that have been added to the amount requested or subtracted from the loan proceeds under § 1026.38(i)(3)(ii). The commenter stated that the approach yields a cash to close amount in the calculating cash to close table consistent with the cash to close amount in the summaries of transactions table. The commenter indicated that amending its current practice to be consistent with proposed comment 38(i)(3)–1 would require a substantial reprogramming effort. A software vendor and software vendor group stated that using the calculation method in proposed comment 38(i)(3)–1 to determine the amount of closing costs financed potentially could be confusing to consumers. Another software vendor stated that the calculation method in proposed comment 38(i)(3)–1 does not align with the language in § 1026.38(i)(3). Finally, as discussed in the section-by-section analysis of § 1026.37(h)(1), regarding the proposal to clarify that, on the simultaneous subordinate financing Loan Estimate, the sale price disclosed under § 1026.37(a)(7) would not be used in any of the § 1026.37(h)(1) calculations, a title insurance company noted that the Bureau did not make a corresponding change for the Closing Disclosure.

The Bureau received several comments on proposed comment 38(i)(3)–2. As discussed in the section-by-section analysis of § 1026.37(h)(1)(ii), consistent with comments received on proposed comment 37(h)(1)(ii)–2, a software vendor expressed support for the Bureau's proposed comment 38(i)(3)–2 to clarify that financed mortgage insurance premiums do not reduce the loan amount used in the calculation. One trade association commenter did not support requiring the loan amount disclosed in § 1026.38(b) to be used in the closing costs financed calculation; instead, the commenter indicated that creditors should be permitted to use the ''base loan amount.''

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For the reasons discussed below, the Bureau is adopting proposed comment 38(i)(3)–1 in part with revisions and adopting proposed comment 38(i)(3)–2 with revisions. To address the slight inconsistency between the language describing the closing costs financed calculation for the Loan Estimate and Closing Disclosure in the proposed amendments to comment 37(h)(1)(ii)–1 and proposed new comment 38(i)(3)–1, respectively, the Bureau is amending comment 37(h)(1)(ii)–1, as discussed in the section-by-section analysis of § 1026.37(h)(1)(ii), for consistency with comment 38(i)(3)–1. Therefore, the Bureau is adopting the relevant proposed revisions to comment 38(i)(3)–1.

For the reasons discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau is not finalizing the proposed amendment to comment 38(i)(3)–1 which would have changed ''$0'' to ''$0.00.'' The Bureau is also not conducting a systematic review of sample forms at this time. As discussed in the section-by-section analysis of Appendix H—Closed-End Forms and Clauses below, doing so would be inconsistent with the Bureau's focus in this rulemaking on providing additional clarity in an expeditious manner.

As discussed above, some commenters raised concerns with the Closing Disclosure's closing costs financed calculation set forth in proposed comment 38(i)(3)–1. In the TILA–RESPA Final Rule, the Bureau added comment 37(h)(1)(ii)–1 to specify a method to calculate the amount of closing costs to be paid from mortgage loan proceeds on the Loan Estimate, in response to comments asking how to conduct the calculation.[88] However, the Bureau did not add a similar comment regarding the Closing Disclosure's closing costs financed disclosure. The Bureau recognizes that this omission has caused confusion in the industry and the industry has taken varying approaches to disclosing the amount of closing costs financed on the Closing Disclosure absent a formula. As discussed in part VI below, the Bureau is committed to giving industry sufficient time to reprogram its software to accommodate the formula. This final rule will be effective 60 days from publication in the **Federal Register**, but there will be an optional compliance period in effect until October 1, 2018.

As discussed in more detail in the section-by-section analysis of § 1026.37(h), several commenters expressed concern that the closing costs financed disclosure may result in a disclosure that does not necessarily align with consumers' understanding of their transactions, and that consumers may not recognize that there is a calculation that determines this disclosure component. One solution raised by commenters is to include the formula in the calculating cash to close table. The Bureau does not adopt this recommendation because it does not believe that including the formula would be helpful to consumers. The table intentionally conducts the calculations behind-the-scenes so that consumers can review the high-level components of the calculation. Another solution raised by commenters is to create a new label for the closing costs financed disclosure so that consumers would not associate the amount disclosed on the currently labeled ''Closing Costs Financed (Paid from your Loan Amount)'' line of the calculating cash to close table with the amount of closing costs they understand to be financed in their transactions. The Bureau does not adopt this recommendation because the labels were developed through consumer testing processes, and it is not feasible, on the expedited schedule of this rulemaking, to reengage in consumer testing to validate revised labels. Although consumer testing of disclosures is not necessary in all instances, the Bureau considers that such testing is important in this context.

As discussed above, one software vendor stated that the calculation method in proposed comment 38(i)(3)–1 does not align with the language in the regulatory text. The Bureau does not agree with this assertion. Section 1026.38(i)(3) requires disclosure of the actual amount of the closing costs that are to be paid out of loan proceeds. Because money is fungible, in order to create standardized disclosures that can be utilized in a wide variety of transaction types, the Bureau had to create formulas that earmarked loan funds for specific disclosures, including the closing costs financed disclosure; the closing costs financed disclosure formula in final comment 38(i)(3)–1 explains to creditors how to determine the amount of closing costs that are to be paid out of loan proceeds for all transaction types in a standardized manner. The Bureau concludes that it is important to specify a method to calculate the amount of closing costs to be paid from loan proceeds on the Closing Disclosure to create consistency and uniformity for this disclosure component, and to ensure that all of the calculating cash to close disclosure components work together to yield an accurate amount of cash due from or to the borrower at closing.

The Bureau is revising comment 38(i)(3)–1 to explain that for some loans, such as simultaneous subordinate financing transactions, no sale price will be disclosed under § 1026.38(j)(1)(ii) in accordance with comment 38(j)(1)(ii)–1. While this revision is not necessary, the Bureau believes the reference to comment 38(j)(1)(ii)–1 in comment 38(i)(3)–1 may be helpful to creditors conducting the closing costs financed calculation for simultaneous subordinate financing.

The Bureau is also amending comment 38(i)(3)–1 to include additional examples for consistency with comments 37(h)(1)(ii)–1 and 38(g)(4)–1. As discussed in the section-by-section analysis of § 1026.38(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.38(g)(4). Because amounts for construction costs, payoff of existing liens, and payoff of unsecured debt are disclosed under § 1026.38(j)(1)(v), they will be included in the closing costs financed calculation as payments to third parties not otherwise disclosed under § 1026.38(f) and (g).

The Bureau is finalizing comment 38(i)(3)–2 with revisions. The Bureau believes its statement in proposed new comment 38(i)(3)–2 that the loan amount is the total amount the consumer will borrow as reflected by the face amount of the note is sufficiently clear and is therefore streamlining the comment by removing the example. The Bureau is making minor technical revisions for greater consistency with comment 37(h)(1)(ii)–2, but is not otherwise amending proposed comment 38(i)(3)–2 as requested by a commenter. The loan amount as disclosed under § 1026.38(b) is an integral part of the closing costs financed calculation, and the calculating cash to close table generally. The Bureau emphasizes that this definition of loan amount in § 1026.38(b) does not affect how other agencies may define or use similar terms for purposes of their own programmatic requirements. For example, the ''base loan amount'' and ''total loan amount,'' as those terms are used for loans made under FHA programs, may not be the same as the loan amount required to be disclosed under § 1026.38(b).

38(i)(4) Down Payment/Funds From Borrower

The Bureau's Proposal

Section 1026.38(i)(4)(ii)(A) requires the down payment and funds from borrower amount in a purchase transaction as defined in § 1026.37(a)(9)(i) to be disclosed as a positive number. In these transactions, the amount is calculated as the difference between the purchase price of the property and the principal amount of the credit extended. The calculation does not capture the amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv). Section 1026.38(i)(4)(ii)(B) requires that, in all other transactions, the amount is determined in accordance with § 1026.38(i)(6)(iv). As discussed below, the Bureau proposed to revise

[88] 78 FR 79730, 79967 (Dec. 31, 2013).

§ 1026.38(i)(4)(ii)(A) and comment 38(i)(4)(ii)(A)–1. The Bureau also proposed to add comment 38(i)(4)(ii)(A)–2.

Specifically, the Bureau proposed to revise § 1026.38(i)(4)(ii)(A) to account for any amount disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions. Proposed § 1026.38(i)(4)(ii)(A)(*1*) would have provided that, in a purchase transaction as defined in § 1026.37(a)(9)(i), the creditor subtracts the sum of the loan amount and any amount for loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) from the sale price of the property, except when the sum of the loan amount and any amount for loans assumed or taken subject to exceed the sale price of the property. Proposed § 1026.38(i)(4)(ii)(A)(*2*) would have provided that when the sum of the loan amount and any amount for existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) exceeds the sale price of the property, the creditor instead would have calculated the funds from the consumer in accordance with § 1026.38(i)(6)(iv). Proposed comment 38(i)(4)(ii)(A)–2 would have explained that the amount the creditor discloses under § 1026.38(i)(4)(ii)(A)(*2*) is determined in accordance with the funds for borrower calculation under § 1026.38(i)(6)(iv).

Proposed comment 38(i)(4)(ii)(A)–1 would have explained the calculation that must be followed for accurate disclosure of the down payment/funds from borrower amount on the Closing Disclosure. The proposed comment also would have explained that the minimum cash investments required of consumers and referred to as ''down payments'' under some loan programs would not necessarily be reflected in the disclosure, and disclosure of the calculated amount would not affect compliance or non-compliance with such loan programs' requirements.

Section 1026.38(i)(4)(ii)(B) provides that in a transaction other than the type described in § 1026.38(i)(4)(ii)(A), the creditor discloses the funds from the consumer in accordance with the formula in § 1026.38(i)(6)(iv), labeled ''Down Payment/Funds from Borrower.'' Current comment 38(i)(4)(ii)(B)–1 provides that under § 1026.38(i)(6)(iv), the final amount of funds from the borrower disclosed under § 1026.38(i)(4)(ii)(B) is determined by subtracting from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended. The Bureau proposed to revise § 1026.38(i)(4)(ii)(B) for conformity with proposed amendments to § 1026.38(i)(4)(ii)(A). The Bureau proposed to revise comment 38(i)(4)(ii)(B)–1 to clarify that the ''total amount of all existing debt being satisfied'' means the sum of amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau sought comment on whether defining the phrase ''total amount of all existing debt being satisfied'' to mean specifically amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the ''total amount of all existing debt being satisfied.'' The Bureau also proposed to revise comment 38(i)(4)(ii)(B)–1 for conformity with proposed amendments to § 1026.38(i)(4)(ii)(B). In addition, the Bureau proposed a technical revision in comment 38(i)(4)(ii)(B)–1 to change $0 in reference to the final amount to $0.00 to reflect the disclosure of a dollar amount of zero to two decimal places.

Comments Received

In response to the Bureau's general solicitation of comment on the calculating cash to close table, many commenters raised concerns with the down payment/funds from borrower disclosure requirements. The Bureau discusses commenters' general concerns in the section-by-section analysis of § 1026.37(h). The comments summarized below are related to the Bureau's specific proposals under § 1026.38(i)(4) and its commentary.

As discussed more fully in the section-by-section analysis of § 1026.37(h)(1)(iii), commenters supported the Bureau's proposal to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation for purchase transactions. Some commenters raised concerns about the distinction between the Bureau's proposed down payment disclosure calculation and minimum cash investments required of consumers under some loan programs, which may also be called ''down payments'' under those loan programs.

In response to the Bureau's request for comments on whether defining the phrase ''total amount of all existing debt being satisfied'' to mean specifically amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive, a title insurance company responded that it did not believe such a definition was too prescriptive. However, the commenter cautioned that the proposed amendments to the commentary of § 1026.38(g)(4) regarding payoffs of amounts secured by real property would have unintended consequences because under the proposal, that debt would not have been disclosed under any of those paragraphs of § 1026.38(j).

A commenter raised a concern that the Bureau's requirement to label the amount of funds from the consumer disclosed under § 1026.38(i)(4)(ii) as ''Down Payment/Funds from Borrower'' when using the ''Funds for Borrower'' calculation under § 1026.38(i)(6)(iv) conflicts with the ''Funds for Borrower'' disclosure requirements of § 1026.38(i)(6)(ii). The commenter cited to § 1026.38(i)(4)(ii)(B)(2), which does not exist. The commenter may have been referring to comment 38(i)(4)(ii)(A)–2 or comment 38(i)(4)(ii)(B)–1.

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For the reasons discussed below and in the section-by-section analysis of § 1026.37(h)(1)(iii), the Bureau is adopting the amendments to § 1026.38(i)(4)(ii)(A) as proposed with several revisions. The Bureau also is adopting conforming revisions to § 1026.38(i)(4)(ii)(B). In addition, the Bureau generally is adopting, with revisions, the proposed amendments to comments 38(i)(4)(ii)(A)–1 and 38(i)(4)(ii)(B)–1, and proposed comment 38(i)(4)(ii)(A)–2, and is making a conforming amendment to comment 38(i)(4)(iii)(A)–1. For the reasons discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau is not finalizing the proposed amendment to comment 38(i)(4)(ii)(B)–1 which would have changed ''$0'' to ''$0.00,'' and is amending proposed comment 38(i)(4)(ii)(A)–2 to reflect ''$0'' instead of ''$0.00.''

Consistent with final § 1026.37(h)(1)(iii) and for the reasons discussed in the section-by-section analysis of § 1026.37(h)(1)(iii), the Bureau is adopting the amendments to § 1026.38(i)(4)(ii)(A) and (B), and adopting comment 38(i)(4)(ii)(A)–2, as proposed with revisions discussed above and revisions to clarify how § 1026.38(i)(4)(ii) applies to simultaneous subordinate financing purchase transactions and purchase transactions with improvements to be made on the property. Specifically, final § 1026.38(i)(4)(ii)(A)(*2*) provides that for a purchase transaction that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, the amount of funds from the consumer is determined in accordance with § 1026.38(i)(6)(iv). Because simultaneous subordinate financing is specifically covered by final § 1026.38(i)(4)(ii)(A)(*2*), it is no longer necessary to reference in § 1026.38(i)(4)(ii)(A)(*1*) the sale price disclosed under § 1026.38(j)(1)(ii) instead of the sale price disclosed under § 1026.38(a)(3)(vii)(A). The Bureau notes that for transactions that use the down payment/funds from borrower calculation under § 1026.38(i)(4)(ii)(A)(*1*), the sale price disclosed on page 1 of the Closing Disclosure under § 1026.38(a)(3)(vii)(A) will be the same as the sale price disclosed in the summaries of transactions table on page 3 of the Closing Disclosure pursuant to § 1026.38(j)(1)(ii). Therefore, in final § 1026.38(i)(4)(ii)(A)(*1*) the Bureau is referencing the sale price disclosed under § 1026.38(a)(3)(vii)(A), consistent with the corresponding provision for the Loan Estimate, and is making conforming amendments to final § 1026.38(i)(4)(ii)(A)(*2*).

The Bureau is also making several technical revisions to comments 38(i)(4)(ii)(A)–1 and –2, and 38(i)(4)(ii)(B)–1. Specifically, the Bureau is revising comments 38(i)(4)(ii)(A)–2 and 38(i)(4)(ii)(B)–1 to make technical revisions to reflect the phrase ''total amount of all existing debt being satisfied in the transaction'' instead of ''total amount of all existing debt being satisfied in the real estate closing'' for consistency with the terminology used in § 1026.37. Similar amendments are discussed in the section-by-section analysis of § 1026.38(i)(6)(iv).

As discussed above, a commenter cautioned that the proposed amendments to the commentary of § 1026.38(g)(4) regarding the payoffs of amounts secured by real property would have unintended consequences to the proposal to define existing debt being satisfied in the transaction as the amounts that are disclosed on the Closing Disclosure under § 1026.38(j)(1)(ii), (iii), and (v). As discussed in the section-by-section analysis of § 1026.38(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.38(g)(4).

The Bureau also is amending comments 38(i)(4)(ii)(A)–1 and –2, 38(i)(4)(ii)(B)–1, and 38(i)(4)(iii)(A)–1 to make clear that the disclosure required under § 1026.38(i)(4)(ii)(A) or (B), respectively, represents both the down payment and the funds from the borrower. For the reasons discussed in the section-by-section analysis of § 1026.37(h)(1)(iii), the Bureau is not making other amendments to comment 38(i)(4)(ii)(A)–1 in response to the comments that raised concerns with the Bureau's distinction between the down payment disclosure calculation and minimum cash investments required of consumers under some loan programs, except to explain that the down payment and funds from borrower calculation is independent of any loan program or investor requirements.

Although the Bureau is not able to determine the commenter's precise concern regarding the potentially conflicting labeling requirements in § 1026.38(i)(4)(ii) and (6)(ii), the Bureau is revising § 1026.38(i)(4)(ii)(B) and comments 38(i)(4)(ii)(A)–2 and 38(i)(4)(ii)(B)–1 to provide greater clarity regarding the calculations and labeling requirements in § 1026.38(i)(4)(ii) and (6)(ii).

38(i)(5) Deposit

The Bureau proposed a technical revision in comment 38(i)(5)–1 to specify that, when no deposit is paid in connection with a purchase transaction, the amount disclosed on the Closing Disclosure under § 1026.38(i)(5)(ii) is $0.00 to reflect the disclosure of a dollar amount of zero to two decimal places. The Bureau did not receive comments on this proposal. For the reasons discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau is not finalizing the proposed amendment to comment 38(i)(5)–1 which would have changed ''$0'' to ''$0.00.'' The Bureau is, however, finalizing other proposed minor technical revisions to comment 38(i)(5)–1.

38(i)(6) Funds for Borrower

38(i)(6)(ii)

Comment 38(i)(6)(ii)–1 provides clarification about how the funds for borrower amount is determined under § 1026.38(i)(6)(iv) and to whom such amount is disbursed. The Bureau proposed to revise comment 38(i)(6)(ii)–1 to conform to proposed revisions and clarifications to § 1026.38(i)(6)(iv). The Bureau proposed to add comment 38(i)(6)(ii)–2 to conform to proposed revisions to comment 37(h)(1)(v)–1.

As discussed more fully in the section-by-section analysis of § 1026.37(h)(1)(v), commenters supported the Bureau's proposed amendments and clarifications to the funds for borrower disclosure in §§ 1026.37(h)(1)(v) and 1026.38(i)(6) and the associated commentary. Commenters stated that the amendments will allow the accurate reflection of proceeds due to the borrower at closing and urged the Bureau to adopt the proposed amendments. One commenter supported the clarification in the proposed revisions to comment 38(i)(6)(ii)–1 that the ''total amount of all existing debt being satisfied'' is the total of the amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v). A commenter noted a slight wording difference between proposed comment 37(h)(1)(v)–2 and proposed amendments to comment 38(i)(6)(ii)–1 regarding the Loan Estimate and Closing Disclosure, respectively. Specifically, proposed comment 37(h)(1)(v)–2 provided that the total amount of all existing debt being satisfied in the transaction includes the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v). This commenter interpreted the word ''includes'' to mean ''includes, but is not limited to,'' whereas the proposed amendments to comment 38(i)(6)(ii)–1 make clear that for the Closing Disclosure the total amount of all existing debt being satisfied is the sum of the amounts that are disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v). The commenter requested that the Bureau revise the comments for better consistency and alignment.

For the reasons discussed below, the Bureau is finalizing with revisions the proposed amendments to comments 38(i)(6)(ii)–1 and proposed comment 38(i)(6)(ii)–2. The Bureau's amendments to comment 38(i)(6)(ii)–1 and proposed comment 38(i)(6)(ii)–2 are necessary to conform to the amendments made to § 1026.38(i)(6)(iv) and for clarity. As discussed above and in the section-by-section analysis of § 1026.37(h)(1)(v), a commenter noted a slight wording difference between proposed comment 37(h)(1)(v)–2 pertaining to the Loan Estimate and the proposed amendments to comment 38(i)(6)(ii)–1 pertaining to the Closing Disclosure. The Bureau is revising comment 37(h)(1)(v)–2 to replace the word ''includes'' with the phrase ''is the sum of'' for consistency and alignment with final comment 38(i)(6)(ii)–1.

As discussed in the section-by-section analyses of § 1026.37(h)(1)(iii) and (v), the Bureau is amending comments 37(h)(1)(iii)–1 and 37(h)(1)(v)–1 to make clear that the disclosure required under § 1026.37(h)(1)(iii) represents both the down payment and other funds from the borrower. The Bureau is similarly amending proposed comment 38(i)(6)(ii)–2 to make clear that the disclosure required under § 1026.38(i)(4)(ii)(A)(*1*) represents both the down payment and funds from the borrower. In addition, the Bureau is streamlining the comment for greater clarity.

As discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau's proposal would have changed ''$0'' to ''$0.00'' in many places in § 1026.38(e) and (i), and the associated commentary, so that dollar amounts of zero would be disclosed consistently in the ''Final'' column of the Closing Disclosure's calculating cash to close table. Generally, unless amounts are required to be rounded by § 1026.38(t)(4), amounts are disclosed on the Closing Disclosure as exact numerical amounts, using decimal places. Section 1026.38(t)(4) provides for exceptions to this general rule. Upon further consideration, the Bureau is not finalizing the proposed approach, and is instead changing the few instances of ''$0.00'' to ''$0.'' The Bureau believes this approach will achieve the consistency intended by the proposal, but will be less burdensome to creditors because § 1026.38(e) and (i), and the associated commentary, currently refer to dollar amounts of zero in the ''Final'' column of the calculating cash to close table as ''$0'' most of the time. Therefore, the Bureau is making conforming amendments to comment 38(i)(6)(ii)–1 and proposed comment 38(i)(6)(ii)–2 to change ''$0.00'' to ''$0.''

38(i)(6)(iv)

Section 1026.38(i)(6)(iv) provides that the funds from borrower disclosed under § 1026.38(i)(4)(ii)(B) and funds for borrower disclosed under § 1026.38(i)(6)(ii) are determined by subtracting the principal amount of the credit extended (excluding closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)). This calculation does not capture the amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv). The Bureau proposed to revise § 1026.38(i)(6)(iv) to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions and loans assumed or taken subject to, and to clarify that the phrase ''total amount of all existing debt being satisfied'' means amounts that are disclosed in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau sought comment on whether defining the phrase ''total amount of all existing debt being satisfied'' to mean amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the ''total amount of all existing debt being satisfied.'' The Bureau also proposed technical revisions to § 1026.38(i)(6)(iv)(A), (B), and (C) which explain the amounts to disclose under § 1026.38(i)(4)(ii) and (6)(ii). Specifically, in paragraphs (A), (B), and (C), the Bureau proposed to change ''$0'' to ''$0.00'' to reflect the disclosure of a dollar amount of zero to two decimal places.

As discussed in the section-by-section analysis of § 1026.37(h)(1)(v), a number of commenters supported the Bureau's proposed amendments to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation in purchase transactions. Two commenters stated that the proposed amendments would allow the accurate reflection of proceeds due to the borrower and urged the Bureau to adopt the proposed amendments.

In response to the Bureau's request for comments on whether defining the phrase ''total amount of all existing debt being satisfied'' to mean specifically amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive, a title insurance company responded that it did not believe such a definition was too prescriptive. However, the commenter cautioned that the proposed amendments to the commentary of § 1026.38(g)(4) regarding payoffs of amounts secured by real property would have unintended consequences because that debt would not be disclosed under § 1026.38(j)(1)(ii), (iii), or (v).

A title insurance company also noted that the integrated disclosure sample form H–25(B) displays $0, not $0.00. The commenter requested that the Bureau revise sample form H–25(B) to illustrate $0.00 instead of $0.

For the reasons discussed below, the Bureau is generally adopting § 1026.38(i)(6)(iv) as proposed with technical revisions, but, for the reasons discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau is not finalizing the proposed amendment to § 1026.38(i)(6)(iv) which would have changed ''$0'' to ''$0.00.'' The amendments the Bureau proposed to make to § 1026.38(i)(6)(iv) and which the Bureau is finalizing are necessary to conform to final § 1026.38(i)(4). The Bureau is making technical revisions to § 1026.38(i)(6)(iv) to reflect the full label ''Down Payment/Funds from Borrower'' instead of only ''Funds from Borrower'' for greater clarity. The Bureau is also revising § 1026.38(i)(6)(iv) to use the phrase ''total amount of all existing debt being satisfied in the transaction'' instead of ''total amount of all existing debt being satisfied in the real estate closing'' for consistency with the terminology used in § 1026.37.

As discussed above, a commenter cautioned that the proposed amendments to the commentary of § 1026.38(g)(4) regarding the payoffs of amounts secured by real property would have unintended consequences to the proposal to define existing debt being satisfied in the transaction as the amounts that are disclosed on the Closing Disclosure under § 1026.38(j)(1)(ii), (iii), and (v). As discussed in the section-by-section analysis of § 1026.38(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.38(g)(4).

The Bureau is not conducting a systematic review of sample forms at this time. As discussed in the section-by-section analysis of Appendix H—Closed-End Forms and Clauses below, doing so would be inconsistent with the Bureau's focus in this rulemaking on providing additional clarity in an expeditious manner.

38(i)(7) Seller Credits

The Bureau's Proposal

Section 1026.38(i)(7) requires creditors to compare the amount of seller credits disclosed on the Loan Estimate under § 1026.37(h)(1)(vi) to the amount disclosed on the Closing Disclosure under § 1026.38(j)(2)(v). If there is a difference (for reasons other than rounding), § 1026.38(i)(7)(iii)(A) requires the creditor to disclose a statement that the consumer should see the seller credits disclosed under § 1026.38(j)(2)(v). The amount of seller credits disclosed on the Loan Estimate under § 1026.37(h)(1)(vi) may include only general (*i.e.,* lump sum) seller credits or general credits and specific seller credits. However, § 1026.38(j)(2)(v) and comment 38(j)(2)(v)–1 state that only general seller credits are disclosed under § 1026.38(j)(2)(v), whereas seller credits attributable to a specific cost should be reflected in the seller-paid column in the closing cost details table under § 1026.38(f) or (g).

Consistent with § 1026.38(j)(2)(v) and comment 38(j)(2)(v)–1, the Bureau proposed to amend to § 1026.38(i)(7)(iii)(A) to provide that, if there is a difference between the amount of seller credits disclosed under §§ 1026.37(h)(1)(vi) and 1026.38(j)(2)(v) that is not attributed to rounding of the amount disclosed under § 1026.37(h)(1)(vi), the creditor must disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) and, as applicable, in the seller-paid column under § 1026.38(f) or (g). The Bureau also proposed new comment 38(i)(7)(iii)(A)–1 with examples of the required statement.

Comments Received

The Bureau received comments on these proposed changes from various industry commenters, including a title insurance company, a group of software vendors, and a non-bank. Some commenters supported the change, other commenters requested different requirements from what the Bureau proposed, and some requested additional clarity.

An industry commenter noted that if creditors are given discretion to disclose a statement that the consumer should see the details disclosed in both the seller-paid column on page 2 and Section L under form H–25(B) in appendix H, when the seller credit only appears in one of those locations (*i.e.,* is only general or only specific), this creates consumer confusion. Instead, the commenter stated that the Bureau should require a statement that consumer should only see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table if the credit is general, or only be directed to the seller-paid column of § 1026.38(f) and (g) if the credit is specific. Conversely, industry software vendor commenters stated that the Bureau should require a statement that the consumer should see the details in the seller-paid column under § 1026.38(f) or (g) and in § 1026.38(j)(2)(v) for every transaction, as the proposed amendments to § 1026.38(i)(7)(iii)(A) would be burdensome and challenging for software vendors to implement. An industry individual commenter requested that the Bureau change the ''Seller Credits'' line in the calculating cash to close table to distinguish between general seller credits and specific seller credits, to ease consumer confusion.

The Final Rule

Based on comments received, the Bureau is finalizing § 1026.38(i)(7)(iii)(A) and comment 38(i)(7)(iii)(A)–1 with revisions. In response to the commenter who requested that the Bureau require a statement that consumer should only see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table if the credit is general, or only be directed to the seller-paid column of § 1026.38(f) and (g) if the credit is specific, the Bureau is providing this option in the final rule. However, the Bureau does not believe that requiring all creditors to provide a statement that consumers should only see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table if the credit is general, or only be directed to the seller-paid column of § 1026.38(f) and (g) if the credit is specific, would substantially aid in consumer understanding and is concerned that doing so may be burdensome. In response to the commenters who requested that the Bureau require a statement that the consumer should see the details in the seller-paid column under § 1026.38(f) or (g) and § 1026.38(j)(2)(v) for every transaction in order to reduce implementation burden, the Bureau is providing this option in the final rule. However, the Bureau declines to require creditors to provide a statement that the consumer should see the details in the seller-paid column under § 1026.38(f) or (g) and § 1026.38(j)(2)(v) for every transaction because doing so would eliminate the option for a creditor to provide more clarity for consumers by specifying which section the change in seller credits is located, if it is only located in the closing cost details table under § 1026.38(f) or (g) or the summaries of transactions table under § 1026.38(j)(2)(v). As finalized, § 1026.38(i)(7) will provide more accurate information to consumers, while providing optionality to ease compliance for industry. The Bureau declines to revisit major policy decisions in this rulemaking, such as the commenter request to change the ''Seller Credits'' line in the calculating cash to close table to distinguish between general seller credits and specific seller credits.

Pursuant to commenter requests for additional clarity, the Bureau provides the following discussion. Creditors will now have options for the text under the subheading ''Did this change,'' when disclosing a difference in the amount of seller credits from the Loan Estimate to the Closing Disclosure, depending on whether the seller credits are either entirely general, entirely specific, or both. A creditor may, under the subheading ''Did this change?,'' either disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of § 1026.38(f) and (g), or disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table if the credit is general, or the seller-paid column of § 1026.38(f) and (g) if the credit is specific. If the difference in ''Seller Credits'' in the calculating cash to close table is attributable to general and specific seller credits, the creditor must disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of § 1026.38(f) and (g).

38(i)(8) Adjustments and Other Credits

38(i)(8)(i)

Section 1026.38(i)(8)(i) requires disclosure under the subheading ''Loan Estimate'' of the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii) rounded to the nearest whole dollar, labeled ''Adjustments and Other Credits.'' The Bureau proposed a technical revision in § 1026.38(i)(8)(i) to remove the phrase ''rounded to the nearest whole dollar.'' The amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii) that is required to be disclosed under § 1026.38(i)(8)(i) is already rounded to the nearest whole dollar in accordance with § 1026.37(o)(4)(i)(A).

The Bureau did not receive any comments on this proposal. However, a trade association commenter stated that sample form H–25(B) contains a final value of −$1,035.04, which the commenter asserted was in violation of § 1026.38(i)(8)(i) because the amount is not rounded to the nearest whole dollar, and requested that the Bureau amend the sample form to correctly reflect the disclosure requirements.

For the reasons discussed below, the Bureau is finalizing the technical revision to § 1026.38(i)(8)(i) as proposed. The Bureau concludes that this technical revision is necessary. In response to the commenter's assertion that the disclosure of −$1,035.04 in sample form H–25(B) is in violation of § 1026.38(i)(8)(i), the Bureau disagrees. On sample form H–25(B), −$1,035.04 is disclosed under the subheading ''Final'' pursuant to § 1026.38(i)(8)(ii), not § 1026.38(i)(8)(i). The amount disclosed under § 1026.38(i)(8)(i) is the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), and that amount is the amount required to be rounded to the nearest whole dollar in accordance with § 1026.37(o)(4)(i)(A).

38(i)(8)(ii)

Section 1026.38(i)(8)(ii) provides that the amount disclosed under the subheading ''Final'' is the total of the amounts due from the borrower disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) and (v) through (x), reduced by the amounts already paid by or on behalf of the borrower disclosed on the Closing Disclosure under § 1026.38(j)(2)(vi) through (xi). However, because amounts disclosed under § 1026.38(j)(1)(iii) and (v) may have already been factored into calculations for prior components of the calculating cash to close table, thereby being counted twice, the Bureau proposed to revise § 1026.38(i)(8)(ii) to clarify that, when amounts disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) are accounted for in the calculations for § 1026.38(i)(4) or (6) as existing debt being satisfied in the transaction, as provided by proposed revisions to those paragraphs, they are not also counted in the adjustments and other credits calculation. The Bureau also proposed a technical revision to comment 38(i)(8)(ii)–1, which incorrectly references § 1026.37(h)(7) instead of § 1026.37(h)(1)(vii). The Bureau did not receive comments on these proposals. The Bureau is finalizing the amendments to § 1026.38(i)(8)(ii) with a minor technical revision and finalizing comment 38(i)(8)(ii)–1 as proposed. The Bureau continues to believe that, in order to arrive at a more accurate cash to close amount, it is necessary to prevent amounts disclosed under § 1026.38(j)(1)(iii) and (v) from being counted twice in the calculating cash to close table calculations.

38(i)(8)(iii)

The Bureau proposed to revise § 1026.38(i)(8)(iii)(A) to conform to proposed revisions to § 1026.38(i)(8)(ii). As discussed in the section-by-section analysis of § 1026.38(i)(8)(ii) above, the Bureau is finalizing the exclusion of the amounts disclosed under § 1026.38(j)(1)(iii) or (v) that are accounted for in the calculations for § 1026.38(i)(4) or (6) as existing debt being satisfied in the transaction from the calculation of adjustments and other credits under § 1026.38(i)(8)(ii). The Bureau did not receive comments on this proposed amendment. Because the proposed amendment to § 1026.38(i)(8)(iii)(A) is necessary to conform to final § 1026.38(i)(8)(ii), the Bureau is adopting the amendment to § 1026.38(i)(8)(iii)(A) as proposed.

38(j) Summary of Borrower's Transaction

Comment 38(j)–3 clarifies that certain amounts disclosed under § 1026.38(j) are the same as the amounts disclosed under corresponding provisions identified in § 1026.38(k). The Bureau proposed to revise comment 38(j)–3 to conform to the proposed revisions to § 1026.38(j)(2)(vi).

The Bureau did not receive any comments on its proposed amendments to comment 38(j)–3. However, the Bureau has decided not to finalize the proposed revision to comment 38(j)–3 that certain amounts disclosed under § 1026.38(j)(2)(vi) and (k)(2)(viii) are identical if the amount disclosed under § 1026.38(j)(2)(vi) is attributable to contractual adjustments between the consumer and the seller. Instead the Bureau finalizing comment 38(j)(2)(vi)–6 to cross-reference § 1026.38(k)(2)(viii), which requires disclosure of a description and amount of any and all other obligations required to be paid by the seller at the real estate closing.

For the reasons discussed in this section, the Bureau is revising comment 38(j)–3 for consistency with new comment 38(k)(2)(vii)–1. As discussed in the section-by-section analysis of § 1026.38(k)(2), the Bureau is adding comment 38(k)(2)(vii)–1 to explain that if the simultaneous subordinate financing purchase transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include, in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii), any contributions toward the simultaneous subordinate financing from the seller that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. As a result, amounts disclosed under § 1026.38(j)(2)(v) and (k)(2)(vii) will not be identical. The amount disclosed under § 1026.38(j)(2)(v) will reflect the lump sum seller credit on the first-lien Closing Disclosure, whereas the amount disclosed under § 1026.38(k)(2)(vii) will reflect the lump sum seller credits on the first-lien Closing Disclosure and the simultaneous subordinate financing Closing Disclosure, when the alternative tables are used for the simultaneous subordinate financing. Therefore, the Bureau is amending comment 38(j)–3 to provide that the amounts disclosed under § 1026.38(j)(2)(v) and (k)(2)(vii) will be identical unless seller contributions toward a simultaneous subordinate financing transaction are disclosed under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure and § 1026.38(k)(2)(vii) on the first-lien Closing Disclosure.

38(j)(1) Itemization of Amounts Due From Borrower

38(j)(1)(ii)

In purchase transactions where there is a seller, the contract sales price is disclosed under § 1026.38(j)(1)(ii), in addition to § 1026.38(a)(3)(vii)(A). To conform with proposed amendments to the commentary of § 1026.37(h)(1) regarding the use of the sale price in the calculating cash to close table calculations on the simultaneous subordinate financing Loan Estimate as discussed above, the Bureau proposed to revise comment 38(j)(1)(ii)–1. As revised, comment 38(j)(1)(ii)–1 would have clarified that the sale price would not be disclosed under § 1026.38(j)(1)(ii) on the simultaneous subordinate financing Closing Disclosure.

The Bureau did not receive comments specific to the proposed conforming amendments to comment 38(j)(1)(ii)–1. As discussed in the section-by-section analysis of § 1026.37(h)(1), the Bureau is finalizing the proposal regarding the use of the sale price in the calculating cash to close table calculations on the simultaneous subordinate financing Loan Estimate. For these reasons, the Bureau is finalizing the corresponding amendments to comment 38(j)(1)(ii)–1 as proposed.

38(j)(1)(v)

Section 1026.38(j)(1)(v) requires the creditor to provide a description and the amount of any additional seller-paid items that are reimbursed by the consumer at the real estate closing. It also requires a description and the amount of any other items owed by the consumer not otherwise disclosed under § 1026.38(f), (g), or (j). Comment 38(j)(1)(v)–1 provides examples of amounts disclosed under § 1026.38(j)(1)(v), which include contractual adjustments not disclosed elsewhere under § 1026.38(j). The Bureau proposed to revise comment 38(j)(1)(v)–1 to clarify that the amounts disclosed under this provision can include amounts owed to the seller but payable to the consumer after the real estate closing, providing the following as examples: Any balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption; any rent the consumer would collect after closing for a time period prior to closing; and any tenant security deposit. Proposed comment 38(j)(1)(v)–1 also provides that the amounts owed to the seller but payable to the consumer after the real estate closing would be listed under the heading ''Adjustments.'' In addition, the Bureau proposed to revise comment 38(j)(1)(v)–2 to conform to the proposed revisions to comment 38(g)(4)–1. As discussed in the section-by-section analysis of § 1026.38(g)(4) above, the Bureau proposed to require the disclosure of the payoff of existing liens secured by the property identified in § 1026.38(a)(3)(vi) under the heading ''H. Other'' of the other costs table on the Closing Disclosure. The Bureau therefore proposed to revise comment 38(j)(1)(v)–2 to conform to the proposed amendments to comment 38(g)(4)–1.

For the reasons discussed in this section, the Bureau is adopting comment 38(j)(1)(v)–1 as proposed, is not adopting the proposed amendments to comment 38(j)(1)(v)–2 but is otherwise revising the comment, and is adding comment 38(j)(1)(v)–3. The Bureau did not receive comments regarding proposed amendments to comment 38(j)(1)(v)–1 or –2.

The Bureau is not adopting the proposed amendments to comment 38(j)(1)(v)–2. As discussed in the section-by-section analyses of §§ 1026.37(g)(4) and 1026.38(g)(4), the Bureau is not finalizing the proposal that would have required certain costs and payoffs, including construction costs, the payoff of existing liens secured by the property and other secured or unsecured debt, to be disclosed on the Loan Estimate and Closing Disclosure as closing costs. That proposal, if finalized, would have made the disclosure of these costs and payoffs under § 1026.38(j)(1)(v) impermissible. Because the Bureau is not finalizing the proposed amendments to comment 38(g)(4)–1, the Bureau is also not finalizing the proposed conforming revision in comment 38(j)(1)(v)–2.

Because the Loan Estimate does not have a disclosure comparable to that in the summaries of transactions table under § 1026.38(j)(1)(v), amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) will be disclosed on the Loan Estimate in one of two ways. In transactions subject to § 1026.37(h)(1)(iii)(A)(*2*) and (B), a creditor factors amounts that will be disclosed under § 1026.38(j)(1)(v), such as those paid to any holders of existing liens on the property in a refinance transaction, construction costs in connection with the transaction that the consumer will be obligated to pay, and payoffs of other secured or unsecured debt, into the funds for borrower calculations under § 1026.37(h)(1)(v) on the Loan Estimate. Because these amounts will be disclosed under § 1026.38(j)(1)(v) on the Closing Disclosure, they are included in existing debt that is factored into the funds for borrower calculation under § °1026.37(h)(1)(v). Comment 37(h)(1)(v)–2 explains that the total amount of all existing debt being satisfied in the transaction that is used in the funds for borrower calculation is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. However, in transactions subject to § 1026.37(h)(1)(iii)(A)(*1*), payoffs of other secured or unsecured debt that will be disclosed under § 1026.38(j)(1)(v) are factored into the adjustments and other credits calculation under § °1026.37(h)(1)(vii) on the Loan Estimate.

The Bureau is, however, revising current comment 38(j)(1)(v)–2 to add construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of other secured or unsecured debt, and principal reductions as examples of amounts that will not have a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv) and to cross-reference to comment 38–4 for an explanation of how to disclose a principal reduction under § 1026.38(j)(1)(v). As discussed in the section-by-section analysis of § 1026.38 pertaining to comment 38–4 above, industry commenters requested additional clarity regarding where in the summaries of transactions table the principal reduction disclosure is to be made, since § 1026.38(j)(4)(i) contains the requirement to disclose costs that are not paid from closing funds but would otherwise be disclosed pursuant to § 1026.38(j) marked with the phrase ''Paid Outside of Closing'' or ''P.O.C.,'' but does not provide a specific location for the principal reduction disclosure. The commenters suggested that the appropriate location within the summaries of transactions table is under § 1026.38(j)(1)(v). The Bureau intended for a principal reduction to be disclosed under § 1026.38(j)(1)(v) in the summaries of transactions table and is revising comment 38–4 to, among other things, specifically reference § 1026.38(j)(1)(v). As a result, the Bureau is including a corresponding amendment to comment 38(j)(1)(v)–2. Final comment 38(j)(1)(v)–2 cross-references comment 38–4 for an explanation of how to disclose a principal reduction under § 1026.38(j)(1)(v).

The Bureau is adding comment 38(j)(1)(v)–3 to permit creditors to include the proceeds of the subordinate financing applied to the first-lien transaction in the summaries of transactions table on the simultaneous subordinate financing Closing Disclosure. Commenters asked, in the context of the alternative disclosures, how creditors would show the proceeds being applied to the first-lien on the alternative disclosures. The commenters asserted that most creditors prefer that the simultaneous subordinate financing Loan Estimate and Closing Disclosure include a disclosure of the amount of loan proceeds that will be applied to the first-lien loan, and asked the Bureau to permit this common practice. In the proposal, the Bureau noted that the funds that are provided to the consumer from the proceeds of subordinate financing and that will be applied to the first-lien transaction would not be included on the simultaneous subordinate financing Loan Estimate or Closing Disclosure. As a result, the cash to close amount disclosed under §§ 1026.37(h)(1)(viii) and 1026.38(i)(9) would have represented the loan proceeds as ''cash out'' to the borrower. The Bureau understands from the comments that a common industry practice may be instead to include the loan proceeds from the simultaneous subordinate financing as an adjustment on the Loan Estimate and Closing Disclosure for the simultaneous subordinate financing transaction, which is inconsistent with the Bureau's proposal. The Bureau is addressing these comments related to the alternative disclosures in the section-by-section analyses of §§ 1026.37(h)(2)(iii) and 1026.38(t)(5)(v), but also finds it appropriate to address these comments in the context of the standard disclosures because simultaneous subordinate financing may be disclosed using the standard disclosures.

The Bureau believes that consumers may benefit from allowing creditors to continue this apparently common practice. This practice may help consumers better understand the simultaneous subordinate financing transaction and its relation to the first-lien loan. It provides a way for the simultaneous subordinate financing Loan Estimate and Closing Disclosure to include a disclosure of the amount of proceeds that will be applied to the first-lien loan. Because, under this practice, the cash to close amount disclosed under §§ 1026.37(h)(1)(viii) and 1026.38(i)(9) would not include the subordinate loan proceeds, the cash to close amount may better represent to consumers the cash, if any, they will owe or receive from the subordinate-lien loan that will not be applied directly to the first-lien loan.

Therefore, the Bureau is adding new comment 38(j)(1)(v)–3 to permit creditors to include the proceeds of the subordinate financing applied to the first-lien transaction in the summaries of transactions table on the simultaneous subordinate financing Closing Disclosure. As explained in the discussion of comment 38(j)(1)(v)–2 above, amounts that will be disclosed under § 1026.38(j)(1)(v) on the Closing Disclosure are factored into the Loan Estimate in one of two ways. In transactions subject to § 1026.37(h)(1)(iii)(A)(*2*) and (B), a creditor factors amounts that will be disclosed under § 1026.38(j)(1)(v) into the funds for borrower calculations under § 1026.37(h)(1)(v). Comment 37(h)(1)(v)–2 explains that the total amount of all existing debt being satisfied in the transaction that is used in the funds for borrower calculation is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. However, in transactions subject to § 1026.37(h)(1)(iii)(A)(*1*), a creditor factors amounts that will be disclosed under § 1026.38(j)(1)(v) into the adjustments and other credits calculation under § 1026.37(h)(1)(vii). The Bureau is making related amendments in commentary to §§ 1026.37(h)(2)(iii) and 1026.38(t)(5)(vii)(B).

38(j)(2) Itemization of Amounts Already Paid by or on Behalf of Borrower

38(j)(2)(vi)

Section 1026.38(j)(2)(vi) provides for the disclosure of ‘‘Other Credits’’ and ‘‘Adjustments’’ in the summary of the borrower's transaction table. Comment 38(j)(2)(vi)–2 clarifies that any subordinate financing proceeds not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) must be disclosed under § 1026.38(j)(2)(vi). Comment 38(j)(2)(vi)–5 clarifies that under § 1026.38(j)(2)(vi), a credit must be disclosed for any money or other payments made by family members or third parties, not otherwise associated with the transaction, along with a description of the nature of the funds. The Bureau proposed to revise § 1026.38(j)(2)(vi) to explain what items should be disclosed under the heading ‘‘Adjustments.’’ Amounts due from the seller to the consumer, under the purchase and sale agreement, would be disclosed under the ‘‘Adjustments’’ heading. The Bureau proposed to revise comment 38(j)(2)(vi)–2 to clarify that subordinate financing proceeds are disclosed pursuant to § 1026.38(j)(2)(vi) on the first-lien transaction Closing Disclosure and to revise comment 38(j)(2)(vi)–5 to clarify that amounts provided in advance of the real estate closing to consumers by third parties, including family members, not otherwise associated with the transaction, are not required to be disclosed under § 1026.38(j)(2)(vi). The Bureau also proposed to add new comment 38(j)(2)(vi)–6 to provide an example of an amount that would be disclosed under the heading ‘‘Adjustments.’’ Having received no comments on the proposed revision to § 1026.38(j)(2)(vi) or the proposal to add new comment 38(j)(2)(vi)–6, the Bureau is finalizing § 1026.38(j)(2)(vi) as proposed and finalizing new comment 38(j)(2)(vi)–6 as proposed with a revision that adds a cross-reference to § 1026.38(k)(2)(viii), which requires disclosure of a description and amount of any and all other obligations required to be paid by the seller at the real estate closing. For the reasons discussed below, the Bureau is adopting as proposed the amendments to comments 38(j)(2)(vi)–2 and –5.

A mortgage company supported the proposed amendments to comment 38(j)(2)(vi)–2 to clarify that the proceeds of simultaneous subordinate financing are disclosed on the first-lien Closing Disclosure. The commenter asserted that this, accompanied by other proposed revisions, will enable creditors to provide a more accurate cash to close amount to consumers. The Bureau concludes that this clarification is necessary for accurate disclosure on the first-lien Closing Disclosure, and is therefore adopting the revisions to comment 38(j)(2)(vi)–2 as proposed.

One compliance professional supported the proposed amendments to comment 38(j)(2)(vi)–5 to clarify that amounts provided in advance of the real estate closing to consumers by third parties, including family members, not otherwise associated with the transaction, are not required to be disclosed under § 1026.38(j)(2)(vi). One industry commenter raised concerns about the proposed change because at the time of disclosure, it is typically not evident if the borrower will receive gift funds before or at consummation.

The Bureau is adopting the amendments to comment 38(j)(2)(vi)–5 as proposed. The Bureau does not believe that additional clarification is needed for a scenario in which the creditor does not know at the time disclosures are given whether a borrower will receive gift funds before or at consummation. The Bureau notes that current comment 19(f)(1)(i)–2 provides that creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (2)(ii) using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i).

38(j)(2)(xi)

Comment 38(j)(2)(xi)–1 clarifies that the amounts disclosed under § 1026.38(j)(2)(xi) are for other items not paid by the seller, such as utilities used by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the closing date, and interest on loan assumptions. The Bureau is proposing to remove the example of rent collected in advance by the seller from a tenant for a period extending beyond the closing date from comment 38(j)(2)(xi)–1. Proposed comment 38(j)(2)(vi)–6 adds that example as an item to be disclosed under the heading ‘‘Adjustments.’’ The Bureau did not receive comments regarding the proposed change to comment 38(j)(2)(xi)–1. For the reasons stated above the Bureau is finalizing as proposed comment 38(j)(2)(xi)–1.

38(j)(4) Items Paid Outside of Closing Funds

38(j)(4)(i)

Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed under § 1026.38(j) be marked as ‘‘Paid Outside of Closing’’ or ‘‘P.O.C.’’ Comment 38(j)(4)(i)–1 explains that the disclosure must include a statement of the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person and cites to an example on form H–25(D) of appendix H of part 1026. The Bureau proposed to add comment 38–4 which would have provided that when contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the consumer as lender credits, a principal curtailment may be used to provide a refund under § 1026.19(f)(2)(v). The Bureau proposed to revise comment 38(j)(4)(i)–1 to provide a cross-reference to comment 38–4 for an explanation of how to disclose a principal curtailment to provide a refund under

§ 1026.19(f)(2)(v). The Bureau also proposed to clarify that ''a statement of the party making the payment'' means the disclosure must identify the party making the payment.

As discussed in more detail in the section-by-section analysis of § 1026.38 pertaining to comment 38–4 above, industry commenters requested that the Bureau permit the use of principal curtailments for situations other than when a creditor is providing a credit for a tolerance refund and requested additional clarity regarding where in the summaries of transactions table the principal curtailment disclosure is to be made, since § 1026.38(j)(4)(i) contains the requirement to disclose costs that are not paid from closing funds but would otherwise be disclosed pursuant to § 1026.38(j) marked with the phrase ''Paid Outside of Closing'' or ''P.O.C.,'' but does not provide a specific location for the principal curtailment disclosure. In addition, an industry group recommended that the Bureau use the phrase ''principal reduction'' instead of ''principal curtailment,'' noting that consumers would be more familiar with the recommended phrase.

For the reasons discussed below, the Bureau is adopting as proposed the modifications to comment 38(j)(4)(i)–1, with additional revisions for conformity with final comment 38–4. The Bureau appreciates the suggestion to use the phrase ''principal reduction'' and is revising final comment 38(j)(4)(i)–1 accordingly. As discussed in the section-by-section analysis of § 1026.38 pertaining to comment 38–4 above, the Bureau sought to address the particular issue of how to disclose a principal reduction that is used to provide a tolerance refund, but did not intend to propose to limit the use of principal reductions to situations where creditors were required to provide a tolerance refund under § 1026.19(f)(2)(v). The Bureau is revising and restructuring proposed comment 38–4 to provide clarity on the disclosure of principal reductions that are and are not used to provide tolerance refunds. Final comment 38–4 discusses the requirement to mark a principal reduction with the phrase ''Paid Outside of Closing,'' or the abbreviation ''P.O.C.'' pursuant to § 1026.38(j)(4)(i) if it is not paid with closing funds. Therefore, the Bureau is amending comment 38(j)(4)(i)–1 to cross-reference to final comment 38–4 for an explanation of how to disclose a principal reduction that is not paid from closing funds. The Bureau also explains, in the section-by-section analysis of § 1026.38 pertaining to comment 38–4 above, that the Bureau intended for a principal reduction to be disclosed in the summaries of transactions table under § 1026.38(j)(1)(v). Final comment 38–4, among other things, specifically references § 1026.38(j)(1)(v) instead of § 1026.38(j)(4)(i) for this requirement.

38(k) Summary of Seller's Transaction

Comment 38(k)–1 explains that § 1026.38(k) does not apply in transactions where there is no seller, such as a refinance transaction. The Bureau proposed to add additional examples of transactions for which § 1026.38(k) does not apply in revised comment 38(k)–1, such as loans with a construction purpose as defined in § 1026.37(a)(9)(iii) which also do not have a seller, or for simultaneous subordinate financing transactions if the first-lien Closing Disclosure records the entirety of the seller's transaction. The Bureau did not receive any comments on this specific proposal. The Bureau concludes that the additional examples will aid in compliance with the disclosure requirements and is therefore finalizing the proposed amendments to comment 38(k)–1 with additional revisions to specify that the example of simultaneous subordinate financing applies to simultaneous subordinate financing transactions with a purchase purpose as defined in § 1026.37(a)(9)(i).

38(k)(1) Itemization of Amounts Due to Seller

Section 1026.38(k)(1) requires a disclosure in the summaries of transactions table of the amounts due to the seller at consummation. Section 1026.38(k)(1)(ii) requires a disclosure of the amount of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled ''Sale Price of Property.'' The Bureau did not propose to amend § 1026.38(k)(1)(ii) or its commentary.

For the reasons discussed below, the Bureau is adding final comment 38(k)(1)–1 to explain what amounts are disclosed under § 1026.38(k)(1)(ii) for a simultaneous subordinate financing transaction if the first-lien Closing Disclosure does not record the entirety of the seller's transaction. As discussed in the section-by-section analysis of § 1026.38(k) above, § 1026.38(k) does not apply in a simultaneous subordinate financing purchase transaction as defined in § 1026.37(a)(9)(i) if the first-lien Closing Disclosure records the entirety of the seller's transaction. In addition, when the alternative tables are used, the table required to be disclosed by § 1026.38(k) may be deleted pursuant to § 1026.38(t)(5)(vii)(C); the alternative tables may only be used for the disclosure of simultaneous subordinate financing if the first-lien Closing Disclosure records the entirety of the seller's transaction.

The Bureau expects that in most transactions with simultaneous subordinate financing for which the alternative tables are not used, the first-lien Closing Disclosure will also record the entirety of the seller's transaction, and therefore § 1026.38(k) will not apply to the simultaneous subordinate financing transaction. However, there may be circumstances in which the first-lien Closing Disclosure will not record the entirety of the seller's transaction, and therefore § 1026.38(k) will apply to the simultaneous subordinate financing transaction. Therefore, the Bureau is adding comment 38(k)(1)–1 to explain that if § 1026.38(k) applies to a simultaneous subordinate financing transaction because the first-lien Closing Disclosure does not record the entirety of the seller's transaction, § 1026.38(k) must be completed based only on the terms and conditions of the simultaneous subordinate financing transaction. Comment 38(k)(1)–1 explains that no contract sales price is disclosed under § 1026.38(k)(1)(ii) on the Closing Disclosure for the simultaneous subordinate financing. This is consistent with the amendment to comment 38(j)(1)(ii)–1 which explains that on the simultaneous subordinate financing Closing Disclosure, no contract sales price is disclosed in the summaries of transactions table for the borrower's transaction under § 1026.38(j)(1)(ii), and comment 38(j)–3 which provides that amounts disclosed under § 1026.38(j)(1)(ii) and (k)(1)(ii) are the same.

38(k)(2) Itemization of Amounts Due From Seller

Section 1026.38(k)(2)(vii) requires a disclosure in the summaries of transactions table, under the seller's transaction, of the total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by § 1026.38(f) and other costs as determined by § 1026.38(g), and any other obligations of the seller to be paid directly to the consumer, labeled ''Seller Credit.'' The Bureau did not propose to amend § 1026.38(k)(2)(vii) or its commentary.

For the reasons discussed below, the Bureau is adding final comment 38(k)(2)(vii)–1. Final comment 38(k)(2)(vii)–1 explains that if a simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include any contributions from the seller toward the simultaneous subordinate financing that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. This amendment enables the first-lien Closing Disclosure to record the entirety of the seller's transaction, which is a requirement of providing the alternative disclosures for simultaneous subordinate financing purchase transactions. Specifically, final comments 37(d)(2)–1, 37(h)(2)–1, 38(d)(2)–1, and 38(e)–1, taken together, permit creditors of simultaneous subordinate financing purchase transactions to use the alternative disclosures only if the first-lien Closing Disclosure will record the entirety of the seller's transaction.

As discussed more fully in the section-by-section analysis of § 1026.37(d)(2), in response to the proposals to permit the disclosure of simultaneous subordinate financing purchase transactions using the alternative tables, one commenter questioned which disclosures should be used when the optional alternative tables were initially used for the simultaneous subordinate financing, but a seller later agrees to contribute to the costs of the subordinate financing, making continued use of the alternative tables impermissible under the proposal. For the reasons discussed in the section-by-section analysis of § 1026.37(d)(2), the Bureau is directly addressing the commenter's concern by adding new comment 38(k)(2)(vii)–1, amending comments 38(d)(2)–1 and 38(j)–3, and amending proposed new comments 38(t)(5)(vii)(B)–1 and –2, to require the disclosure of the seller's contributions to the subordinate financing, if any, in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure and the summaries of transactions table on the first-lien Closing Disclosure, when the alternative disclosures are used for the simultaneous subordinate financing. As discussed in the section-by-section analysis of § 1026.38(t)(5)(vii), final comments 38(t)(5)(vii)(B)–1 and –2.iii explain that if a simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e), any contributions from the seller toward the simultaneous subordinate financing must be disclosed in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure. Final comment 38(k)(2)(vii)–1 explains that if a simultaneous subordinate financing transaction is disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include, in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii), any contributions from the seller toward the simultaneous subordinate financing that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. The result of these amendments, coupled with the amendments to comment 38(j)–3, is that the first-lien Closing Disclosure will be able to record the entirety of the seller's transaction.

For example, assume the alternative tables are provided for the simultaneous subordinate financing transaction pursuant to § 1026.38(d)(2) and (e) and the seller contributes $200.00 toward the closing costs of the simultaneous subordinate financing. The simultaneous subordinate financing Closing Disclosure must include the $200.00 contribution in the payoffs and payments table in accordance with § 1026.38(t)(5)(vii)(B). The first-lien Closing Disclosure must include the $200.00 contribution in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii), thereby recording the entirety of the seller's transaction on the first-lien Closing Disclosure. For a more detailed discussion of these new and revised comments, see the section-by-section analyses of § 1026.38(d)(2), (j), and (t)(5)(vii).

38(l) Loan Disclosures

38(l)(7) Escrow Account

Mortgage Insurance Premiums

The Bureau's Proposal

If an escrow account is or will be established, § 1026.38(l)(7)(i)(A)(*1*), (*2*), and (*4*) require certain disclosures based on the tax, insurance, and assessment amounts described in § 1026.37(c)(4)(ii). Section 1026.37(c)(4)(ii), in turn, includes the mortgage-related obligations identified in § 1026.43(b)(8). However, § 1026.37(c)(4)(ii) specifically excludes amounts for mortgage insurance identified in § 1026.4(b)(5) (because amounts for mortgage insurance are already disclosed in the projected payments table under § 1026.37(c)(2)(ii)). The Bureau proposed to amend § 1026.38(l)(7)(i) and comments 38(l)(7)(i)(A)(*2*)–1 and 38(l)(7)(i)(A)(*4*)–1 to permit disclosure of amounts for ongoing mortgage insurance premiums.

Comments Received

Several commenters, including creditors and vendors, supported the proposed amendments to § 1026.38(l)(7)(i) and associated commentary to permit disclosure of amounts for ongoing mortgage insurance premiums. Vendors stated that such amendments are necessary both for consumer understanding and for facilitating industry compliance. A creditor noted that, by permitting disclosure of amounts for ongoing mortgage insurance premiums, the proposed amendments to § 1026.38(l)(7)(i) and associated commentary are consistent with current § 1026.38(g)(3), which cross-references § 1026.37(g)(3) and requires disclosure of the amount to be paid into the escrow account for mortgage insurance premiums at consummation.

However, some industry commenters opposed the proposed amendments to § 1026.38(l)(7)(i) and associated commentary to permit disclosure of amounts for ongoing mortgage insurance premiums. Trade association commenters stated that such amendments regarding the disclosures on page 4 of the Closing Disclosure are inconsistent with the estimated escrow payment disclosed on page 1 of the Closing Disclosure, which excludes amounts for mortgage insurance. A trade association and a vendor asserted that, while various labels on page 4 of the Closing Disclosure use the phrase ''property costs,'' mortgage insurance premiums are not a property cost and the Bureau should not finalize the proposed amendments without testing for potential consumer confusion.

A trade association requested that, if the Bureau finalizes the proposed amendments to permit disclosure of amounts for ongoing mortgage insurance premiums, such disclosure should include only mortgage insurance premiums that are included in the escrow account analysis prescribed under Regulation X, 12 CFR 1024.17. A vendor group requested clarification regarding escrow account disclosures and space limitations on page 4 of the Closing Disclosure form. Vendors also requested that the Bureau amend § 1026.38(l)(7)(i) to require disclosure of all amounts paid into an escrow account, regardless of whether the consumer is required to make such payment or, rather, opts to do so.

Regarding implementation costs, a vendor commented that the proposed amendments to permit disclosure of amounts for ongoing mortgage insurance premiums would require significant reprogramming. A vendor group noted that the amendments are consistent with informal guidance previously provided by the Bureau to some vendors but the amendments would require substantial changes for others. The vendor group stated that the proposed amendments would eliminate industry uncertainty. Regarding an implementation period for the various amendments to § 1026.38(l)(7) and associated commentary, including new comments 38(l)(7)(i)(A)(*2*)–2 and 38(l)(7)(i)(A)(*5*)–1 discussed below, the vendor group stated that reprogramming could take up to nine months for some vendors and a creditor recommended a six-month implementation period.

The Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(l)(7)(i) and comments 38(l)(7)(i)(A)(*2*)–1 and 38(l)(7)(i)(A)(*4*)–1 as proposed and, in part in response to commenters' concerns, is also adding new comments 38(l)(7)–1 and –2. After considering the commenter's concern that the amendments should align with Regulation X, 12 CFR 1024.17, and consistent with current comment 38(g)(3)–5, new comment 38(l)(7)–1 cross-references the definition of ''escrow account'' in 12 CFR 1024.17(b) to provide a description of an escrow account for purposes of the escrow account disclosure under § 1026.38(l)(7). After considering the commenter's concern regarding space limitations on page 4 of the Closing Disclosure form, and consistent with current comment 38(j)–2, new comment 38(l)(7)–2 cross-references § 1026.38(t)(5)(ix) and provides that additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure under § 1026.38(l)(7), with a reference such as ''See attached page for additional information'' placed in the applicable section of the Closing Disclosure.

As to commenters' concerns regarding potential consumer confusion as a result of the amendments permitting disclosure of amounts for ongoing mortgage insurance premiums, the Bureau notes that such disclosure is consistent with current § 1026.38(l)(7)(i)(A)(*3*), which cross-references current § 1026.38(g)(3) and requires disclosure of the amount to be paid into the escrow account for mortgage insurance premiums at consummation. Regarding commenters' concern that permitting disclosure of amounts for ongoing mortgage insurance premiums on page 4 of the Closing Disclosure is inconsistent with the estimated escrow payment disclosed on page 1 of the Closing Disclosure, the Bureau concludes that such disclosures are not inconsistent because the estimated escrow payment on page 1 is disclosed adjacent to the mortgage insurance premium. Regarding commenters' assertion that mortgage insurance premiums should not be labeled ''property costs'' without testing for potential consumer confusion, the Bureau notes that current § 1026.38(l)(7)(i) already requires certain disclosures, labeled ''property costs,'' based on the amounts described in § 1026.37(c)(4)(ii). Section 1026.37(c)(4)(ii), in turn, cross-references the mortgage-related obligations identified in § 1026.43(b)(8) and includes, among other costs, premiums for credit life, accident, health, or loss-of-income insurance that are written in connection with a credit transaction if such premiums are required by the creditor. Similarly, the Bureau concludes it is appropriate to include mortgage insurance premiums as part of such ''property costs'' disclosures and additional consumer testing is not necessary in this instance. With respect to the comments requesting that the Bureau amend § 1026.38(l)(7)(i) to disclose amounts that a consumer optionally pays into an escrow account, the Bureau notes that, consistent with the model language on page 4 of the Closing Disclosure form and TILA section 129D(h)(2), (3), and (4), creditors may disclose amounts a consumer pays into an escrow account if consistent with the terms of the legal obligation between the creditor and consumer.

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the **Federal Register**, but there will be an optional compliance period in effect until October 1, 2018.

The First Year

The Bureau's Proposal

Section 1026.38(l)(7) provides for various disclosures based on payments during the first year after consummation. Specifically, § 1026.38(l)(7)(i)(A)(*4*) requires disclosure of the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation. Section 1026.38(l)(7)(i)(A)(*1*) requires a disclosure, labeled ''Escrowed Property Costs over Year 1,'' calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation. Depending on the payment schedule dictated by the legal obligation, sometimes fewer than 12 periodic payments will be made to the escrow account during the first year after consummation—in which case creditors may comply with § 1026.38(l)(7)(i)(A)(*1*) and (*4*) by basing such disclosures on less than 12 periodic payments. Alternatively, § 1026.38(l)(7)(i)(A)(*5*) provides that a creditor may comply with § 1026.38(l)(7)(i)(A)(*1*) and (*4*) by basing the disclosures on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17. To clarify the alternative means by which creditors may comply with § 1026.38(l)(7)(i)(A)(*1*) and (*4*), the Bureau proposed to add new comment 38(l)(7)(i)(A)(*5*)–1.

Current § 1026.38(l)(7)(i)(A)(*2*) requires a disclosure of certain charges, labeled ''Non-Escrowed Property Costs over Year 1,'' that the consumer is likely to pay during the first year after consummation but without using escrow account funds. The Bureau proposed to add new comment 38(l)(7)(i)(A)(*2*)–2 so that, if the creditor elects to make the disclosures required by § 1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) based on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, the creditor may make the disclosures required by § 1026.38(l)(7)(i)(A)(*2*) based on a 12-month period beginning with the borrower's initial payment date (rather than beginning with consummation).

Comments Received

Several commenters, including vendors, a creditor, a trade association, and an individual compliance consultant, generally supported proposed comments 38(l)(7)(i)(A)(*2*)–2 and 38(l)(7)(i)(A)(*5*)–1 to provide creditors with flexibility as to the means by which they may comply with § 1026.38(l)(7)(i)(A)(*1*), (*2*), and (*4*). However, several commenters, including creditors, trade associations, and a vendor, requested that the Bureau require such disclosures to be based on a 12-month period beginning with the borrower's initial payment date (and not permit creditors the alternative option of a 12-month period beginning with consummation). Another vendor did not specify a preference between either disclosure timeframe, but nonetheless requested that the Bureau adopt a single, mandatory timeframe, rather than allowing creditors flexibility to choose among the alternatives. A vendor, a creditor, and a trade association asserted that disclosing on a 12-month period beginning with the borrower's initial payment date is better for consumer understanding. The vendor also stated that allowing creditors to choose among alternative options could conflict with secondary market investors' preferences.

The Final Rule

For the reasons discussed below, the Bureau is adopting comments 38(l)(7)(i)(A)(*2*)–2 and 38(l)(7)(i)(A)(*5*)–1 as proposed. The Bureau concludes that allowing creditors the flexibility of choosing among alternative disclosure options will facilitate compliance. As to commenters' assertion that disclosing on a 12-month period beginning with the borrower's initial payment date is better for consumer understanding than a 12-month period beginning with consummation, the Bureau notes that the model language on page 4 of the Closing Disclosure form simply uses the phrase ''over Year 1'' and the Bureau believes either option supports consumer understanding. The Bureau does not believe any benefits to disclosing on a 12-month period beginning with the borrower's initial payment date would warrant limiting flexibility for facilitating compliance here. Regarding commenters' concern that allowing creditors to choose among alternative options could conflict with secondary market investors' preferences, among the alternative options provided by comments 38(l)(7)(i)(A)(*2*)–2 and 38(l)(7)(i)(A)(*5*)–1, nothing in the rule prohibits a creditor from choosing the option that an investor prefers or requires.

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the **Federal Register**, but there will be an optional compliance period in effect until October 1, 2018.

38(l)(7)(i)

38(l)(7)(i)(B)

38(l)(7)(i)(B)(1)

If an escrow account will not be established, § 1026.38(l)(7)(i)(B)(*1*) requires disclosure of the estimated total amount, labeled ''Property Costs over Year 1,'' that the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) during the first year after consummation. As discussed above, § 1026.37(c)(4)(ii) specifically excludes amounts for mortgage insurance identified in § 1026.4(b)(5) (because amounts for mortgage insurance are already disclosed in the projected payments table under § 1026.37(c)(2)(ii)). The Bureau proposed to amend § 1026.38(l)(7)(i)(B)(*1*) and comment 38(l)(7)(i)(B)(*1*)–1 to permit disclosure of amounts for ongoing mortgage insurance premiums.

In addition to the comments received regarding § 1026.38(l)(7) and associated commentary discussed above, a vendor requested an additional revision to proposed § 1026.38(l)(7)(i)(B)(*1*) or its associated commentary that, similar to proposed 38(l)(7)(i)(A)(*2*)–2, would permit creditors to disclose based on a 12-month period beginning with the borrower's initial payment date (rather than beginning with consummation).

For the reasons discussed below, the Bureau is adopting § 1026.38(l)(7)(i)(B)(*1*) and comment 38(l)(7)(i)(B)(*1*)–1 as proposed and, in part in response to commenters' feedback, is also adding new comment 38(l)(7)(i)(B)(*1*)–2. Specifically, new comment 38(l)(7)(i)(B)(*1*)–2 provides creditors with an option to make the disclosures required by § 1026.38(l)(7)(i)(B)(*1*) based on a 12-month period beginning with the borrower's initial payment date or beginning with consummation. The Bureau concludes that allowing creditors the flexibility of choosing among alternative disclosure options is consistent with comment 38(l)(7)(i)(A)(*2*)–2, as finalized, and will facilitate compliance. Moreover, for the reasons discussed above, both as proposed and as finalized, § 1026.38(l)(7)(i)(B)(*1*) and comment 38(l)(7)(i)(B)(*1*)–1 permit disclosure of amounts for ongoing mortgage insurance premiums, which is consistent with current § 1026.38(l)(7)(i)(A)(*3*).

38(o) Loan Calculations

38(o)(1) Total of Payments

The Bureau's Proposal

TILA section 128(a)(5) and (8) requires a creditor to disclose the sum of the amount financed and the finance charge, using the term ''Total of Payments,'' and a descriptive explanation of that term.[89] In the TILA–RESPA Final Rule, to promote consumer understanding, the Bureau adopted a modified definition of total of payments that differs from the statutory definition under TILA section 128(a)(5). Section 1026.38(o)(1) defines the total of payments, for purposes of the Closing Disclosure, as the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. The Bureau proposed to adopt tolerances for the total of payments that parallel the statutory tolerances for the finance charge and disclosures affected by the finance charge because, historically, the total of payments has been understood to be a disclosure affected by the finance charge and therefore subject to its tolerances. The Bureau also proposed conforming revisions to § 1026.23(g) and (h)(2) as discussed in the section-by-section analyses of those provisions above. For the reasons discussed below, the Bureau adopts the revisions to § 1026.38(o)(1) as proposed.

Comments Received

The Bureau received several comments from industry that were generally supportive of the proposal to adopt tolerances for the total of payments that parallel the statutory tolerances for the finance charge and disclosures affected by the finance charge. A number of creditors stated that they support the proposed change and believe that it would provide clarity to both consumers and creditors. Several trade groups similarly supported the addition of tolerances for the total of payments, with one stating that it believes the approach proposed will positively impact secondary market execution by affording investors comfort that minor inaccuracies do not raise liability concerns. One commenter stated that this proposed change by the Bureau represented a good example of a flexible approach that balances consumer protection and accurate disclosure of loan terms and costs with the practical challenges faced by creditors and investors. A group of vendor commenters agreed that the addition of tolerances for the total of payments is a necessary and desirable change. One specific vendor commented that these clarifications would assist industry in complying with the rule, provide for more uniform data for transactions subject to the rule, and reduce legal risk for creditors and investors.

Among commenters that generally supported the proposal to adopt tolerances for the total of payments, some encouraged the Bureau to go further. Two trade groups requested that the Bureau increase the tolerance beyond $100. With respect to implementation, a number of industry commenters requested that the

[89] 15 U.S.C. 1638(a)(5), (8). For transactions subject to § 1026.19(e) and (f), § 1026.38(o)(1) implements this disclosure requirement.

tolerances for the total of payments be effective immediately and, in some cases, commenters requested that the tolerances apply retroactively to the effective date of the TILA–RESPA Final Rule (October 3, 2015).

Commenters generally supported the proposal to adopt tolerances for the total of payments that parallel the statutory tolerances for the finance charge and disclosures affected by the finance charge. In response to those industry commenters who requested that the Bureau go further by adopting a tolerance greater than $100, the Bureau declines to do so. The Bureau believes that applying the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge to the total of payments for purposes of the Closing Disclosure promotes consistency with the tolerances in effect before the TILA–RESPA Final Rule. The Bureau has determined that the tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of TILA and are thus appropriate pursuant to the Bureau's authority under TILA section 121(d) to adopt tolerances necessary to facilitate compliance with the statute. And with respect to commenters' request that the new tolerance for the total of payments be effective immediately or retroactively, the Bureau similarly declines this request for the reasons discussed in part VI, below, regarding the rule's effective date.

The Bureau also received comments from industry that questioned the proposal to adopt tolerances for the total of payments. One trade group stated that there would be significant cost and a lengthy reprogramming process for compliance. Another trade group stated that the Bureau's proposal to extend a tolerance for the total of payments applies only to the extent that the finance charge is accurate and that, therefore, the Bureau should extend an additional tolerance to the total of payments for errors in loan costs when the finance charge is not correct. One industry commenter stated that the proposed amendment would be confusing and overly burdensome because it would expand the current finance charge tolerance to all components of the total of payments. One creditor stated that it considers the proposed tolerance limitations for the total of payments redundant and overlapping with the APR tolerance limitations and encouraged the Bureau to abandon the APR tolerance limitations if the proposed tolerances for the total of payments were adopted. An individual commenter opposed the proposal on the basis that finance charges are already subject to tolerance and adding non-finance charge loan costs to the tolerance test would increase creditor liability.

The existing finance charge tolerance extends to any disclosure affected by the finance charge, including the total of payments as long as a misdisclosure of the total of payments resulted from a misdisclosure of the finance charge. Conversely, under the current rule, a misdisclosure of the total of payments that does not result from a misdisclosure of the finance charge is not subject to the finance charge tolerances. Because the current rule does not provide for a tolerance for the total of payments, other than to the extent a total of payments misdisclosure results from a misdisclosure of the finance charge, under the current rule, any misdisclosure of the total of payments that does not result from a misdisclosure of the finance charge could potentially subject a creditor to liability.

Those industry comments that did not support the proposal to adopt tolerances for the total of payments seemed to imply that the total of payments currently may vary by any amount and that therefore the proposal to adopt a tolerance for the total of payments would impose a new and undue restriction. To the contrary, however, the adoption of tolerances for the total of payments offers a new tolerance that applies to the components of the total of payments that were previously not permitted to vary by any amount, even if those components are not finance charges and therefore would not benefit from the existing finance charge tolerance. The adopted tolerances for the total of payments apply independently, whether the disclosed finance charge is accurate or not. And in neither the TILA–RESPA Final Rule nor the proposal did the Bureau make changes or propose to make changes that impact the APR tolerance.

Some industry commenters offered alternatives to the proposal to adopt tolerances for the total of payments. One creditor suggested that the Bureau either make clear that the new total of payments calculation is no longer tied to the finance charge and therefore not subject to tolerance; or revert to TILA's definition of the total of payments. Another creditor suggested that the Bureau clarify that the amount by which the total of payments is understated may be corrected when the finance charge understatement is made whole. One trade group suggested that when good faith tolerances under § 1026.19(e)(3)(i) and (ii) are met for components, including loan costs, of the total of payments that the new total of payments tolerance should also be satisfied.

None of those suggested alternatives would achieve the Bureau's goal of adopting tolerances for the total of payments necessary to facilitate compliance with TILA. In response to the first creditor's set of alternatives, although in the TILA–RESPA Final Rule the Bureau modified the total of payments calculation, it is still a disclosure affected by any finance charge in that certain loan costs may also be finance charges. Additionally, the Bureau did not propose to revise the definition of the total of payments in the proposal and continues to believe, as stated in the TILA–RESPA Final Rule, that the revised definition of the total of payments enhances consumer understanding.[90] The second creditor's suggestion does not recognize that the total of payments may be understated for reasons unrelated to the finance charge. And the final alternative offered does not distinguish between the § 1026.19(e)(3) good faith analysis adopted in the TILA–RESPA Final Rule and the separate and independent statutory tolerances afforded under TILA.

A few industry commenters sought clarification of issues related to the proposal to adopt tolerances for the total of payments. One trade group requested clarification as to whether the proposed tolerances for the total of payments change the existing finance charge tolerances. Two industry commenters expressed uncertainty about the remedy or cure required if the tolerance for the total of payments were exceeded and the interaction between the proposed tolerances for the total of payments and the existing tolerances for the finance charge and APR. One trade group specifically expressed concern that the proposed rule does not clearly state that when a violation occurs it can be cured with a reimbursement to the consumer. Other industry commenters requested information specifically about how to account for financed loan costs, stating that including financed loan costs in the total of payments calculation would be redundant to the extent such loan costs are accounted for in the principal and interest payments.

To clarify, the new tolerances for the total of payments do not change the existing finance charge tolerances or those tolerances that apply to the APR. The tolerances for each of these disclosures operates independently as explained in new comment 38(o)–1. As to the question of the rule addressing

[90] *See* 78 FR 79730, 80038 (Dec. 31, 2013).

how a violation may be cured, nothing in the TILA–RESPA Final Rule altered the remedies available to creditors for the correction of errors under TILA section 130(b). Creditors may employ the statutory provisions for correction of errors with respect to the total of payments to the same extent today as they could prior to the adoption of the TILA–RESPA Final Rule and to the same extent as they will be able to after the effective date of this final rule. Section 1026.38(o)(1) likewise remains that same as to the calculation of the total of payments: The total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs as scheduled through the end of the loan term. The rule does not offer an alternative calculation if the consumer elects to finance loan costs. The Bureau declines to adopt commenters' request that the Bureau amend the total of payments calculation in the event that loan costs are financed because the Bureau did not propose to change and did not request comment on amending the underlying calculation for the total of payments.

The Bureau received comments from consumer groups opposing the proposal to adopt tolerances for the total of payments that parallel the statutory tolerances for the finance charge and disclosures affected by the finance charge. The consumer groups stated that the proposal would not promote consistency or avoid misleading disclosures and that it would dramatically change the tolerance rules by applying them to errors in the total of payments that are not caused by an understatement of the finance charge. The consumer groups stated that the total of payments calculation is straightforward for creditors and that errors should be rare in light of computer programming. The commenters stated that creditors wishing to make the total of payments appear smaller could intentionally and improperly disclose loan costs under the other costs table on the Closing Disclosure or incorrectly amortize the principal. Additionally, the commenters urged the Bureau to require creditors to use an addendum for variable rate loans to disclose the projected actual monthly payment at each change listed under the projected payments table, not just the maximum and minimum, and to require creditors to disclose the total of each component of the total of payments in an addendum.

The Bureau considered the comments submitted by the consumer groups. The commenters expressed concern that a creditor could intentionally make the total of payments appear smaller by improperly disclosing loan costs under the other costs table on the Closing Disclosure or by incorrectly amortizing the principal. However, the adoption of tolerances for the total of payments does not give creditors license to violate the rule by, for example, improperly disclosing costs or incorrectly calculating required disclosures, nor does it permit creditors to overstate intentionally the total of payments by ''padding'' fees. Additionally, the Bureau declines to require an addendum for variable rate loans to disclose the projected actual monthly payment at each change listed under the projected payments table or to disclose the total of each component of the total of payments, as requiring such an addendum would impose additional regulatory implementation costs and the Bureau believes that the disclosures required by the TILA–RESPA Rule already promote the meaningful disclosure of credit terms and informed use of credit.

The Final Rule

For the reasons discussed in this section-by-section analysis, the Bureau adopts the revisions to § 1026.38(o)(1) as proposed. Specifically, the Bureau revises § 1026.38(o)(1) to provide that the disclosed total of payments shall be treated as accurate if the amount disclosed as the total of payments: (i) Is understated by no more than $100; or (ii) is greater than the amount required to be disclosed. The Bureau also finalizes conforming revisions to § 1026.23(g) and (h)(2) as discussed in the section-by-section analyses of each of those provisions above.

As the Bureau explained in the proposal, TILA section 128(a)(3) and (8) requires a creditor to disclose the finance charge, using that term.[91] As amended by Congress in 1995,[92] TILA section 106(f)(1) sets forth the tolerances for accuracy of the finance charge and other disclosures affected by any finance charge and states that, in connection with credit transactions (not under an open end credit plan) that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate, except for purposes of rescission under TILA section 125, if the amount disclosed as the finance charge (A) does not vary from the actual finance charge by more than $100; or (B) is greater than the amount required to be disclosed.[93] For transactions subject to § 1026.19(e) and (f), § 1026.38(o)(2) implements the finance charge disclosure requirement in TILA section 128(a)(3) and the statutory tolerance provision for the finance charge in TILA section 106(f)(1).

In the TILA–RESPA Final Rule, the Bureau modified the requirement under TILA section 128(a)(5) to disclose the total of payments as the sum of the amount financed and the finance charge to require that a creditor instead disclose the total of payments on the Closing Disclosure as the sum of principal, interest, mortgage insurance, and loan costs. Accordingly, § 1026.38(o)(1) requires the disclosure of the ''Total of Payments,'' using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. This modification of the total of payments calculation for purposes of the Closing Disclosure results in loan costs that are not components of the finance charge being included in the total of payments. In addition, the modification of the total of payments calculation also results in components of the finance charge being excluded from the total of payments if such components are not interest, mortgage insurance, loan costs, or included in the principal amount of the loan. This in turn may have introduced ambiguity as to whether the total of payments as modified by the Bureau for purposes of the Closing Disclosure is a disclosure affected by the disclosed finance charge and therefore subject to the same tolerances. In modifying the total of payments calculation in the TILA–RESPA Final Rule, the Bureau did not intend to alter the tolerances for accuracy applicable to the total of payments. To apply the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge unambiguously to the total of payments on the Closing Disclosure, the Bureau proposed to revise § 1026.38(o)(1).

The Bureau modified the total of payments in the TILA–RESPA Final Rule because it understood that this disclosure had been unclear to consumers historically. As the Bureau explained in the 2012 TILA–RESPA Proposal and TILA–RESPA Final Rule, a Board-HUD Joint Report analyzing the

[91] 15 U.S.C. 1638(a)(3).

[92] Truth in Lending Act Amendments of 1995, Public Law 104–29, 3(a), 109 Stat 271 (1995).

[93] 15 U.S.C. 1605(f)(1). As discussed in the section-by-section analysis of § 1026.23(g), 15 U.S.C. 1605(f)(2) sets forth specific treatment for the disclosure of the finance charge and other disclosures affected by any finance charge for purposes of rescission under TILA section 125.

TILA and RESPA disclosures recommended changes to several disclosures, including the total of payments.[94] The Board's consumer testing found that many consumers did not understand the total of payments and that, even when consumers understood its meaning, most did not consider it important in their decision-making process.[95]

To enhance consumer understanding, in the TILA–RESPA Final Rule, the Bureau modified the requirement of TILA section 128(a)(5) that the total of payments disclose the sum of the amount financed and the finance charge in two ways.[96] First, the Bureau adopted § 1026.37(l)(1)(i) to require that a creditor disclose on the Loan Estimate the total payments over five years, rather than the life of the loan, using the label ''In 5 Years.'' [97] Second, the Bureau adopted § 1026.38(o)(1) to require that a creditor disclose on the Closing Disclosure the total of payments to reflect the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.[98] Including mortgage insurance and loan costs rather than the finance charge in the ''In 5 Years'' and the total of payments disclosures was intended to enhance consumer understanding of mortgage transactions and allow consumers to compare loans more easily and usefully. Loan costs are those costs disclosed under § 1026.38(f) and include origination charges as well as the costs of services required by the creditor but provided by persons other than the creditor, including services that the borrower did and did not shop for.[99] These services commonly include fees for appraisal, credit reporting, survey, title search, and lender's title insurance. Under § 1026.4, these services may or may not be included in the finance charge, and whether they are included in the finance charge is a fact-specific determination.[100]

The Bureau believes that applying the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge to the total of payments for purposes of the Closing Disclosure is appropriate. The TILA–RESPA Final Rule adopted its own good faith analysis and requires a creditor to refund any excess paid by the consumer, when necessary, to promote accurate disclosure. Additionally, since Congress amended TILA in 1995, the tolerances for accuracy of the finance charge have been understood to apply to the total of payments. Congress was clear that, to the extent other disclosures with statutory liability were affected by a misdisclosure of the finance charge within the tolerance limits, the same protections should apply. At the time Congress adopted the finance charge tolerance rules, assuming that no errors or clerical mistakes were made in the total of payments calculation, the total of payments was by definition determined by the finance charge calculation. Congress did not alter the statutory tolerances in adopting the Dodd-Frank Act and in requiring the Bureau to integrate the TILA and RESPA disclosures. Therefore, to promote consistency with the tolerances in effect before the TILA–RESPA Final Rule, the Bureau now applies the same tolerances for accuracy of the finance charge to the total of payments for purposes of the Closing Disclosure.

The Bureau understands that clarity regarding the applicable tolerances for accuracy of the total of payments is especially important because of the statutory consequences of misdisclosure of the total of payments. The total of payments is one of the disclosures that may give rise to civil liability as set forth in TILA section 130 for a creditor's failure to comply, including actual damages, statutory damages (individual and class action), costs, and attorney's fees.[101] The total of payments is also one of the even more limited set of material disclosures where a misdisclosure can give rise to TILA's extended right of rescission for certain transactions as set forth in TILA section 125, which generally is available for three years after the date of consummation of the transaction, serves to void the creditor's security interest in the property, and eliminates the consumer's obligation to pay any finance charge (even if accrued) or any other costs incident to the loan.[102] Nothing in the TILA–RESPA Final Rule altered this defined statutory liability for the total of payments or any other disclosure.

The Bureau also adopts as proposed new comment 38(o)–1 to provide two examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f). A number of industry commenters stated that they support the application of tolerances for the total of payments that operate independently from the finance charge tolerances.

Further, the Bureau adopts the revisions to comment 38(o)(1)–1 substantially as proposed, but with changes to clarify that the total of payments calculation excludes any amount of principal, interest, mortgage insurance, or loan costs that is not paid by the consumer and offset by another party through a specific credit. As proposed, the revisions to comment 38(o)(1)–1 would have explained that the total of payments is calculated in the same manner as the ''In 5 Years'' disclosure under § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term and excludes charges for loan costs disclosed under § 1026.38(f) that are designated on the Closing Disclosure as paid by seller or paid by others. However, some industry commenters stated that an agreement between the consumer and the seller or other party to offset a cost through a specific credit does not only apply to loan costs, but may also be used to offset other components of the total of payments including, for example, prepaid interest. Therefore, the Bureau revises comment 38(o)(1)–1 to clarify that the total of payments calculation on the Closing Disclosure excludes any component of the total of payments that is not paid by the consumer and offset by the seller or other party through a specific credit.

A seller or other party, such as the creditor, may agree to offset payments of principal, interest, mortgage insurance, or loan costs, whether in whole or in part, through a specific credit, for example through a specific seller or lender credit. The revision to the comment clarifies that, because these amounts are not paid by the consumer, they are excluded from the total of payments calculation. The revision to comment 38(o)(1)–1 references only amounts offset by specific credits as

[94] 77 FR 51116, 51124 (Aug. 23, 2012), 78 FR 79730, 79976 (Dec. 31, 2013).

[95] 77 FR 51116, 51222 (Aug. 23, 2012), 78 FR 79730, 79976 (Dec. 31, 2013).

[96] The Bureau modified the requirement of TILA section 128(a)(5) pursuant to its authority under TILA section 105(a) (15 U.S.C. 1604(a)), Dodd-Frank Act 1032(a) (12 U.S.C. 5532(a)), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) (15 U.S.C. 1601 note). 78 FR 79730, 80038 (Dec. 31, 2013).

[97] 77 FR 51116, 51223 (Aug. 23, 2012), 78 FR 79730, 79977 (Dec. 31, 2013).

[98] 78 FR 79730, 80038 (Dec. 31, 2013).

[99] *See* 78 FR 79730, 80010 (Dec. 31, 2013).

[100] Finance charge is defined in TILA section 106(a) (15 U.S.C. 1605(a)). Section 1026.4 implements this definition, provides examples, and excludes certain charges from the finance charge.

[101] 15 U.S.C. 1640(a).

[102] 15 U.S.C. 1635. Section 1026.23 implements TILA's rescission provision and defines material disclosures to mean the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.43(g). *See* § 1026.23(a)(3)(ii).

being excluded from the total of payments calculation. A few industry commenters stated that the Bureau should permit creditors to exclude from the total of payments any credit offered by the seller or other party, including general credits. Non-specific credits, however, are generalized payments to the consumer that do not represent an agreement to pay for a particular fee or amount and therefore do not serve to offset payments of principal, interest, mortgage insurance, or loans costs for purposes of the total of payments calculation.

One industry commenter stated that the Bureau should also permit creditors to calculate the ''In 5 Years'' disclosure to reflect any amount of principal, interest, mortgage insurance, or loan costs that is offset by the seller or other party. However, as the Bureau explained in the proposal, the Bureau believes that the distinct treatment of specific credits from a seller or other party between the ''In 5 Years'' disclosure and the total of payments disclosure is appropriate given the difference between the information available to the creditor when it provides the Loan Estimate and when it provides the Closing Disclosure. At the Loan Estimate stage, a creditor may not know whether a specific credit will be applied to offset a component of the total of payments, whether in whole or in part. Further, unlike the Closing Disclosure, the Loan Estimate does not allow for the itemized disclosure of amounts paid by the seller or others.

Legal Authority

The Bureau revises § 1026.38(o)(1) and its commentary, and makes conforming revisions to § 1026.23(g) and (h)(2), to apply the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).[103] Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute. The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted above, the Bureau has concluded that the tolerances for the total of payments promote consistency with the tolerances in effect before the TILA–RESPA Final Rule. The Bureau therefore believes that the tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in revised § 1026.38(o)(1), which are identical to the finance charge tolerances provided by Congress in TILA section 106(f), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

38(t) Form of Disclosures

38(t)(3) Form

The Bureau proposed to make technical amendments to comment 38(t)(3)–1 to insert two missing words and make a non-substantive stylistic edit. Specifically, in the first sentence of the comment, the Bureau proposed to add the words ''is not'' and delete the prefix ''non'' that precedes the word ''federally.'' The Bureau noted that the proposed technical amendment would not alter the substance of comment 38(t)(3)–1. The Bureau did not receive comments on the proposed changes and is finalizing comment 38(t)(3)–1 as proposed.

38(t)(4) Rounding

38(t)(4)(ii) Percentages

Section 1026.38(t)(4)(ii) provides rounding rules for the percentage amounts disclosed under § 1026.38(b), (f)(1), (n), (o)(4), and (o)(5). As explained in the TILA–RESPA Final Rule the Bureau required rounding for certain amounts to reduce information overload, aid in consumer understanding of the transaction, prevent misconceptions regarding the accuracy of certain estimated amounts (*e.g.,* estimated property costs over the life of the loan), and ensure a meaningful disclosure of credit terms. Section 1026.38(t)(4)(ii) provides that the percentage amounts disclosed for loan terms, origination charges, the adjustable interest rate table, and the TIP shall not be rounded and shall be disclosed up to two or three decimal places and the percentage amount required to be disclosed for the annual percentage rate shall not be rounded and shall be disclosed up to three decimal places. If the amount is a whole number, then the amount disclosed shall be truncated at the decimal point.

In its proposal the Bureau noted that it understands that there is uncertainty about the rounding requirements under § 1026.38(t)(4)(ii). In an effort to eschew uncertainty about rounding requirements under § 1026.38(t)(4)(ii) the Bureau proposed to revise § 1026.38(t)(4)(ii) to simplify the rounding requirements for the percentages disclosed pursuant to the requirements of § 1026.38(t)(4)(ii). Proposed § 1026.38(t)(4)(ii) provided that the percentage amounts disclosed under § 1026.38(b), (f)(1), (n), (o)(4), and (o)(5) must be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point. The Bureau did not receive comment regarding the proposed revision to § 1026.38(t)(4)(ii). The Bureau is finalizing the revisions to § 1026.38(t)(4)(ii) as proposed.

38(t)(5) Exceptions

38(t)(5)(v) Separation of Consumer and Seller Information

The Bureau's Proposal

Regulation Z requires the use of the Closing Disclosure by the creditor to provide the required disclosures concerning the transaction to the consumer under § 1026.19(f)(1)(i) and requires the settlement agent to provide a copy of the Closing Disclosure to the seller under § 1026.19(f)(4)(i). Under § 1026.38(t)(5)(vi), the creditor or settlement agent is permitted to provide a separate Closing Disclosure to the seller that contains limited consumer information. The settlement agent must provide to the seller either a copy of the Closing Disclosure or a permissible separate Closing Disclosure, under § 1026.19(f)(4)(iv). The Bureau proposed to add comment 38(t)(5)(v)–1 to clarify that, at its discretion, the creditor may make modifications to the Closing Disclosure form to accommodate the provision of separate Closing Disclosure forms to the consumer and the seller and the three methods by which a creditor can separate such information. The Bureau also proposed to add comments 38(t)(5)(v)–2 and –3 to provide examples where the creditor may choose to provide separate Closing Disclosure forms to the consumer and seller.

The preamble to the proposal also discussed the existing requirements of the Gramm-Leach-Bliley Act (GLBA) and Regulation P, which generally provide that a financial institution (such as a creditor or settlement agent) may not disclose its customer's nonpublic personal information to a nonaffiliated third party without providing notice to the customer of such information sharing and an opportunity to opt-out of such sharing. The Bureau noted that there are several exceptions to these notice and opt-out requirements.[104]

[103] 15 U.S.C. 1631(d).

[104] 81 FR 54317, 54356 (Aug. 15, 2016).

Comments Received

The Bureau received comments from settlement agents, real estate agents, GSEs, title insurers and title trade associations, credit unions, a mortgage industry consultant, settlement services provider trade associations, a credit union trade association, a state bankers association, a group of mortgage software vendors, creditors, and other industry associations. Commenters generally supported the proposed comments 38(t)(5)(v)–1, –2, and –3; however, several commenters requested various clarifications.

One commenter requested that the Bureau cross-reference the exact regulatory provisions expressly permitted to be left blank under § 1026.38(t)(5)(v)(A), (B), and (C). The commenter stated that as proposed, the comment refers to the ''applicable disclosure,'' which may be confusing or interpreted in unintended ways. The commenter further stated that the Bureau should restate the exact regulatory provisions or state the names of the part of form H–25 that may be left blank. Another commenter stated that the Bureau lacked the authority to permit revisions to a consumer-only form since no model of such form has been published in appendix H of Regulation Z.

One commenter noted that the Bureau had a misstatement in its proposal. The Bureau stated that the settlement agent must provide to the seller either a copy of the Closing Disclosure or a permissible separate Closing Disclosure, under § 1026.19(f)(4)(iv). The commenter noted that the correct cite for this statement should have been § 1026.19(f)(4)(i).

One commenter requested clarification of the Bureau's use of the term ''omit'' in the proposal. Section 1026.38(t)(5)(v) permits creditors to modify the Closing Disclosure by omitting certain information concerning the seller or consumer on the form provided to the other party. The commenter stated that the proposed use of the word ''omit'' could be interpreted to mean that the inapplicable tables and labels can be deleted from form H–25. The commenter further stated that this interpretation would conflict with the regulatory text of § 1026.38(t)(5)(v), which authorizes information to be left ''blank'' on the separate Closing Disclosures but does not expressly permit creditors or settlement agents to ''omit'' or ''delete'' information from form H–25. The commenter further noted that § 1026.38(t)(5)(vi) expressly allows information to be ''deleted'' on a modified version of the Closing Disclosure provided to the seller or a third party. The commenter requested clarification as to whether the Bureau intended to propose that the regulatory text in § 1026.38(t)(5)(v) would authorize the deletion of inapplicable tables and labels on separate Closing Disclosures. The commenter stated that the authority to delete inapplicable tables and labels on a separate Closing Disclosure provided to the consumer would complicate compliance and constitute a new version of the Closing Disclosure that currently is not included in appendix H of Regulation Z.

Another commenter noted that manually omitting or modifying sections of the Closing Disclosure from a systems programming perspective is challenging and will likely lead to an increase in errors. A different commenter stated that the Bureau should clarify that the seller's closing costs under § 1026.38(f) and (g) cannot be left blank on the Closing Disclosure provided to the consumer because § 1026.38(t)(5)(v)(B) does not provide such authority. Some commenters sought more clarity on the interplay between State privacy laws and contractual provisions and proposed comments 38(t)(5)(v)–1, –2, and –3.

The Bureau also received many comments related to the proposal's preamble discussion of the existing requirements of the GLBA and Regulation P. The Bureau received a number of observations on the changes in consumer information included on the Closing Disclosure compared to what was previously on the HUD–1 settlement statement. Many commenters noted that the real estate contract sets forth the terms of the purchase-sale agreement and may also address sharing of the Closing Disclosure, either specifically or generally via contract terms related to the delivery of information.

Commenters generally requested additional clarity on sharing a combined or separate Closing Disclosure with third parties, including requests for the Bureau to provide clearer guidance, or frequently asked questions, concerning what customer information a creditor may share with a settlement agent, a real estate agent, or other parties to a transaction. Some also requested changes to Regulation P and Regulation Z to require or expressly permit creditors and settlement agents to provide Closing Disclosures to real estate agents without providing notice to the customer of such information sharing and an opportunity to opt-out of such sharing. Other commenters suggested that the Bureau create a list of third parties with whom creditors are ''affirmatively permitted'' to share consumer and seller information, such as the Closing Disclosure.

One commenter suggested that the Bureau's preamble discussion applies only to the provision of the consumer's Closing Disclosure to the borrower's agent or broker and to the provision of the seller's Closing Disclosure to the seller's agent or broker. This commenter also noted that, unless a different arrangement is established, all real estate agents in a transaction typically represent the seller and not the buyer. Real estate agent commenters stated that they should receive a copy of both the seller's and consumer's Closing Disclosures when separate Closing Disclosures are provided, regardless of whether the real estate agent is an agent of the other party. These commenters stated that such sharing should be required for several reasons: To inform their clients, imposed by a fiduciary relationship or a contractual obligation; to be used as an accounting tool for the real estate brokerage for which the real estate agent is associated; to find mistakes in the financial terms of the real estate transaction or on the Closing Disclosure; to assist non-English speakers; or to provide accurate transaction data to be included in multiple listing services or shared with appraisers. GSEs commented that it is important for creditors, and their successors and assigns, to see the seller's Closing Disclosure to ensure compliance with investor guidelines and the identification of potential fraudulent transactions.

Many commenters mentioned that the easiest, simplest, and safest way to handle issues concerning the sharing of the Closing Disclosure with third parties would be for creditors, settlement agents, real estate agents and others to obtain written consent to the sharing from consumers and sellers. Some commenters stated that, to help alleviate secondary market concerns, it would be helpful for the Bureau to affirmatively state that the sharing of the Closing Disclosure is permissible under GLBA with the consent of the consumer or seller. One commenter noted that for creditors that currently utilize the consent method for the sharing of forms, and who have a proprietary loan origination system rather than a system from a third party vendor, the associated reprogramming expense could be avoided if the Bureau indicated that the written consent method was acceptable. Further, several commenters requested that the Bureau provide guidance on the type of authorizations it would view as sufficient, or a model form, to be able to provide the disclosures. One commenter noted that because of the legal risk in sharing Loan Estimates and Closing Disclosures, creditors and settlement agents are asking consumers to sign separate written authorization forms to obtain the consent of the consumer to share these disclosures with third parties, including real estate agents, through the closing or settlement of the transaction, pursuant to GLBA. They stated that greater clarity regarding the ability to share Loan Estimates and Closing Disclosures pursuant to GLBA sections 502(e)(1) and 502(e)(8) may reduce the utilization of such separate authorization forms, and better avoid information overload for consumers and enable them to focus on the important information in their disclosures regarding their loan terms and costs. Some commenters stated that it would be beneficial to the industry if the Bureau provided further clarification in the rule or commentary that the exception under GLBA section 502(e)(8) applies to the sharing of the seller's closing cost information under § 1026.38(f) and (g) by the settlement agent with the creditor, and to the settlement agent's provision to the creditor of a copy of the separate seller's Closing Disclosure pursuant to § 1026.19(f)(4).

Though not addressed in the proposal or preamble discussion, some commenters discussed issues of lender and settlement agent liability, and requested Bureau guidance. One commenter stated that it would be beneficial if the Bureau provided clarification regarding the administrative liability of settlement agents that provide the Closing Disclosure to the consumer pursuant to § 1026.19(f)(1)(v), including whether settlement agents would be liable for noncompliant actions that were required by creditors. Some commenters noted that many creditors are attempting to shift liability to settlement agents in contracts and in loan closing instructions. One commenter stated that liability for the Closing Disclosure is unclear because under § 1026.19(f)(4) the settlement agent appears to be responsible for the Closing Disclosure provided to the seller, including liability for its accuracy; however, proposed comments 38(t)(5)(v)–1 and –3 appear to place this responsibility on the creditor.

The Final Rule

Since commenters generally supported the proposed additional provisions, the Bureau is adopting comments 38(t)(5)(v)–1 and –2 and comment 38(t)(5)(vi)–1 as proposed. The Bureau is adopting comment 38(t)(5)(v)–3 with minor modifications clarifying the circumstances in which a creditor may be providing a Closing Disclosure to a seller. In response to the commenter requesting that the Bureau cross-reference the exact regulatory provisions expressly permitted to be left blank under § 1026.38(t)(5)(v)(A), (B), and (C), the Bureau believes that the additions to comments 38(t)(5)(v)–1, –2, and –3, and comment 38(t)(5)(vi)–1 are adequately specific and should allow creditors sufficient flexibility to modify the Closing Disclosure form for the consumer and the seller in a way that facilitates the transaction.

In response to commenters' questions regarding the omission of inapplicable tables and labels when creating separate forms for consumers and sellers, the Bureau notes that the omission of a table or label from the consumer-only Closing Disclosure does not materially differ from reproducing the applicable table and labels without disclosing any numerical values. In either case, the disclosures required under § 1026.38 are still made, just to the seller, not to the consumer. Accordingly, comment 38(t)(5)(v)–1 permits the creditor to leave blank or omit the applicable tables and labels on the consumer-only Closing Disclosure.

In response to the commenter who stated that the Bureau should clarify that the seller's closing costs under § 1026.38(f) and (g) cannot be left blank on the Closing Disclosure provided to the consumer because § 1026.38(t)(5)(v)(B) does not provide such authority, the Bureau notes that certain information about the seller's transaction is required by § 1026.38 because such information is necessary to comply with TILA section 128(a)(17).[105] The Bureau believes TILA section 128(a)(17) requires disclosure of information about the seller's transaction. In addition RESPA section 4(a) requires that the RESPA settlement statement itemize all charges imposed upon the seller in connection with the settlement.[106]

In response to commenters who raised questions about the interplay between State privacy laws and contractual provisions, and proposed comments 38(t)(5)(v)–1, –2, and –3, the Bureau notes that the comments as proposed described three different methods by which creditors may separate a consumer's information from a seller's information. In some instances, State law or contractual provisions may bar a creditor from disclosing a consumer's information to parties other than the consumer or bar a creditor from disclosing a seller's information to parties other than the seller. The comments as proposed provided options creditors could use to separate information to comply with these requirements or to comport with a creditor's decision to separate such information, while remaining in compliance with § 1026.38(t) requirements as to the form of disclosures. The Bureau notes that one commenter read the language of § 1026.38(t)(5)(v)–1 as proposed as potentially granting a creditor a Federal protection to make modifications to the form and provide the modified form to other parties, notwithstanding State law saying no other party has a right to those forms. However, the commenter provided no explanation for the proposition that a provision permitting separation of information is properly viewed as in conflict with a State law limiting or barring disclosure of such information, nor did the commenter cite to a specific State law. The Bureau believes that comments 38(t)(5)(v)–1, –2, and –3 as finalized could facilitate creditors' compliance with State privacy laws by ensuring that creditors can separate consumer and seller information while remaining in compliance with Regulation Z requirements as to the form of disclosures.

One commenter highlighted as incorrect the following sentence in the Bureau's proposal, ''the settlement agent must provide to the *seller* either a copy of the Closing Disclosure or a permissible separate Closing Disclosure, under § 1026.19(f)(4)(iv),'' (emphasis added). The sentence in the proposal was a misstatement and should have stated that the settlement agent must provide to the *creditor* either a copy of the Closing Disclosure or a permissible separate Closing Disclosure, under § 1026.19(f)(4)(iv), *if the creditor is not the settlement agent*.[107]

As discussed in the preamble to the proposal, there are several exceptions to the GLBA's general prohibition on a financial institution's disclosure of its customer's nonpublic personal information to a nonaffiliated third party without providing notice to the customer of such information sharing and an opportunity to opt-out of such

[105] In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan. TILA Section 128(a)(17), 15 U.S.C. 1638.

[106] 78 FR 79730, 80038 (Dec. 31, 2013).

[107] 81 FR 54317, 54355 (Aug. 15, 2016).

sharing. For example, GLBA section 502(e)(8) provides an exception that applies if a financial institution shares its customer's non-public personal information to comply with Federal, State, or local laws, rules and other applicable legal requirements. Regulation Z requires the use of the Closing Disclosure by the creditor to provide the required disclosures under § 1026.38 concerning the transaction to the consumer under § 1026.19(f)(1)(i), requires the settlement agent to provide to the creditor a copy of the disclosures provided to the seller under § 1026.19(f)(4)(iv) when the consumer and seller's disclosures are provided in separate documents, and requires the settlement agent to provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction under § 1026.19(f)(4)(i). GLBA section 502(e)(8) and Regulation P § 1016.15(a)(7)(i) permit this required sharing of information without providing notice of such information sharing and an opportunity to opt-out of such sharing.[108]

GLBA sections 502(e)(1) and 509(7)(A) provide an exception that applies if a financial institution's sharing of its customers' non-public personal information is required, or is a usual, appropriate, or acceptable method to provide the customer or the customer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product.

The Closing Disclosure, whether provided as a combined form containing consumer and seller information or separate forms reflecting each side of the real estate transaction conveying the real property from the seller to the consumer, is a record of the transaction (among other things), both for the consumer and the creditor, of the transactions between the consumer, seller, and creditor, as required by both TILA and RESPA. Such records may be informative to real estate agents and others representing both the consumer credit and real estate portions of residential real estate sales transactions, as they provide the consumer or the consumer's agent with a record of the transaction. The Bureau in the preamble to the proposal stated that, based on its understanding of the real estate settlement process, it understands that it is usual, appropriate, and accepted for creditors and settlement agents to provide the combined or separate Closing Disclosure to consumers, sellers, and their agents as a confirmation, statement, or other record of the transaction, or to provide information on the status or value of the financial service or financial product to their customers or their customers' agents or brokers.

The Bureau included discussion of GLBA and Regulation P in the preamble in response to inquiries from creditors, settlement agents, and real estate agents about the sharing of the Closing Disclosure with third parties. One commenter correctly noted that GLBA sections 502(e)(1) and 509(7)(A) would apply only to the provision of the consumer's Closing Disclosure to the consumer's agent or broker and to the provision of the seller's Closing Disclosure to the seller's agent or broker.

As noted by several commenters, creditors and settlement agents may disclose customer information with the consent or at the direction of the customer provided that the customer has not revoked the consent or direction.[109] Some commenters requested that the Bureau provide a model form or guidance on the type of authorizations it would view as sufficient to satisfy GLBA section 502(e)(2). The Bureau did not propose such guidance or a model form in the proposal, however, nor did the Bureau in the proposal propose any amendments to Regulation P or its accompanying model forms. Furthermore, the Bureau does not believe that providing a model form or guidance as recommended by commenters would further the purposes of Regulation Z, which is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices. For these reasons, the Bureau declines in this rulemaking to provide such guidance or amend Regulation P to provide a model form.[110]

With respect to comments requesting that the Bureau require or permit sharing of the Closing Disclosure with third parties, such as counterparties' real estate agents or other enumerated third parties, the Bureau notes that such sharing of the Closing Disclosure may be permissible currently to the extent that it is consistent with GLBA and Regulation P and is not barred by applicable State law. However, the Bureau does not believe that expansion of the scope of such permissible sharing would, in this rulemaking, be germane to the purposes of Regulation Z. The Bureau also notes that some of the rationales posed by commenters for including a requirement to share the Closing Disclosure with real estate agents, including as an accounting tool for the real estate brokerage for which the real estate agent is associated, or to provide accurate transaction data to be included in multiple listing services or shared with appraisers, are arguments concerning the sharing of information after consummation and also do not further the stated purposes of Regulation Z.

Since the Bureau did not propose any amendments or clarifications to creditor and settlement agent liability, commenter requests related to changes or clarifications on these issues are largely outside the scope of this rulemaking. The Bureau refers commenters to the section-by-section analysis to the TILA–RESPA Final Rule, where the Bureau stated that creditors under § 1026.19(f)(1)(v) are responsible for ensuring compliance with § 1026.19(f), even where a settlement agent provides the disclosure.[111] In the section by section analysis to the TILA–RESPA Final Rule the Bureau also stated, in response to commenter questions regarding creditor and settlement agent liability in providing the required disclosures under § 1026.19(f)(4) to the seller, that the Bureau proposed a separate requirement under § 1026.19(f)(4)(i) for the person conducting the settlement to provide the disclosures in § 1026.38 that relate to the seller's transaction to the seller because the Bureau recognizes that a creditor does not owe a duty to the seller and to account for variations in local law that may require that the seller

[108] GLBA 502(e)(8); 12 CFR 1016.15(a)(7)(i).

[109] GLBA 502(e)(2); 12 CFR 1016.15(a)(1).

[110] TILA section 102(a), 15 U.S.C 1601. The Bureau also notes that, when the regulations implementing the GLBA's privacy provisions were first adopted, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the Agencies) declined to elaborate on the requirements for obtaining consent or the consumer safeguards that should be in place when a consumer consents, stating that ''the resolution of this issue is appropriately left to the particular circumstances of a given transaction.'' The Agencies noted that ''any financial institution that obtains the consent of a consumer to disclose nonpublic personal information should take steps to ensure that the limits of the consent are well understood by both the financial institution and the consumer. If misunderstandings arise, consumers may have means of redress, such as in situations when a financial institution obtains consent through a deceptive or fraudulent practice. Moreover, a consumer may always revoke his or her consent. In light of the safeguards already in place, the Agencies have decided not to add safeguards to the consent exception.'' Privacy of Consumer Financial Information, 65 FR 35182, 35184 (Jun. 1, 2000).

[111] 78 FR 79730, 79869 (Dec. 31, 2013).

receive a separate disclosure (*e.g.,* for privacy reasons) or variations in local practice in which a seller and a consumer may not attend settlements in-person or at the same time.[112] The Bureau does not believe it is necessary to mandate how a settlement agent and creditor must coordinate to ensure settlement agent compliance as discussed in § 1026.19(f)(4)(iv) and comments 19(f)(1)(v)–2 through –4. In general, the Bureau believes final § 1026.19(f)(1)(v) sets forth a clear standard for settlement agents to comply with § 1026.19(f) to the extent they provide disclosures under that section.[113] In response to the commenter statement that proposed comments 38(t)(5)(v)–1 and –3 appear to place the liability for providing the Closing Disclosure on the creditor, whereas under § 1026.19(f)(4) the settlement agent appears to be responsible for the Closing Disclosure provided to the seller, under the proposed commentary, the decision to provide separate Closing Disclosures to the consumer and the seller is to be made by the creditor. Even though § 1026.19(f)(4) indicates that the settlement agent is to provide the seller with a Closing Disclosure, the creditor is not prohibited from providing the Closing Disclosure to the seller if the creditor decides to provide it in some instances (such as if the creditor is performing the functions of a settlement agent, or the settlement agent refuses to provide a single, integrated disclosure or a seller-specific separate disclosure).

38(t)(5)(vi) Modified Version of the Form for a Seller or Third-Party

As detailed in the section-by-section analysis of § 1026.38(t)(5)(v), the Bureau proposed and is now adopting new comment 38(t)(5)(vi)–1 to cross-reference comment 38(t)(5)(v)–1 for additional clarity on permissible form modifications in relation to the modified version of the Closing Disclosure for sellers or third parties.

38(t)(5)(vii) Transaction Without a Seller or for Simultaneous Subordinate Financing

The Bureau's Proposal

Section 1026.38(t)(5)(vii) permits modifications to form H–25 of appendix H for a transaction that does not involve a seller and for which the alternative tables are disclosed pursuant to § 1026.38(d)(2) and (e). Comment 38(t)(5)(vii)–2 explains that, as required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller must contain the label ''Appraised Prop. Value,'' or ''Estimated Prop. Value'' where there is no appraisal. The Bureau proposed to revise § 1026.38(t)(5)(vii), consistent with proposed revisions to § 1026.38(d)(2) and (e), to include simultaneous subordinate financing as transactions for which a modification of form H–25 of appendix H is permitted. The Bureau also proposed a technical revision so that comment 38(t)(5)(vii)–2 correctly references § 1026.38(t)(5)(vii) instead of § 1026.38(t)(5)(viii) and additional minor clarifying edits. In addition, the Bureau proposed to add comment 38(t)(5)(vii)(B)–1 to clarify that amounts provided by third parties may be disclosed as credits in the payoffs and payments table, comment 38(t)(5)(vii)(B)–2 to clarify the disclosure of subordinate financing proceeds, and comment 38(t)(5)(vii)(B)–3 to cross-reference comment 37(h)(2)(iii)–1 (for additional examples) and comment 38–4 (for the disclosure of a principal reduction to provide a refund).

Comments Received

Many of the comments that were submitted and that related to § 1026.38(d)(2) and (e) would be applicable to the proposal set forth under § 1026.38(t)(5)(vii) to permit simultaneous subordinate financing purchase transactions to be disclosed using the alternative disclosures. Please see the section-by-section analyses of § 1026.38(d)(2) and (e) for a general discussion of such comments.

As discussed more fully in the section-by-section analysis of § 1026.37(d)(2), and relevant to comments 38(t)(5)(vii)(B)–1 and –2, one commenter questioned what disclosures should be used when the optional alternative tables were initially used for the simultaneous subordinate financing transaction, but a seller later agrees to contribute to the costs of the subordinate financing, making continued use of the alternative tables impermissible under the proposal.

An industry commenter supported the Bureau's proposed amendments to comment 38(t)(5)(vii)(B)–2, which provided that simultaneous subordinate financing proceeds are required to be disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on a first-lien transaction. However, other commenters noted that the Bureau did not propose any amendments to the provisions of the alternative Loan Estimate and Closing Disclosure to explain how simultaneous subordinate financing itself would be disclosed on the alternative disclosures, including how to disclose the amount of proceeds from the subordinate financing being applied to the first-lien transaction. Commenters also asserted that most creditors prefer that the Closing Disclosure for the simultaneous subordinate financing include a disclosure of the amount of proceeds being applied to the first-lien loan, and asked the Bureau to permit this common practice and clarify the provision under which the disclosure should be made.

The Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(t)(5)(vii) as proposed with a minor technical revision, comment 38(t)(5)(vii)–2 as proposed, and comments 38(t)(5)(vii)(B)–1 and –2 as proposed with revisions; renumbering proposed comment 38(t)(5)(vii)(B)–2 as comment 38(t)(5)(vii)(B)–2.i; adding new comments 38(t)(5)(vii)(B)–2.ii and –2.iii; and adopting proposed comment 38(t)(5)(vii)(B)–3 with revisions. For the reasons discussed in the section-by-section analyses of § 1026.38(d)(2) and (e), the Bureau is finalizing the proposed amendment to § 1026.38(t)(5)(vii), which permits simultaneous subordinate financing purchase transactions to be disclosed using the alternative disclosures. Final § 1026.38(t)(5)(vii) permits modifications to form H–25 of appendix H for a transaction that does not involve a seller or for simultaneous subordinate financing transactions, and for which the alternative tables are disclosed under § 1026.38(d)(2) and (e). The Bureau did not receive any comments in response to the proposed technical revision to comment 38(t)(5)(vii)–2 and the Bureau is adopting the proposed revision as final.

The Bureau is revising the reference to the partial exemption criteria of § 1026.3(h) in proposed comment 38(t)(5)(vii)(B)–1 to more closely align with final § 1026.3(h). Final comment 38(t)(5)(vii)(B)–1 provides, in part, that the proceeds from a loan that satisfies the partial exemption criteria in § 1026.3(h) is an example of an amount paid by a third party that may be disclosed as a credit on the payoffs and payments table under § 1026.38(t)(5)(vii)(B). As discussed in more detail below, the Bureau is also amending proposed comment 38(t)(5)(vii)(B)–1 to address the commenter's question regarding how to proceed under the proposal when the optional alternative table was properly used on the Loan Estimate, or even the Closing Disclosure, but a subsequent event would cause the continued use of

[112] 78 FR 79730, 79890 (Dec. 31, 2013).

[113] 78 FR 79730, 79869 (Dec. 31, 2013).

the alternative table to be impermissible.

The Bureau is not finalizing the requirement to disclose certain amounts as negative numbers in proposed comments 38(t)(5)(vii)(B)–1 and –2 for the same reasons the Bureau is removing certain references to positive or negative numbers elsewhere in this final rule. While the Bureau did not propose these revisions and does not anticipate any circumstances in which funds provided on behalf of consumers and the proceeds from simultaneous subordinate financing disclosed on the first-lien Closing Disclosure would not be disclosed as negative numbers, the Bureau is not finalizing the technical requirement to disclose these amounts as negative numbers to allow flexibility for any unforeseen situations.

The Bureau is renumbering proposed comment 38(t)(5)(vii)(B)–2 as comment 38(t)(5)(vii)(B)–2.i and revising the comment for greater clarity. Proposed comment 38(t)(5)(vii)(B)–2 explained that on the Closing Disclosure for a first-lien transaction that also has simultaneous subordinate financing, the proceeds of the subordinate financing are disclosed in the payoffs and payment table under § 1026.38(t)(5)(vii)(B). As discussed in the section-by-section analysis of § 1026.37(d)(2), a commenter asked the Bureau to clarify how to disclose the simultaneous subordinate financing loan proceeds that are applied to the first-lien transaction. In final comment 38(t)(5)(vii)(B)–2.i, the Bureau adds the heading ''First-lien Closing Disclosure,'' explains that the comment pertains to first-lien Closing Disclosures disclosed using the alternative tables under § 1026.38(d)(2) and (e), and provides a refinance transaction as an example of a first-lien transaction that could be disclosed under § 1026.38(d)(2) and (e) that also has simultaneous subordinate financing. In response to the comments received on the proposal, the Bureau is also providing additional guidance on how to disclose the amount of subordinate financing, consistent with the requirements in comment 38(j)(2)(vi)–2 for disclosing the proceeds of subordinate financing on the standard Closing Disclosure.

The Bureau is adding comment 38(t)(5)(vii)(B)–2.ii to permit creditors to include, in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure, the proceeds of the subordinate financing applied to the first-lien transaction. Final comment 38(t)(5)(vii)(B)–2.ii responds to commenters' questions about how to disclose the simultaneous subordinate loan proceeds that will be applied to the first lien on the disclosure for the simultaneous subordinate financing. The commenters asserted that most creditors prefer that the simultaneous subordinate financing Closing Disclosure include a disclosure of the amount of loan proceeds that are applied to the first-lien loan, and asked the Bureau to permit this practice. In the proposal, the Bureau noted that the funds that are provided to the consumer from the proceeds of subordinate financing being applied to the first-lien transaction would not be included in the payoffs and payments table on the simultaneous subordinate financing disclosure. As a result, the cash to close amount disclosed under § 1026.38(e)(5)(ii) would have represented the loan proceeds as ''cash out'' to the borrower. For the same reasons discussed in the section-by-section analysis of § 1026.37(h)(2)(iii), the Bureau is not finalizing the proposed approach and instead is adding new comment 38(t)(5)(vii)(B)–2.ii to permit creditors to include the proceeds of the subordinate financing applied to the first-lien transaction in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure. The Bureau is making similar amendments in commentary to §§ 1026.37(h)(2)(iii) and 1026.38(j)(1)(v).

The Bureau is adding comment 38(t)(5)(vii)(B)–2.iii and amending proposed comment 38(t)(5)(vii)(B)–1 to address the commenter's question regarding how to proceed under the proposal when the optional alternative table was properly used on the Loan Estimate, or even the Closing Disclosure, but a subsequent event would cause the continued use of the alternative table to be impermissible. For the reasons discussed in the section-by-section analysis of § 1026.37(d)(2), the Bureau is directly addressing the commenter's concern by adding new comment 38(k)(2)(vii)–1, amending comments 38(d)(2)–1 and 38(j)–3, and amending proposed comments 38(t)(5)(vii)(B)–1 and –2 (including adding comment 38(t)(5)(vii)(B)–2.iii), to require the disclosure of the seller's contributions to the subordinate financing, if any, in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure and the summaries of transactions table on the first-lien Closing Disclosure, when the alternative disclosures are used for the simultaneous subordinate financing transaction. Final comment 38(t)(5)(vii)(B)–2.iii explains that if a creditor discloses the alternative tables pursuant to § 1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure, the creditor must also disclose in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure, any seller contributions toward the simultaneous subordinate financing. Final comment 38(t)(5)(vii)(B)–1 includes, as an example of amounts paid by third parties that may be disclosed as credits on the simultaneous subordinate financing's payoffs and payments table under § 1026.38(t)(5)(vii)(B), contributions from a seller for costs associated with a simultaneous subordinate financing transaction. As discussed in the section-by-section analysis of § 1026.38(k)(2), final comment 38(k)(2)(vii)–1 explains that if the simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include, in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii), any contributions toward the simultaneous subordinate financing from the seller that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. The result of these amendments, coupled with the amendments to comment 38(j)–3, is that the first-lien Closing Disclosure will be able to record the entirety of the seller's transaction.

For example, assume the simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e) and the seller contributes $200.00 toward the closing costs of the simultaneous subordinate financing. The simultaneous subordinate financing transaction Closing Disclosure must disclose the $200.00 contribution in the payoffs and payments table in accordance with § 1026.38(t)(5)(vii)(B) and comment 38(t)(5)(vii)(B)–1. The first-lien Closing Disclosure must disclose the $200.00 contribution in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii) on the first-lien Closing Disclosure, thereby recording the entirety of the seller's transaction on the first-lien Closing Disclosure. For a more detailed discussion of these new and revised comments, see the section-by-section analyses of § 1026.38(d)(2), (j), and (k)(2).

The Bureau is adopting proposed comment 38(t)(5)(vii)(B)–3 with technical conforming revisions. As discussed in more detail in the section-by-section analysis of § 1026.38 pertaining to comment 38–4 above, an industry group recommended that the Bureau use the phrase ''principal reduction'' instead of ''principal curtailment,'' noting that consumers would be more familiar with the recommended phrase. The Bureau is revising proposed comment 38(t)(5)(vii)(B)–3 to reflect the phrase ''principal reduction.'' Industry commenters also requested that the Bureau permit the use of principal curtailments for situations other than when a creditor is providing a credit for a tolerance refund. In the proposal, the Bureau sought to address the particular issue of how to disclose a principal curtailment that is used to provide a tolerance refund, but did not intend to propose to limit the use of principal curtailments to providing tolerance refunds. The Bureau is revising and restructuring comment 38–4 to provide clarity on the disclosure of principal reductions that are and are not used to provide tolerance refunds. As a result, the Bureau is amending comment 38(t)(5)(vii)(B)–3 to remove the reference to a tolerance refund under § 1026.19(f)(2)(v), making the comment applicable to all principal reductions, regardless of whether the principal reduction is for the purpose of providing a tolerance refund.

38(t)(5)(ix) Customary Recitals and Information

Comment 38(t)(5)(ix)–1 provides examples of information permitted to be disclosed on an additional page for the disclosure of customary recitals and information used locally in real estate settlements. The Bureau proposed to revise comment 38(t)(5)(ix)–1 to cross-reference proposed comment 38–4, which would have provided options for the disclosure of a principal curtailment to provide a refund under § 1026.19(f)(2)(v), including disclosure under § 1026.38(t)(5)(ix).

For the reasons discussed below, the Bureau is not finalizing the proposed amendments to comment 38(t)(5)(ix)–1. As discussed in more detail in the section-by-section analysis of § 1026.38 pertaining to comment 38–4 above, some industry commenters raised concerns with the various options for disclosure of principal curtailments proposed by the Bureau. While the Bureau intended for the proposal to provide the flexibility for the disclosure of principal curtailments discussed in the Bureau staff's informal April 2016 webinar, the Bureau appreciates commenters' assertions that a uniform disclosure method for principal curtailments would reduce compliance burden, aid consumer understanding, and aid the utilization of a uniform data standard. The Bureau is therefore revising proposed comment 38–4 to, among other things, limit the locations in which a creditor may disclose principal reductions to only § 1026.38(j)(1)(v) and (t)(5)(vii)(B). As a result, the Bureau is not finalizing the proposed revisions to comment 38(t)(5)(ix)–1, which would have cross-referenced comment 38–4 for an explanation of how to disclose a principal curtailment under § 1026.38(t)(5)(ix). If there is insufficient space under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) for certain required elements of the principal reduction disclosure, final comment 38–4 permits a creditor to provide an abbreviated disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) and a complete disclosure with a reference to the abbreviated disclosure under an appropriate heading on an addendum, in accordance with § 1026.38(j) and (t)(5)(ix), as applicable. No amendments to comment 38(t)(5)(ix)–1 are necessary to effectuate this change. See the section-by-section analysis of § 1026.38 pertaining to comment 38–4 for an explanation of when and how an addendum may be used in the context of a principal reduction disclosure.

Appendix D—Multiple-Advance Construction Loans

Loan Term

The Bureau's Proposal

Proposed comment app. D–7.i clarified how a creditor may disclose the loan term, pursuant to §§ 1026.37(a)(8) and 1026.38(a)(5)(i), for a construction-permanent loan, taking into account the fact that such loans may be disclosed as one transaction or as more than one transaction. Under proposed comment app. D–7.i.A, if the creditor disclosed the construction and permanent financing as a single transaction, the loan term disclosed would be the total combined term of the construction period and the permanent period. To illustrate this result, the proposed comment provided an example of how to disclose the loan term when a single set of disclosures is used for the combined construction-permanent loan. In the example, if the term of the construction period is 12 months and the term of the permanent period is 30 years, and both phases are disclosed as a single transaction, the loan term disclosed is 31 years. Proposed comment app. D–7.i.A also included a cross-reference to comment 37(a)(8)–3 intending to explain that, in accordance with § 1026.17(c)(3) and its accompanying commentary, the effect of minor variations in the number of days counted for the months or years of a loan may be disregarded for purposes of the loan term disclosure.

Proposed comment app. D–7.i.B clarified how to disclose the term of the permanent phase of a construction-permanent loan when the creditor elected to disclose the two phases as separate transactions. Because the permanent phase may be consummated and disclosed at the same time as the construction phase and may also be disclosed as a separate transaction with payments that do not begin until months after consummation, creditors have reported some uncertainty about when to begin counting the loan term of the permanent phase for disclosure purposes. Proposed comment app. D–7.i.B explained that, consistent with proposed comment 37(a)(8)–3, the loan term of the permanent financing is counted from the date that interest for the first scheduled periodic payment of the permanent financing begins to accrue, regardless of when the permanent phase is disclosed.

Comments Received

As explained in the above section-by-section analysis of comment 37(a)(8)–3, commenters were concerned that comment 37(a)(8)–3 did not include the explanations referred to in comment app. D–7.i.

The Final Rule

For the reasons discussed below, the Bureau is finalizing comment app. D–7.i substantially as proposed, but the Bureau is removing the cross-references to comment 37(a)(8)–3 in comment app. D–7.i.

The intent of the cross-reference to comment 37(a)(8)–3 in comment app. D–7.i.A was to explain that, in accordance with § 1026.17(c)(3) and its accompanying commentary, the effect of minor variations in the number of days counted for the months or years of a loan may be disregarded for purposes of the loan term disclosure. However, citing only to § 1026.17(c)(3) might raise questions as to the applicability of other sections that are not cited, which was not the intent of the Bureau. Sections such as § 1026.17(c)(4) are also applicable in determining the impact of minor variations in the number of days counted for the loan term, as well as other disclosures, as applicable. In order to avoid creating an impression that only § 1026.17(c)(3) applies for purposes of construction and construction-permanent disclosures to the exclusion of other potentially applicable sections, the Bureau is not finalizing the cross-references to comment 37(a)(8)–3 in comment app.D–7.i.

A similar approach to generally applicable provisions was taken in the TILA–RESPA Final Rule with respect to providing specific guidance in § 1026.37(c) regarding whether the periodic principal and interest disclosure should be based on an average 30-day month or some other measure. There, the Bureau noted that creditors may base their disclosures on calculation tools that assume that all months have an equal number of days, even if their practice is to take account of the variations in months for purposes of collecting interest. The Bureau further noted that because this § 1026.17(c)(3) guidance applies generally to the disclosures required by § 1026.37, the Bureau did not believe it was necessary or appropriate to provide such guidance in § 1026.37(c).[114]

Comment app. D–7.i.B, which explains how the loan term of the permanent phase is counted, also included a statement that it was consistent with comment 37(a)(8)–3. As explained above, comment 37(a)(8)–3 only contains a cross-reference to comment app. D–7.i. and no additional explanations. Accordingly, the reference to comment 37(a)(8)–3 is deleted, because there is no explanation there for comment app. D–7.i. to be ''consistent with.''

Product

The Bureau's Proposal

Proposed comment app. D–7.ii would explain how to disclose the duration of the ''Interest Only'' feature of a construction loan or the construction phase of a construction-permanent loan under §§ 1026.37(a)(10)(ii)(B) and 1026.38(a)(5)(iii). The duration of the interest-only period depends on whether the construction phase is disclosed separately, which would be covered by proposed comment app. D–7.ii.A, or as a combined transaction with the permanent phase, which would be covered by proposed comment app. D–7.ii.B.

Section 1026.37(a)(10) requires disclosure of the loan product, including the features that may change the periodic payment on the loan. Section 1026.37(a)(10)(iv) requires disclosure of the duration of the payment period of certain of the loan features, including the ''Interest Only'' feature under § 1026.37(a)(10)(ii)(B). Disclosure of an ''Interest Only'' feature is required if the loan does not have a negative amortization feature and one or more regular periodic payments may be applied only to interest accrued and not to the loan principal. The duration of the ''Interest Only'' payment period, therefore, counts the regular periodic payments that may be applied only to interest accrued and not to the loan principal.

In a construction loan disclosure, or when a separate disclosure is provided for the construction phase of a construction-permanent loan, the final payment will typically be a balloon payment that is the sum of the final interest payment and the loan principal. As a payment that includes principal, the final balloon payment is not counted for purposes of determining the duration of the ''Interest Only'' payment period. This means, for example, that the product disclosure for a fixed rate construction loan with a term of one year is ''11 mo. Interest Only, Fixed Rate.'' Proposed comment app. D–7.ii.A provided this explanation and example.

Proposed comment app. D–7.ii.B explained that, if a single, combined construction-permanent disclosure is provided, the time period of the interest-only feature that is disclosed as part of the product disclosure under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is the full term of the interest-only construction financing. In such cases, the construction and permanent phases are considered together as a single loan or transaction, and there is no balloon payment of principal and interest at the end of the construction phase. Proposed comment app. D–7.ii.B provided an example explaining that a creditor discloses the ''Product'' for a fixed rate, construction-permanent loan with an interest-only construction phase of 12 months as ''1 Year Interest Only, Fixed Rate.''

Comments Received

While the Bureau did not receive any comments that directly addressed proposed comment app. D–7.ii, a comment on proposed comment app. D–7.iii, which is further discussed in the section-by-section analysis for comment app. D–7.iii below, raised issues that directly concern the disclosure of the loan product under § 1026.37(a)(10). Proposed comment app. D–7.iii provided, in part, that if the creditor may modify the rate for permanent financing when the construction financing converts to permanent financing, certain variable-rate disclosures are provided regardless of whether the permanent financing has a fixed, adjustable, or step rate. The commenter indicated that there could be confusion over the applicable product disclosures for construction-permanent loans disclosed as either one transaction or two transactions but consummated simultaneously where the interest rate for the permanent phase is set upon completion of the construction phase. The commenter indicated the loan product for such a loan would seem to be adjustable rate, rather than fixed rate, which could generate confusion over how to disclose the loan product for this scenario.

The Final Rule

The Bureau agrees with the commenter and, for this reason, is finalizing comment app. D–7.ii substantially as proposed, but adding comment app. D–7.ii.C and making a conforming change to comment app. D–7.ii.B for consistency. Comment app. D–7.ii.C clarifies that for construction-permanent loans with a single consummation, in the case of either a separate disclosure for the permanent phase or a single combined disclosure for both phases, if the creditor reserves the right to modify the disclosed interest rate for the permanent phase at a post-consummation date and the modified interest rate for the permanent phase is not known at the time of consummation, the loan product disclosed under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is ''Adjustable Rate.'' This is true even if, once set at the later date, the interest rate for the permanent phase would not change again.

Comment app. D–7.ii.C reflects the applicability of § 1026.37(a)(10)(i) when disclosing the loan product for construction-permanent loans with a single consummation, just as it would apply to any other covered loan. Under § 1026.37(a)(10)(i), if the creditor reserves the right to modify the interest rate for the permanent phase of a construction-permanent loan with a single consummation, and that interest rate may increase but the rate that will apply is not known at consummation, the loan product disclosed under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is ''Adjustable Rate,'' if the permanent phase is disclosed separately or a single disclosure is used for the combined construction-permanent financing. Further, any other disclosures required for the loan product specified would also apply. For example, the introductory rate or payment period disclosure as required by §§ 1026.37(a)(10)(iv) and 1026.38(a)(5)(iii) is disclosed even if the construction and permanent phases individually are fixed rate. In the loan described above, if the loan is disclosed using a single disclosure for a combined construction-permanent financing, the introductory period disclosure would be the term of the construction phase and then the term of the permanent phase, *e.g.* ''1/30 Adjustable Rate.'' If, however, the permanent phase is disclosed separately, assuming the permanent phase is a fixed rate upon conversion from the construction phase, the introductory rate disclosure would be zero followed by the term of the permanent phase, *e.g.,* ''0/30 Adjustable Rate.''

Additionally, should the creditor reserve the right to modify the interest rate for the permanent phase of a construction-permanent loan with a single consummation, and that interest rate may increase but the rate that will apply is not known at consummation, the other adjustable-rate loan disclosures would be required, if not otherwise already required. For example, comment app. D–7.iii as finalized discusses the requirements for the disclosure under § 1026.20(c).

Similarly, the Adjustable Interest Rate table, as required by §§ 1026.37(j) and 1026.38(n), is disclosed where the creditor reserves the right to modify the interest rate for the permanent phase of a construction-permanent loan with a single consummation, and that interest rate may increase but the rate that will apply is not known at consummation. If the permanent phase is disclosed separately or a single disclosure is used for the combined construction-permanent financing, the creditor discloses the index and margin, as required § 1026.37(j)(1), using the index and/or margin identified in the legal obligation that will be used to determine the interest rate for the permanent phase at conversion. The creditor also discloses the initial interest rate at consummation under § 1026.37(j)(3), which may be the interest rate for the construction phase. Finally, the creditor discloses the minimum and maximum interest rates for the permanent phase, as required by § 1026.37(j)(4). If the legal obligation does not provide a minimum and/or maximum interest rate cap for the permanent phase interest rate upon conversion, as stated in current comment 37(j)(4)–1 and –2, the disclosure is based on the applicable law.

Comment app. D–7.ii.C is consistent with the applicability of the other § 1026.37(a)(10)(i) provisions to construction-permanent loans. For example, using the definition in § 1026.37(a)(10)(i)(B), if, for a construction-permanent loan using a single disclosure for both phases, the interest rates for both phases are fixed at consummation and the creditor does not reserve the right to modify the rate after consummation, but the interest rates are not the same, the creditor would disclose the loan product under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) as a

[114] *See* 78 FR 79730, 79937 (Dec. 31, 2013).

''Step Rate'' product because the interest rate will change after consummation and the rates and periods they will apply are known. Further, the introductory rate and payment period disclosures required by §§ 1026.37(a)(10)(iv) and 1026.38(a)(5)(iii) would also be required.

But it should be noted that comment app. D–7.ii.C is read in the context of the rest of the rule. For example, while a construction-permanent loan using a single disclosure for both phases where the creditor reserves the right to modify the permanent phase interest rate after consummation would not by itself require disclosure of the Adjustable Payments table, an aspect of the construction phase or permanent phase might otherwise require it, such as an interest-only period in the construction phase. As explained in the discussion of proposed comment app. D–7.v, finalized as comment app. D–7.iv, the adjustable payment table is included for separate disclosures of the construction phase or combined construction-permanent disclosures if the interest during the construction phase is payable only on the amount actually advanced—in such cases the periodic payment may change after consummation but not based on an adjustment to the interest rate.

Interest Rate

The Bureau's Proposal

Proposed comment app. D–7.iii explained the disclosure of the interest rate in a construction-permanent loan pursuant to §§ 1026.37(b)(2) and 1026.38(b). The comment addressed a unique aspect of some construction-permanent loans: If the permanent phase is disclosed at the same time as the construction phase, either in a combined disclosure with the construction phase or in a separate disclosure of only the permanent phase, the interest rate of the permanent financing may not be known because the conversion to permanent financing may not take place for several months. If the permanent financing has an adjustable rate and separate disclosures are provided, the proposed comment stated that the rate disclosed for the permanent financing is the fully-indexed rate pursuant to § 1026.37(b)(2) and its commentary. If the permanent financing has a fixed rate, proposed comment app. D–7.iii would have explained that the rate disclosed is based on the best information reasonably available at the time the disclosures are made and included a cross-reference to comments 19(e)(1)(i)–1 and 19(f)(1)(i)–2, which provide explanation of the best information reasonably available standard. The proposed comment also provided instruction on disclosures that may be required after consummation if the creditor may modify the rate disclosed for the permanent financing when the construction financing converts to permanent financing. If such an adjustment of the interest rate occurs at the time of conversion and results in a payment change, the creditor must provide the rate and payment adjustment disclosures required by § 1026.20(c) (commonly referred to as ARM notices) at least 60 days, and no more than 120 days, before the first payment at the adjusted level is due, without regard to whether the permanent financing has a fixed, adjustable, or step rate. The Bureau sought comment on the appropriateness of the provision of the § 1026.20(c) disclosures in connection with the conversion to permanent financing and any operational changes for creditors in a construction-permanent loan context to provide the disclosure required by § 1026.20(c), generally required at least 60 days, and no more than 120 days, before the first payment at the adjusted level is due.

Comments Received

The Bureau received one comment on the proposal regarding comment app. D–7.iii. The commenter noted that, if the loan in question is a two-phase construction-permanent loan in which the permanent phase will be consummated at the close of the construction phase of the loan, the creditor can issue a revised Loan Estimate for the permanent phase of the loan any time prior to 60 days before consummation of the permanent phase. The Bureau agrees that such a revision of the Loan Estimate may be permissible under § 1026.19(e)(3)(iv). The commenter stated that if the transaction is a single consummation construction-permanent loan and the creditor may modify the rate for permanent financing when the construction financing converts to permanent financing, the loan product would not be fixed-rate, and if that rate upon conversion is unknown would not be step-rate either, as stated in proposed comment app. D–7.iii. The commenter further noted that the permanent phase of the transaction would be an adjustable-rate loan product if the creditor reserves the right to modify the rate when the construction loan ends.

The Final Rule

The Bureau is finalizing comment app. D–7.iii substantially as proposed, but with clarifications. The interest rate disclosed under §§ 1026.37(b)(2) and 1026.38(b) is the interest rate applicable to the transaction at consummation. If the construction phase and permanent phase of a construction-permanent transaction are consummated at the same time, the payments for the permanent phase will often not be due for a year or more. In such situations, the legal obligation may provide that the interest rate of the permanent phase may change when the construction phase converts to the permanent phase, and further, may not specify what the interest rate will change to at the permanent phase. As discussed in final comment app. D–7.ii, the fact that the permanent phase interest rate may change and increase after consummation requires the permanent phase, if considered separately, to be disclosed as an adjustable-rate product, as defined in § 1026.37(a)(10)(i)(A) and not a fixed-rate or step-rate product, even if the loan will become a fixed-rate or a step-rate at the time of conversion. Similarly, as discussed in final comment app. D–7.ii, the combined construction-permanent transaction in such a situation would also be disclosed on the combined Loan Estimate and Closing Disclosure as an adjustable-rate product. However, the construction phase, if disclosed separately and if it has no interest rate changes of its own, would not. The disclosure of the permanent phase as an adjustable-rate product in these circumstances applies even if, upon conversion, the permanent phase will have a fixed interest rate. The statement ''regardless of whether the permanent financing has a fixed, adjustable, or step rate'' at the end of the comment as proposed is not adopted given the clarification of the product in final comment app. D–7.ii.

The Bureau is providing clarification in comment app. D–7.iii that in a transaction secured by the consumer's principal dwelling, if the legal obligation provides that the interest rate of the permanent financing may change, and therefore may increase, when the construction financing converts to permanent financing, and such conversion results in a fixed-rate transaction and payment change, the creditor must provide the disclosures pursuant to § 1026.20(c) generally at least 60 days, and no more than 120 days, before the first payment on the permanent phase at the adjusted level is due. Pursuant to § 1026.20(c), an adjustable-rate mortgage (ARM) payment change disclosure must be provided to the consumer when an interest rate adjustment resulting from the conversion of an adjustable-rate mortgage to a fixed-rate transaction, if that interest rate adjustment results in a corresponding payment change, as is the case in the conversion of the construction to a permanent loan described above.

If the permanent phase interest rate disclosed at consummation may increase when the construction phase converts to the permanent phase, the permanent phase is both an adjustable-rate product under § 1026.37(a)(10)(i)(A) and an ARM, as identified in § 1026.20(c)(1). If the interest rate set at conversion for the permanent financing will not change post-conversion, the permanent financing then becomes a fixed-rate loan, and the conversion from construction to permanent financing is a conversion of the permanent financing from an adjustable-rate mortgage to a fixed-rate transaction. Thus, the ARM payment change disclosure must be provided to consumers in this situation because, pursuant to § 1026.20(c), the disclosure is required when an ARM converts to a fixed-rate transaction, if the interest rate adjustment results in a payment change. Note that this requirement only applies if the loan is secured by the consumer's principal dwelling. Because the § 1026.20(d) ARM initial interest rate adjustment disclosure is not required when an ARM converts to a fixed-rate transaction, that requirement would not be triggered by the construction to permanent phase conversion. However, should the construction or permanent phase individually otherwise meet the coverage requirements of § 1026.20(c) or (d), for example, if the permanent phase has an adjustable rate after conversion or if the initial term of the construction phase exceeds one year, nothing in comment app. D–7.iii should be read to exclude or modify those requirements.

Finally, in response to the commenter's assertion regarding resetting tolerances for the permanent phase, the Bureau notes that if the loan in question is a two-phase construction-permanent loan in which the permanent phase will be consummated at the close of the construction phase, and if consistent with § 1026.19(e)(3)(iv), the creditor can issue revised disclosures and reset tolerances by issuing a revised Loan Estimate for the permanent phase, which may disclose a different interest rate than originally disclosed.

Initial Periodic Payment

Proposed comment appendix D–7.iv would have clarified that the general rule of § 1026.17(c)(3), which allows creditors to disregard the effects of certain minor variations in making calculations and disclosures, applies to the appendix D calculation of the initial periodic payment amount disclosed under §§ 1026.37(b)(3) and 1026.38(b). For example, the effect of the fact that months have different numbers of days may be disregarded in making the disclosure.

The Bureau did not receive comments on the proposed clarification to comment app. D–7.iv. However, for the reasons explained in the above section-by-section analysis of comment app. D–7.i, the Bureau is removing this cross-reference for consistency. While the creditor may consider § 1026.17(c)(3) to determine the effects of certain minor variations in making calculations and disclosures, this should not be to the exclusion of other applicable sections, such as § 1026.17(c)(4). Accordingly, proposed comment app. D–7.iv is not being adopted.

Increase in Periodic Payment

The Bureau's Proposal

Sections 1026.37(b)(6) and 1026.38(b), by cross-reference, require a creditor to provide an affirmative or negative answer to the question, ''Can this amount increase after closing?'' with respect to certain amounts, including the initial periodic payment amount disclosed under § 1026.37(b)(3). Creditors have asked the Bureau what answer may be provided to this question in the case of construction financing if the actual schedule of advances is not known. Proposed comment app. D–7.v explained that, in general, the answer a creditor provides will depend upon whether the construction financing has a fixed rate or an adjustable rate. Proposed comment app. D–7.v.A and B discussed the disclosure of fixed-rate construction financing, and proposed comment app. D–7.v.C discussed the disclosure of adjustable-rate construction financing.

The payments made during the construction phase are often interest-only payments. The amount of any particular interest-only payment on a construction loan is typically determined by applying the contract interest rate to the amounts advanced. The amounts advanced may be tied to construction milestones and the total of the amounts advanced will increase with each milestone, usually resulting in increases in the amounts of the interest-only payments that become due. If the construction financing has a fixed rate, the periodic interest-only payments will increase over the term of the loan, reflecting increases in the amounts advanced. If the construction financing has an adjustable rate, the periodic interest-only payments may also increase over time, but the increase may be due to both an increase in the adjustable interest rate and increases in the amounts advanced.

A creditor may use the methods in appendix D to estimate interest and make disclosures for construction loans if the actual schedule of advances is not known. The calculation of the periodic payments in a fixed-rate construction loan using appendix D produces interest-only periodic payments that are equal in amount. The preamble of the proposed rule explained that although the actual interest-only payments will increase over the term of the construction financing as the amounts advanced increase, because the methods provided by appendix D to estimate interest may be used to make disclosures, a technically correct and compliant answer to ''Can this amount increase after closing?'' is ''NO.'' The periodic payments for fixed-rate construction financing, as calculated under appendix D, do not increase but are equal.

Creditors nonetheless have expressed concern over providing an answer of ''NO'' to the question, ''Can this amount increase after closing?'' This technically correct disclosure may not reflect the actual increase in payments that will occur over the term of the construction financing, even though the amount of such increases is not known at or before consummation. Thus, the Bureau proposed comment app. D–7.v.A to explain that a creditor may disclose the initial periodic payment using appendix D and nevertheless may answer ''YES'' to the question, ''Can this amount increase after closing?'' Comment app. D–7.v.A also explained that a technically correct answer to ''Can this amount increase after closing'' is ''NO.'' The proposed comment is consistent with informal guidance provided by the Bureau.

Proposed comment app. D–7.v.B explained that, if separate disclosures are provided for fixed-rate construction and permanent financing and appendix D is used to compute the periodic payment for the construction phase, the disclosures under § 1026.37(b)(6)(iii) and the disclosure of a range of payments under § 1026.37(c)(2)(i) may be omitted. As discussed above, the periodic payments calculated under appendix D for a fixed-rate loan are equal. Consequently, the proposal stated a creditor in that case does not provide the increase in periodic payments disclosures under § 1026.37(b)(6)(iii), such as the due date of the first adjusted principal and interest payment or a reference to the adjustable payments table required by § 1026.37(i). The proposal also stated such a creditor also does not disclose the principal and interest payment under § 1026.37(c)(2)(i) as a range of payments in the projected payments table, even though the interest-only payments would increase over the term of the construction financing, reflecting increases in the total amount advanced.

Proposed comment app. D–7.v.C stated that, if separate disclosures are provided for adjustable-rate construction financing and appendix D is used to calculate the periodic payment, the disclosures reflect the changes that are due to changes in the interest rate but not the changes that are due to changes in the amounts advanced and provided an illustrative example. Proposed comment app. D–7.v.C. also stated that while a creditor extending fixed-rate construction financing may answer either ''YES'' or ''NO'' as the answer to the question, ''Can this amount increase after closing?,'' because payments may increase based on increases in advances, a creditor extending adjustable-rate construction financing would disclose ''YES'' as the answer to the question, ''Can this amount increase after closing?'' When a creditor extends adjustable-rate construction financing, unlike when it extends fixed-rate construction financing, payments may increase based on an increase in the adjustable interest rate as well as an increase in the amount advanced. Because the payments may increase in such cases, without regard to the amount of advances, a creditor would disclose ''YES'' as the answer to the question, ''Can this amount increase after closing?'' and ''NO'' would not be a technically correct answer.

Proposed comment app. D–7.v.C. also stated that, for adjustable-rate construction financing, a creditor must provide disclosures reflecting changes that are due to changes in the interest rate, but may omit disclosures reflecting changes that are due to changes in the total amount advanced. Proposed comment app. D–7.v.C. explained that the creditor may omit the adjustable payment table disclosure required by § 1026.37(i) because the disclosure would reflect a change due to a change in the total amount advanced. Consistent with these disclosures, the creditor would also disclose a range of payments in the principal and interest row of the projected payments table under § 1026.37(c)(2)(i).

Comments Received

Commenters raised concerns regarding the options provided by the proposed commentary and the time that would be required to implement it. An individual commenter objected to the option to provide either an affirmative or negative answer to the question, ''Can this amount increase after closing?'' The commenter stated that disclosing ''NO'' would be inaccurate as the payment can range as high as interest on the total amount of the approved loan or as little as $0.00, if no funds have been drawn. A vendor commented that the optionality in proposed comment app. D–7.v.A would complicate compliance because creditors and investors would need to conduct additional staff training regarding these options, including that they are only applicable for fixed-rate transactions. The option provided under proposed comment app. D–7.v.B to omit the disclosures under § 1026.37(b)(6)(iii) and (c)(2)(i) would similarly complicate compliance and require training. The commenter further noted that implementing these options would require significant reprogramming for technology providers across the industry, including loan origination, document production, and compliance software companies. The commenter also stated that useful information under § 1026.37(b)(6)(iii) and (c) that is based on the principal balance would be able to be disclosed and noted consumers would benefit from a disclosure of the maximum principal and interest payment based on the maximum principal balance that could be outstanding during the construction phase.

Several vendors expressed implementation concerns with proposed comments app. D–7.v.A and B. They indicated their systems cannot support a ''YES'' for fixed-rate construction-only disclosures without the § 1026.37(b)(6)(iii) bullet points as the proposed comments would permit. The vendors' comments noted that, currently, most software automatically produces the bullets under § 1026.37(b)(6)(iii) when a ''YES'' answer is provided under § 1026.37(b)(6). Thus, while the proposal indicated the bullets under § 1026.37(b)(6)(iii) are optional, the vendors indicated the optionality did not exist under their programs. The proposed changes would require reprogramming and would also complicate software integrations. Vendors estimated the proposed comments would require 9 to 12 months to implement. These implementation concerns were echoed by a trade organization, which commented that the construction loan management (CLM) systems that creditors use to manage draws and inspections during the construction phase do not communicate with servicing and loan origination software. Because of such software issues, creditors manually interface their CLM systems with their other systems. The comment noted sufficient time will be needed to adjust systems and processes to the new rules.

The Final Rule

Based on the concerns initially raised by creditors and noted in the proposed rule, and the additional concerns expressed in the comments, the Bureau is adopting comment app. D–7.v with modification. The option to disclose an answer of either ''YES'' or ''NO'' to the question ''Can this amount increase after closing?'' under comment app. D–7.v.A is not adopted under this final rule. Only a disclosure of ''YES'' would be provided as the § 1026.37(b)(6) response to whether there will be an increase in the periodic payment when the amounts or timing of advances is unknown at or before consummation and the appendix D assumption that applies if interest is payable only on the amount advanced for the time it is outstanding is used to calculate the periodic payment. This change will address the concerns of creditors and others that the disclosure should reflect the fact that the payments actually increase over the term of the construction financing, even though the amount of such increases is not known at or before consummation. However, during the optional compliance period before October 1, 2018, and after the optional compliance period with respect to transactions for which a creditor or mortgage broker received an application during the optional compliance period, disclosures may continue to be made in the manner explained by the informal guidance provided by the Bureau and restated in proposed comment app. D–7.v.A. This takes into account the concerns of vendors, creditors, and others for sufficient time to reprogram systems and train staff to integrate the disclosures finalized here into their systems and processes.

To further simplify the disclosures and their implementation, the scope of comments app. D–7.v.A. and B is not limited to circumstances when separate disclosures are provided for fixed-rate construction financing as they were in the proposed rule and comment app. D–7.v.C is not limited to separate disclosures for adjustable-rate construction financing. As a practical matter, if ''YES'' is the answer to ''Can this amount increase after closing?'' when separate disclosures are provided for either fixed-rate or adjustable-rate construction financing, ''YES'' will necessarily be the answer when a combined disclosure for that financing is provided. This is generally the result whenever a combined disclosure is used because the interest-only payment of the construction financing increases to the principle and interest payment of the permanent financing. Comment app. D–7.v therefore applies to both separate construction disclosures and combined construction-permanent disclosures because, in either case, the § 1026.37(b)(6) disclosures would reflect the construction phase during which there may be an increase in the periodic payment. In addition, the statement, ''If the amounts or timing of advances is unknown at or before consummation and the appendix D assumption that applies if interest is payable only on the amount advanced for the time it is outstanding is used to calculate the periodic payment'' is provided as the introductory paragraph that applies to all of comment app. D–7.v.A through C. This condition in the introductory paragraph is the perquisite for the applicability of the explanations that follow in the subsequent paragraphs of the comment. The Bureau considers that the greater consistency provided for the § 1026.37(b)(6) disclosures by the final rule will provide greater clarity and help creditors facilitate the implementation of these provisions. However, the option to answer ''NO'' during the optional compliance period before October 1, 2018, will continue to be limited to circumstances when separate disclosures are provided for fixed-rate construction financing. As noted above, when a single, combined disclosure is used for both the construction and permanent phases, or when the construction phase has an adjustable rate and either separate or combined disclosures are provided, the initial interest-only periodic payment may increase, even when the initial payment is calculated in accordance with appendix D.

The option in proposed comment app. D–7.v.B to omit the disclosures under § 1026.37(b)(6)(iii) and the disclosure of a range of payments under § 1026.37(c)(2)(i) is adopted with modifications. In adopting these modifications, the Bureau agrees with the comments noting that useful information could be provided to consumers based on the maximum principal balance that could be outstanding during the construction phase. The Bureau is also taking into account the practical consequences of the comments noting that many systems automatically populate the § 1026.37(b)(6)(iii) ''bullets'' when a response of ''YES'' is disclosed.

Comment app. D–7.v.B, as modified, provides an explanation of how to make the § 1026.37(b)(6)(iii) disclosures when a ''YES'' response to ''Can this amount increase after closing?'' is disclosed. The comment explains that years or months may be used for the § 1026.37(b)(6)(iii) disclosures, consistent with comment 37(b)(6)–1. Using months for the disclosures provides more useful information for construction loans in particular, as such loans often do not exceed 12, rather than 24, months. The comment provides examples that, for a 10-month construction loan, the first bullet may disclose, ''Adjusts every mo. starting in mo. 1'' and the second bullet may disclose, ''Can go as high as $ [insert maximum possible payment] in year 1.'' The comment clarifies the maximum possible payment disclosed would be based on the maximum principal balance that could be outstanding during the construction phase. The adjustment may start in the first month (''mo. 1'') because the first payment is not likely to equal the amount computed using the appendix D assumptions when the amounts or timing of advances is unknown at or before consummation and interest is payable only on the amount advanced for the time it is outstanding.

Comment app. D–7.v.B further explains that as part of the ''First Change/Amount'' disclosure in the ''Adjustable Payment (AP) Table'' pursuant to § 1026.37(i)(5)(i), the creditor may omit and leave blank the amount or range corresponding to the first periodic principal and interest payment that may change. The timing of the first change, which is the earliest possible payment that may change under the terms of the legal obligation under comment 37(i)(5)–2, is still disclosed. This disclosure, in particular, reflects a change due to a change in the total amount advanced, but when the amounts or timing of advances is unknown at or before consummation and interest is payable only on the amount advanced for the time it is outstanding, there is not a method for computing the amount at the first change in payment. However, the other disclosures in the ''Adjustable Payment (AP) Table'' may be made without having to take an unknown quantity into account. For example, the first change may take place at the first payment, the earliest possible payment that may change, because the first payment likely may not equal the amount computed using the appendix D assumption, and the maximum payment would be based on the maximum draw that could be outstanding during the construction phase.

The reference to § 1026.37(c)(2)(i) in proposed comment app. D–7.v.B is also removed in this rule. Because the payment can range as high as the interest on the total amount of the approved loan or as little as $0.00, as noted in the comments, the proposed option to omit the § 1026.37(c)(2)(i) disclosures is not adopted. As discussed below, proposed comment app. D–7.vi adopted in this rule as comment app. D–7.v, which directly addresses the projected payments disclosures for multiple-advance construction loans, more appropriately addresses such issues.

Comment app. D–7.v.C, which addresses the increase in periodic payment disclosures for adjustable-rate construction financing, is modified for consistency with the app. D–7.v changes described above. It applies to both the separate construction disclosures and the combined construction-permanent disclosures, rather than only to separate construction disclosures as proposed. Because the § 1026.37(b)(6)(iii) bullets may be disclosed as provided in comment app. D–7.v.B, comment app. D–7.v.C explains that both the adjustable payment table and the adjustable interest rate table are included in the § 1026.37(b)(6) disclosures for adjustable-rate construction financing.

Finally, because proposed comment app. D–7.iv is not being adopted, a conforming change is being made and proposed comment app. D–7.v is renumbered as comment app. D–7.iv in this rule.

Projected Payments Table

The Bureau's Proposal

Comment app. D–7 currently addresses only the disclosure of a projected payments table under §§ 1026.37(c) and 1026.38(c). Comment app. D–7.i provides an illustration of the construction phase projected payments table disclosure if the creditor elects to disclose the construction and permanent phases as separate transactions. Comment app. D–7.ii provides an illustration of the projected payments table disclosure if the creditor elects to disclose the construction and permanent phases as a single transaction. The proposed rule would have restated comment app. D–7.i as comment app. D–7.vi.A and added clarifying language to specify that, if interest is payable only on the amount actually advanced for the time it is outstanding, the creditor uses the assumption in appendix D, part I.A.1, to determine the amount of the interest-only payment to be made during the construction phase. The proposed comment would have also clarified that comment app. D–7.i's statement that the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), applies unless the transaction has negative amortization, interest-only, or step payment features, consistent with § 1026.37(a)(10)(iii). References to the balloon payment disclosures under §§ 1026.37(b)(5), 1026.37(b)(7)(ii), and 1026.38(b) would have been added to the existing statement that the creditor must disclose the balloon payment in the projected payments table.

The proposed rule would have also restated comment app. D–7.ii as comment app. D–7.vi.B. Language consistent with informal guidance provided by the Bureau would have been added to clarify comment app. D–7.ii's statement that the projected payments table must reflect the interest-only payments during the construction phase in a first column. As proposed, the comment would have explained that the first column also reflects the amortizing payments for the permanent phase if the term of the construction phase is not a full year. This clarification would have ensured consistency with § 1026.37(c)(1)(iii)(B), which requires disclosure of a range of payments if the periodic principal and interest payment or range of payments may change during the same year as the initial periodic payment or range of payments. A clarifying revision would have also been added to proposed comment app. D–7.vi.B to explain that, if interest is payable only on the amount actually advanced for the time it is outstanding, the creditor uses the assumption in appendix D, part II.A.1 to determine the amount of the interest-only payment to be made during the construction phase.

Comments Received

A law firm commenter recommended that the Bureau incorporate the guidance from Section 14.7 of the Bureau's TILA–RESPA Integrated Disclosure Rule Small Entity Compliance Guide regarding the mortgage insurance and estimated escrow disclosures in the projected payments table for transactions where the terms of the legal obligation for the permanent phase, but not the construction phase, require mortgage insurance or escrow. This commenter also recommended that the Bureau clarify the impact of the mortgage insurance and estimated escrow disclosures on the estimated total monthly payment disclosure where the construction phase is not a full year and, therefore, the first column in the projected payments table discloses a range of payments reflecting the interest-only payments during the construction phase and the amortizing payments for the permanent phase. A vendor group commenter similarly recommended that the rule address the treatment of estimated escrow payments as they relate to single-close construction-to-permanent transactions.

Another law firm commenter stated that the regulation does not explain how to calculate the amount of the periodic payment of ''only interest'' other than directing creditors to assume that interest is ''outstanding at the contract interest rate for the entire construction period.'' This commenter provided an example of the interest-only monthly payment computed using a daily interest accrual method. The commenter requested that the Bureau validate the formula used to compute the monthly payment.

The Final Rule

As an initial matter, because proposed comment app. D–7.iv is not being adopted, proposed comment app. D–7.vi is renumbered as comment app. D–7.v in this rule. In addition, the description of the § 1026.17(c)(6)(ii) provision that is currently in the introductory paragraph of comment app. D–7, but did not appear in proposed comment app. D–7.vi, is reinstated in the introductory paragraph of comment app. D–7.v in this rule. This revision is necessary to provide the context of the ''two alternatives'' cited in the following sentence of the comment.

As discussed above concerning proposed comment app. D–7.v, comments noted the actual payment during the construction phase can range as high as the interest on the total amount of the approved loan or as little as $0.00. Nonetheless, current comment app. D–7.i and proposed comment app. D–7.vi provided that the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. To promote consistency and continuity for construction disclosures in the projected payments table, comment app. D–7.v.A as adopted in this final rule continues to require the creditor to determine the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. This means that the interest-only construction payments are not disclosed as a range of payments in the projected payments table. If a separate disclosure is used for the construction phase or if the term of the construction phase is a full year and a combined disclosure for both phases is used, only the payment determined using the appendix D assumption is disclosed in the projected payments table rather than a range of payments between $0 and the interest on the total amount of the approved loan. If a single disclosure is used for both the construction and permanent phases and the term of the construction phase is less than a full year, a range of payments reflecting the payment determined using the appendix D assumption and the amortizing payments that will begin in the first year is disclosed.

The Bureau agrees with the commenters that recommended incorporating additional discussion on disclosing escrow and mortgage insurance that was previously provided in an informal webinar by Bureau staff and incorporated into the Bureau's TILA–RESPA Integrated Disclosure Rule Small Entity Compliance Guide. That discussion is added as comment app. D–7.v.C. Comment app. D–7.v.B is also revised to include a reference to mortgage insurance and escrow payments, which are reflected in the first column of the projected payments table along with the amortizing payments of the permanent phase if the creditor elects to disclose the construction and permanent phases as a single transaction and the construction phase is not a full year.

With respect to the commenter that requested the Bureau validate the method used to compute the monthly interest payment for disclosure purposes, appendix D does not specify the method used to calculate the interest or monthly payment of the construction transaction. Appendix D only provides assumptions that creditors may use to estimate and disclose the terms of multiple advance construction loans. For example, if interest is payable only on amounts advanced, the estimated interest is computed based on the assumption that one-half the commitment amount is outstanding for the entire construction. The example that follows section I.B.4 of appendix D demonstrates how the interest-only monthly payment may be calculated using the assumptions provided, including the assumed use of monthly periods for calculation purposes. The example in the (B) column states the amount of the calculated monthly payment. The amount of the monthly payment in column (A) may be calculated by dividing the estimated interest by the number of months of the construction transaction in the example. However, these are only examples. Neither the regulation nor appendix D requires the use of monthly periods, or any other particular unit-periods. A creditor may use daily, or other, unit-periods for calculation purposes, as long as the period used is not inconsistent with the terms of the legal obligation between the creditor and the consumer.

Construction Costs as ''Other'' Costs

The Bureau's Proposal

Proposed comment app. D–7.vii.A would have explained the amount of construction costs is disclosed under the subheading ''Other'' under § 1026.37(g)(4), consistent with informal guidance provided by the Bureau and the proposed changes to § 1026.37(g)(4). This proposed comment was consistent with proposed amendments to comment 37(g)(4)–4, which would have provided that the amount of construction costs must be disclosed under the subheading ''Other'' pursuant to § 1026.37(g)(4).

Proposed comment app. D–7.vii.B would have also addressed disclosure of a portion of a construction loan's proceeds that is placed in a reserve or other account at consummation, sometimes referred to as a ''construction holdback.'' Consistent with informal guidance provided by the Bureau, the proposed comment would have explained that the amount of such an account may be disclosed separately from other construction costs or may be included in the amount disclosed for construction costs for purposes of required disclosures and calculations under §§ 1026.37 and 1026.38, at the creditor's option. The comment would also have explained that if the creditor chooses to disclose the amount of loan proceeds placed in a reserve or other account at consummation separately, the creditor may disclose the amount as a separate itemized cost, along with a separate itemized cost for the balance of the construction costs, in accordance with § 1026.37(g)(4), the amount may be labeled with any accurate term in accordance with the clear and conspicuous standard explained at comment 37(f)(5)–1, and the balance of construction costs must exclude the designated amount to avoid double counting.

Comments Received

Comments on proposed comment app. D–7.vii were generally made together with comments submitted on the proposed revision of comments 37(g)(4)–4 and 38(g)(4)–1 and, similarly, were generally unfavorable. Commenters stated that disclosure of construction costs under §§ 1026.37(g)(4) and 1026.38 (g)(4) would make the closing costs in many loans, including construction loans, appear to be enormous, causing confusion. Commenters stated that consumers would be concerned that loans were prohibitively expensive upon seeing such high ''closing costs.'' Commenters also noted that consumer testing had not been conducted for the proposed required disclosures, and disagreed with what they perceived as giving a greater priority to comparability between the Loan Estimate and the Closing Disclosure than to consumer understanding. Significant staff training and systems reprogramming were also cited as concerns by commenters. A fuller presentation of these comments is in the discussion of comment 37(g)(4)–4 above in this preamble.

However, some commenters also pointed out an issue that was specific to proposed comment app. D–7.vii. Two trade association commenters noted that proposed comment app. D–7.vii.A did not expressly refer to the alternative disclosure for transactions without a seller, which was referenced in the proposed commentary to §§ 1026.37(g)(4) and 1026.38 (g)(4). The commenters believed that not including this reference would create legal complexity and may introduce different interpretations between creditors and investors, causing confusion for the industry.

The Final Rule

The Bureau is not adopting comment app. D–7.vii as proposed but is adopting the comment with modifications in response to comments. The changes adopted are consistent with the changes made to other provisions in this rule that address construction costs. Because the disclosure of construction costs under §§ 1026.37(g)(4) and 1026.38 (g)(4) is not being required as proposed, comment app. D–7.vii as adopted is revised to describe the options available for a creditor to disclose and calculate construction costs rather than focus only on the disclosure of construction costs as ''Other costs.'' In addition, because proposed comment app. D–7.iv is not being adopted in this rule, proposed comment app. D–7.vii is renumbered as comment app. D–7.vi in this rule.

Comment app. D–7.vi, as redesignated, is renamed ''Disclosure of construction costs.'' The reference to construction costs as ''other costs'' is removed, because construction costs will no longer be disclosed as ''other costs'' under §§ 1026.37(g)(4) and 1026.38(g)(4). Proposed comment app. D–7.vii.A is redesignated as comment app. D–7.vi.A and revised to provide a description of ''construction costs,'' as costs related to the improvements to be made to the property that the consumer contracts for in connection with the financing transaction and that will be paid in whole or in part with loan proceeds. Proposed comment app. D–7.vii.A is revised to refer to costs for which the consumer contracts in connection with the financing transaction rather than costs the consumer contracts at or before the real estate closing to pay, as proposed, because it may not be clear if there is a ''real estate closing'' when the financial transaction only involves construction. Even when a ''real estate closing'' is clearly present, improvements in connection with the financing transaction may not be contracted for until shortly after the closing takes place. In such cases, as long as the creditor knows that financing the improvement is a purpose of the loan proceeds, the construction costs are in connection with the financing transaction.

Further, proposed comment app. D–7.vii.B is redesignated as comment app. D–7.vi.D. Comments app. D–7.vi.B and C as adopted in this rule describe the options available for a creditor to disclose and calculate construction costs under the Loan Estimate and Closing Disclosure, respectively.

Comment app. D–7.vi.B as adopted provides that on the Loan Estimate the creditor factors construction costs into the funds for borrower calculation under § 1026.37(h)(1)(v), or discloses these costs under § 1026.37(h)(2)(iii) in the optional alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing. Comment app. D–7.vi.C as adopted in this rule describes the options a creditor has with respect to construction costs on the Closing Disclosure: to disclose these costs under § 1026.38(j)(1)(v) in the summaries of transactions table and factor them into the funds for borrower calculation under § 1026.38(i)(4) and (6) or disclose these costs under § 1026.38(t)(5)(vii)(B) in the optional alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.

A conforming change is made to comment app. D–7.vi.D, which was proposed comment app. D–7.vii.B, by removing the reference to § 1026.37(g)(4) and replacing it with a reference to ''the disclosure and calculation options described in comments app. D–7.vi.B and C.''

Construction Loan Inspection and Handling Fees

Proposed comment app. D–7.viii provided instructions for the disclosure of construction loan inspection and handling fees consistent with informal guidance provided by the Bureau. The proposed comment explained that comment 4(a)–1.ii.A identifies inspection and handling fees for the staged disbursement of construction loan proceeds as finance charges. The proposed comment also provided cross-references to proposed comments 37(f)–3, 37(f)(6)–3, and 38(f)–2, which are discussed in the section-by-section analysis above. The Bureau believes that, by directing readers of the appendix D commentary to these other comments, proposed comment app. D–7.viii would facilitate compliance.

The Bureau did not receive any comments on proposed comment app. D–7.viii. Although the Bureau received no comments regarding this proposed comment, as stated in the discussion of comment 37(f)–3, above, the Bureau is finalizing comment app. D–7.viii as proposed with an additional clarification in response to comments received that construction loan inspection and handling fees are loan cost charges that must be added to the ''In 5 Years'' disclosure under § 1026.37(l)(1) and the total of payments disclosure under § 1026.38(o)(1) because they are disclosed under § 1026.37(f), even when they are disclosed on an addendum. Consistent with a clarification being adopted in comment 37(f)–3, a statement is added that inspection and handling fees include draw fees. In addition, because proposed comment app. D–7.iv is not being adopted in this rule, proposed comment app. D–7.viii is renumbered as comment app. D–7.vii in this rule.

Appendix H—Closed-End Forms and Clauses

The Bureau's Proposal

Pursuant to TILA section 105(b), a creditor is deemed to be in compliance with TILA's disclosure provisions with respect to other than numerical disclosures if the creditor uses any appropriate model form or clause as published by the Bureau.[115] Appendix H to Regulation Z includes blank forms illustrating the master headings, headings, subheadings, etc., that are required by §§ 1026.37 and 1026.38, *i.e.,* forms H–24(A) and (G), H–25(A) and (H) through (J), and H–28(A), (F), (I), and (J) (together, the blank forms). Appendix H to Regulation Z also includes non-blank forms providing samples of disclosures, *i.e.,* forms H–24(B) through (F), H–25(B) through (G), and H–28(B) through (E), (G), and (H) (together, the sample forms).

Current comment app. H–30 provides that forms H–24(A) through (G), H–25(A) through (J), and H–28(A) through (J), *i.e.,* both the blank forms and the sample forms, are model forms for the disclosures required under §§ 1026.37 and 1026.38 and that use of an appropriate model form is mandatory for a transaction that is a federally related mortgage loan (as defined in Regulation X). The Bureau proposed to revise comment app. H–30 to distinguish between the blank forms and the sample forms and to establish that only the blank forms are model forms.

Comments Received

Commenters, including creditors, vendors, trade associations, government sponsored enterprises (GSEs), a title insurance underwriter, and an individual attorney, opposed the proposed revisions to comment app. H–30 that would remove the sample forms' status as model forms, and thus remove the existing safe harbor protection afforded by use of the sample forms. A title insurance underwriter, a trade association, and GSE commenters noted the Bureau's statement in the TILA–RESPA Final Rule that the sample forms ''illustrate the disclosures required under §§ 1026.37 and 1026.38, for particular types of transactions.''[116] Trade association commenters challenged the Bureau's legal authority to revise comment app. H–30 as proposed and stated that reversing the decision made in the TILA–RESPA Final Rule at this point would appear to be arbitrary and capricious.

GSE commenters stated that the sample forms were critical to the GSEs' development of the Uniform Closing Dataset (UCD) and that it is important to preserve the safe harbor protection afforded by use of the sample forms. As an example of the importance of safe harbor protection, a title insurance underwriter cited § 1026.37(b)(6), which, for each amount required to be disclosed by § 1026.37(b)(1) through (3), requires creditors to provide a statement of whether the amount may increase after consummation as an affirmative or negative answer to the question, and under such question disclosed as a subheading, ''Can this amount increase after closing?'' Moreover, in the case of an affirmative answer, § 1026.37(b)(6) requires creditors to provide additional information specified in § 1026.37(b)(6)(i) through (iii), as applicable. The title insurance underwriter commented that, without the status of the sample forms as model forms, there would be no safe harbor regarding the formatting or organization of the disclosures required under § 1026.37(b)(6). The title insurance underwriter stated that the proposed revisions to comment app. H–30 would increase legal risk for creditors, which could potentially increase costs for consumers.

Some commenters, including a creditor, a title insurance underwriter, a trade association, and a vendor group, requested that the Bureau conduct a systematic review of the sample forms to address errors and for consistency with the final rule. A trade association commenter requested that the Bureau publish more details regarding the hypothetical transactions and assumptions that underlie the various existing sample forms. That commenter further requested that the Bureau develop additional sample forms to demonstrate alternative approaches for disclosing the same hypothetical transactions that underlie the existing sample forms.

The Final Rule

For the reasons discussed below, the Bureau is not adopting the proposed revisions to current comment app. H–30. Accordingly, use of an appropriate sample form, if properly completed with accurate content, constitutes compliance with the requirements of §§ 1026.37 or 1026.38 and associated commentary, as applicable. In part in response to commenters' concerns, the Bureau concludes that maintaining the current text of comment app. H–30 and the sample forms' status as model forms will facilitate compliance and promote greater consistency in formatting the disclosures required under §§ 1026.37 and 1026.38. Such consistency, in turn, can facilitate comparison shopping for consumers.

In finalizing the current proposal, the Bureau has not pursued commenters' suggestions to develop additional sample forms, publish more details regarding the forms' underlying assumptions, and conduct a systematic review of the forms, because such actions would be very time consuming and resource-intensive, whereas the Bureau's focus in this rulemaking is providing additional clarity in an expeditious manner.

VI. Effective Date

A. The Bureau's Proposal

The Bureau proposed an effective date 120 days after publication in the **Federal Register** of any final rule based on the proposal. The Bureau also requested comment on when the changes proposed should be effective. In addition, the Bureau requested comment on whether there is a better or worse time of year for any of the proposed changes to become effective. The Bureau also requested comment on whether specific changes, as detailed in the section-by-section analysis of the proposal, should have a separate effective date and, if so, whether it should be earlier or later than the general effective date and why. In the proposal, the Bureau stated that it believed that the proposed changes should enable industry to implement the provisions set forth in the TILA–RESPA Rule more cost-effectively and that industry should be able to implement these changes relatively quickly. At the same time, the Bureau stated that it recognized that some of the proposed changes might require changes to systems or procedures.

In addition, the Bureau proposed revisions to comment 1(d)(5)–1 related to the implementation timeframe for the escrow cancellation notice required by § 1026.20(e) and the partial payment disclosure required by § 1026.39(d)(5). Those revisions are discussed further in the section-by-section analysis of § 1026.1(d)(5).

B. Comments Received

In response to the proposed rule, the Bureau received many comments concerning the effective date and implementation period. One consumer group commenter indicated that the changes in the final rule should be applied prospectively only. Thus, the changes should only be effective to applications received on or after a date certain. The commenter stated that such prospective application of the changes would create clarity for enforcement agencies and consumers.

A large number of industry commenters addressed the effective date and implementation period issues. Some industry commenters suggested a single implementation period applicable to all changes made in the final rule. These industry commenters indicated that 120 days was not adequate to implement the changes. They indicated they needed additional time to complete software updates, to conduct testing and self-audits, to update training policies, and to complete staff training. These commenters' suggestions for the implementation period ranged from 6 months to 24 months. One commenter suggested 6 months, one commenter suggested 6 to 9 months, one commenter suggested 18 months, one commenter suggested 24 months, and the predominance of commenters suggested 12 months. One commenter suggested that the implementation period should extend to the later of (1) 12 months or (2) 180 days after the effective date for all other regulations related to mortgages that have recently been finalized by the Bureau.

Several industry commenters suggested that the implementation timeframe should vary based on the particular change. One commenter suggested a 30-day implementation period for changes requiring little or no reprogramming and a 180-day

[115] 15 U.S.C. 1604(b). A creditor may delete any information which is not required by TILA or rearrange the format, if in making such deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. *Id.*

[116] 78 FR 79730, 80064 (Dec. 31, 2013).

implementation period for other changes, such as changes to the calculating cash to close table, and the total of payments disclosure. One commenter recommended an earlier implementation period for changes related to the official interpretations, but recommended a voluntary compliance period coupled with a mandatory compliance deadline of 12 months for provisions that it perceived as requiring changes to the forms, including the calculating cash to close table. One commenter indicated that changes that require little reprogramming should be effective immediately upon publication. This commenter indicated that, for other changes, the effective date should be 180 days from publication of the final rule. One commenter suggested that certain changes that do not require software upgrades should be effective upon finalization and asked the Bureau to work with vendors to determine an appropriate effective date for other provisions.

Several industry commenters suggested that the Bureau allow optional compliance. One commenter indicated that an optional compliance period would allow changes to loan origination systems to be ''rolled out'' prior to the final compliance date, so that all of the changes do not have to occur on one day. This commenter stated that an optional compliance period would ease the transition process for both providers of loan origination systems and for the users of the systems who must learn about and understand the changes being implemented. One commenter stated that because some of the proposed changes are based on unofficial guidance previously provided by the Bureau's staff, many creditors are already complying with those proposed changes. This commenter indicated that the Bureau should permit optional compliance with the final changes so that creditors already complying with the final changes are not penalized.

Several industry commenters asked that certain changes be made retroactive. For example, one industry commenter indicated that technical, non-substantive changes (*i.e.,* typographical errors, incorrect rule references, and other minor modifications) should be effective as quickly as possible and should apply retroactively. Another industry commenter recommended that certain amendments, such as the proposed changes related to cooperative units and the proposed changes related to the sharing of Closing Disclosures, should be effective for all loan applications received on or after October 3, 2015. One industry commenter recommended retroactivity for proposed changes related to tolerances for the total of payments for transactions for which creditors received applications before the effective date of the tolerance. One industry commenter indicated that, where the Bureau is memorializing unofficial guidance, the provisions should be effective upon rule finalization for all transactions originated on or after October 3, 2015. One industry commenter indicated that the Bureau should provide retroactive protection for clarifications of ambiguous provisions and formal adoption of informal guidance previously provided by the Bureau. This commenter also indicated that any cure or correction provisions that are adopted should be retroactive. The commenter also asked the Bureau to confirm that the Bureau's ''good faith'' approach to oversight of the TILA–RESPA integrated disclosures is still in effect and will remain in effect during the implementation period after the proposal is finalized.

C. The Final Rule

Overview of the Final Rule

Based on the requests that creditors be allowed to implement some aspects of the final rule soon after issuance, the amendments in the final rule (2017 TILA–RESPA Amendments) will become effective on October 10, 2017. The Bureau is further allowing optional compliance until compliance with the 2017 TILA–RESPA Amendments becomes mandatory. As discussed in more detail below, the Bureau believes that an optional compliance period is the best framework for addressing the specific implementation challenges that are present in this rulemaking as identified in the proposal and in comments. Therefore, compliance with the 2017 TILA–RESPA Amendments is mandatory only with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018 (except for compliance with the escrow cancellation notice required by § 1026.20(e) and the partial payment policy disclosure required by § 1026.39(d)(5) discussed in the section-by-section analysis of § 1026.1(d)(5)). Except with respect to the escrow cancellation notice and the partial payment disclosure requirements, for transactions for which a creditor or mortgage broker received an application prior to October 1, 2018, from the effective date of the 2017 TILA–RESPA Amendments, a person may comply either with Regulation Z (as interpreted by the commentary) as it is in effect (including the amendments set forth in the 2017 TILA–RESPA Amendments) or as it was in effect on October 9, 2017, together with any amendments that become effective other than the 2017 TILA–RESPA Amendments.

After considering the comments, the Bureau believes that it is appropriate for several reasons to require compliance with the 2017 TILA–RESPA Amendments only with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018 (except for compliance with the escrow cancellation notice and partial payment policy disclosure requirements discussed above with which compliance will become mandatory on October 1, 2018, regardless of when an application was received). The final rule will require several changes to systems used to produce the TILA–RESPA integrated disclosure forms. The Bureau believes that mandating compliance with the 2017 TILA–RESPA Amendments only with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018, will provide creditors sufficient time to complete software updates, to conduct testing and self-audits, to update training policies, and to complete staff training that may be needed to implement the changes in the final rule. The Bureau does not believe that a longer timeframe, as requested by a small number of commenters, is necessary given the nature of the changes in this final rule.

The Bureau believes that it is appropriate to allow optional compliance with the 2017 TILA–RESPA Amendments for several reasons. As the Bureau noted in its proposal, this final rule does not reopen major policy decisions made in the TILA–RESPA Final Rule. This final rule generally clarifies ambiguous provisions, including by memorializing past informal guidance, and makes technical amendments. The Bureau believes many creditors, either in reliance on informal guidance or otherwise, currently may be complying with some of the final rule's clarifications. At the same time, given that the Bureau is clarifying existing ambiguity, the Bureau recognizes that not all creditors have already adopted processes in compliance with the final rule and that creditors are likely at various points along a continuum of adopting practices in compliance with the final rule. Therefore, the Bureau believes it reasonable to grant creditors an interim period in which to phase in their compliance with the final rule, in accordance with their individual circumstances. As to the purely technical and clarifying amendments, the Bureau does not believe that this phased-in optional compliance period poses any risks of consumer harm.

The final rule also contains a few substantive changes to the TILA–RESPA Rule in a limited number of situations in which the Bureau has identified potential discrete solutions to specific implementation challenges. While the Bureau believes that these limited substantive changes will generally benefit consumers and industry alike by providing greater clarity for implementation, the Bureau also does not believe that permitting a phased-in optional compliance period for these limited substantive changes is likely to cause consumer harm. These substantive changes are limited and do not affect the content of the disclosures giving rise to statutory damages. Moreover, the changes to the disclosures do not alter the bottom-line dollar disclosures consumers are most likely to rely on in shopping for and closing on a mortgage, thereby minimizing the risk of consumer harm during the optional compliance period. For example, a creditor phasing in changes relating to the calculating cash to close table would nonetheless be required to disclose a final cash to close amount that is consistent with the summaries of transactions table. In general, the Bureau believes, therefore, that the minor variations in disclosure possible during the limited duration of the optional compliance period will not cause significant consumer confusion, whether such minor variations occur as between a Loan Estimate and Closing Disclosure issued by the same creditor or between Loan Estimates issued by two different creditors, although creditors may not phase in compliance in a way that violates provisions of Regulation Z (as interpreted by the commentary) unchanged by this final rule, as discussed further below in the *Details of the Final Rule* section.

The Bureau also believes that industry's overall compliance with the TILA–RESPA Rule will be facilitated by the implementation of these limited substantive changes and that therefore there is both a consumer and industry benefit to allowing creditors to implement these changes as quickly as possible after the effective date. At the same time, the commenters clearly indicated that not all creditors will be able to implement these changes on the same schedule. The flexibility afforded under the optional compliance period may help creditors implement the provisions of the final rule more quickly and easily.

For these reasons, the Bureau agrees with several commenters that it is appropriate to allow creditors flexibility to comply with the 2017 TILA–RESPA Amendments all at one time, or to phase in the changes prior to the mandatory compliance date. After considering the comments, the Bureau does not believe that it would be optimal in these circumstances for the Bureau to impose a detailed schedule for creditors to phase in the changes required by this final rule, for example by establishing multiple effective dates that are staggered over time. Thus, after the effective date of the 2017 TILA–RESPA Amendments, creditors generally may phase in the 2017 TILA–RESPA Amendments as best comports with their business models, whether based on application dates for specific provisions or even during the course of a transaction, although such phased-in compliance may not place the creditor in violation of provisions of Regulation Z (as interpreted by the commentary) unchanged by this final rule, as discussed further below in the *Details of the Final Rule* section. The Bureau bases this decision on the general clarifying purpose of the final rule coupled with the limited, technical nature of the few substantive changes. Such expansive flexibility during the optional compliance period may not be appropriate in the context of other final rules with more significant substantive changes, more novel (as opposed to clarifying) amendments, or provisions whose staggered implementation posed a greater risk of consumer harm. Additionally, this approach may not be appropriate in circumstances where the provisions of the final rule were sufficiently related that implementing them piecemeal would cause significant conflict with either the existing rule or the final rule.

With respect to some commenters' requests that the Bureau make provisions of the final rule retroactive, the Bureau declines to do so. Retroactive rulemaking is disfavored by the courts, and commenters have not established why it would be appropriate here.

As discussed above, one commenter asked the Bureau to confirm that the Bureau's ''good faith'' approach to oversight of the TILA–RESPA integrated disclosures is still in effect and will remain in effect during the implementation period after the proposal is finalized. The Director of the Bureau publicly stated, in the early days after the TILA–RESPA Final Rule became effective in 2015, that the Bureau's oversight would be sensitive to the progress made by those entities that have squarely focused on making good-faith efforts to come into compliance with the TILA–RESPA Final Rule on time.[117] The Bureau will take this approach in its oversight of efforts by creditors to come into compliance by the mandatory compliance date with the changes in this final rule.

Details of the Final Rule

After considering the comments received and for the reasons discussed above, the Bureau is establishing an effective date, optional compliance provision, and mandatory compliance date for this final rule. Comment 1(d)(5)–2 sets forth the effective date, the optional compliance provision, and the mandatory compliance date.

The effective date is 60 days after publication in the **Federal Register**. Consistent with the practice of other agencies in similar contexts, the 2017 TILA–RESPA Amendments will be incorporated into the Code of Federal Regulations on the effective date, but the amendments will not yet be mandatory. Instead, compliance with the July 2017 TILA–RESPA Amendments is only mandatory with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018 (except for compliance with the escrow cancellation notice required by § 1026.20(e) and the partial payment policy disclosure required by § 1026.39(d)(5) discussed in comment 1(d)(5)–1.iv, which, starting October 1, 2018, apply without regard to when the application for the covered loan was received).

Except as discussed in comment 1(d)(5)–1.iv with respect to the escrow cancellation notice and the partial payment disclosure, for transactions for which a creditor or mortgage broker received an application prior to October 1, 2018, from the effective date of the 2017 TILA–RESPA Amendments, a person has the option of complying with Regulation Z (as interpreted by the commentary) either as it is in effect or as it was in effect on October 9, 2017, together with any amendments that become effective other than the 2017 TILA–RESPA Amendments. With respect to transactions subject to the optional compliance provision, this means that an act or omission violates Regulation Z (as interpreted by the commentary) only if the act or omission violates *both:* (1) Regulation Z (as interpreted by the commentary), as it is

[117] *See, e.g.,* Letter from Director Richard Cordray, CFPB, to Industry Trades (April 28, 2015); Letter from Director Richard Cordray, CFPB, to Representatives Andy Barr and Carolyn B. Maloney, U.S. House of Representatives (June 3, 2015).

in effect; *and* (2) Regulation Z (as interpreted by the commentary), as it was in effect on October 9, 2017, together with any amendments that become effective other than the 2017 TILA–RESPA Amendments. Consistent with § 1026.25, a creditor must keep records of such compliance and permit the agency responsible for enforcing Regulation Z with respect to that creditor to inspect those records.

Under the optional compliance provision, as discussed above, a creditor is permitted to comply with the 2017 TILA–RESPA Amendments all at one time, or to phase in the changes prior to the mandatory compliance date whether based on application dates or during the course of a transaction, although such phased-in compliance may not place the creditor in violation of provisions of Regulation Z (as interpreted by the commentary) unchanged by this final rule, as discussed further below. For example, current § 1026.37(l)(3) requires creditors to disclose the total interest percentage (TIP) and provides that the TIP is the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the principal of the loan. Among other things, the final rule revises comment 37(l)(3)–1 to state that prepaid interest that is disclosed as a negative number under §§ 1026.37(g)(2) or 1026.38(g)(2) must be included as a negative value when calculating the TIP. With respect to transactions subject to the optional compliance provision, a creditor may either (1) include negative prepaid interest into the TIP calculation as a negative value as discussed in final comment 37(l)(3)–1; or (2) not include negative prepaid interest into the TIP calculation because the current regulation and commentary do not restrict how a creditor factors negative prepaid interest into the TIP calculation. As another example, current § 1026.38(e) and 1026.38(i) provide that, in the Closing Disclosure's calculating cash to close table, the amounts that are required to be disclosed under the subheading ''Loan Estimate'' are the amounts disclosed on the Loan Estimate. Sections 1026.38(e) and 1026.38(i) do not specify which Loan Estimate's amounts should be used if multiple Loan Estimates have been provided. The final rule adds comments 38(e)–6 and 38(i)–5 to specify that the amounts required to be disclosed under the subheading ''Loan Estimate'' on the Closing Disclosure's calculating cash to close table are the amounts disclosed on the most recent Loan Estimate provided to the consumer. With respect to transactions subject to the optional compliance provision, a creditor may disclose, under the subheading ''Loan Estimate'' on the Closing Disclosure's calculating cash to close table, the amounts from any Loan Estimate provided to the consumer, including the most recent Loan Estimate provided to the consumer.

Notwithstanding the flexibility discussed above to phase in the 2017 TILA–RESPA Amendments prior to the mandatory compliance date, creditors cannot phase in the amendments in a way that violates provisions of Regulation Z (as interpreted by the commentary) unchanged by this final rule, because doing so would not comply with either of the permissible versions of Regulation Z (as interpreted by the commentary). For example, a creditor could not, during the optional compliance period, provide a RESPA good faith estimate followed by a Closing Disclosure to a consumer in a transaction secured by a cooperative unit, even though the creditor is permitted to provide either the RESPA disclosures (the good faith estimate and settlement statement) or the Integrated Disclosures (the Loan Estimate and Closing Disclosure) for transactions secured by cooperative units where State law does not treat the cooperative unit as real property during the optional compliance period. The creditor could not provide a RESPA good faith estimate and then provide a Closing Disclosure (instead of a RESPA settlement statement) because, in doing so, the creditor would violate § 1026.38(i) in both permissible versions of Regulation Z, which requires that information that was disclosed on the Loan Estimate be included on the Closing Disclosure. Thus, during the optional compliance period, if State law provides that a transaction secured by a cooperative unit is not a transaction secured by real property, for a particular cooperative transaction, if the creditor provides a RESPA good faith estimate, the creditor would be required to provide a RESPA settlement statement rather than a Closing Disclosure. Conversely, if the creditor provides a Loan Estimate for a particular cooperative transaction described above, the creditor would be required to provide a Closing Disclosure. At the same time, creditors could still choose to phase in compliance for other 2017 TILA–RESPA Amendments in cooperative unit transactions that are disclosed using the Loan Estimate and the Closing Disclosure, even within the course of a transaction, for example, with respect to the provisions relating to the calculating cash to close table, so long as doing so complies with either of the two permissible versions of Regulation Z (as interpreted by the commentary).

VII. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts.[118] The Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

This final rule makes three substantive changes to the TILA–RESPA Final Rule, along with a number of technical corrections and clarifications: Tolerances for the total of payments, adjustment of the partial exemption under § 1026.3(h), and coverage of loans secured by cooperative units, whether or not treated as real property under State law. The potential benefits and costs of the provisions contained in this final rule are evaluated relative to the baseline where the current provisions of the TILA–RESPA Rule remain in place.

The first of these three substantive changes provides tolerances for the total of payments that parallel the existing tolerances for the finance charge. Prior to the TILA–RESPA Final Rule, the calculation of the total of payments was based directly on the finance charge. As a result, the disclosure of the total of payments was generally subject to the statutory tolerances for the finance charge and disclosures affected by the finance charge. The Bureau modified the calculation of the total of payments in the TILA–RESPA Final Rule, which may have introduced ambiguity as to whether the total of payments is a disclosure affected by the disclosed finance charge and therefore subject to the same tolerances. To apply the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge

[118] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a 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.

unambiguously to the total of payments on the Closing Disclosure, the Bureau revises § 1026.38(o)(1).

The second change revises the partial exemption from the TILA–RESPA integrated disclosure requirements at § 1026.3(h), which, as cross-referenced at Regulation X § 1024.5(d)(2), also provides an exemption from the RESPA disclosures. If a creditor is not subject to the TILA–RESPA integrated disclosure requirements and is not eligible for the partial exemption under § 1026.3(h), the creditor must provide the pre-existing RESPA disclosures. The partial exemption often applies to low-cost down payment or other types of housing assistance loans originated by housing finance agencies (HFAs) or by creditors that partner with HFAs and originate loans in accord with HFA guidelines. The partial exemption was designed to facilitate such low cost lending by HFAs and their partners in the recognition that such loans provide consumers with significant benefits.

The Bureau has heard from HFAs and others that, in some jurisdictions, the applicability of the partial exemption has been limited. Under the current rule, in order to satisfy the criteria for the partial exemption, the total costs of the loan payable by the consumer at consummation, including transfer taxes and recording fees, cannot exceed 1 percent of the total amount of credit extended. Many HFAs have told the Bureau that, due to the increase in both transfer taxes and recording fees in recent years and the small size of many of these housing assistance loans, often less than $5,000, these loans often have upfront costs exceeding the 1-percent threshold. Consequently, these loans do not meet criteria for the partial exemption in current § 1026.3(h)(5) and are not eligible for the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). This means that for loans that are not subject to the TILA–RESPA integrated disclosure requirements, creditors must continue to provide the RESPA disclosures.

Following the introduction of the TILA–RESPA integrated disclosures, some vendors and loan originator systems no longer support the RESPA disclosures. Although the RESPA disclosures are still required for other loan types, such as reverse mortgages, many lenders do not offer such products, and those lenders that do offer such products often do so through separate divisions that do not engage with, or operate on separate systems that do not support, housing assistance loan programs. In addition, software systems used by HFAs may no longer support the RESPA disclosures, making it necessary to complete RESPA disclosures manually. Manual completion of the disclosures, while compliant, may be costly and error-prone. As a result of these additional difficulties, some creditors may be less willing to work with HFAs and other organizations to continue providing these housing assistance loans. As revised, § 1026.3(h)(5) makes explicit that transfer taxes are among the permissible costs for these loans and provides that neither transfer taxes nor recording fees count towards the 1-percent threshold, thus expanding the scope of the partial exemption for the low-cost and deferred or contingent repayment lending envisioned by § 1026.3(h). Additionally, the final rule revises § 1026.3(h)(6) to permit creditors to provide either the TILA disclosures described in § 1026.18 or the Loan Estimate and Closing Disclosure described in § 1026.19(e) and (f), respectively, to meet the criteria for the partial exemption. The Bureau believes the flexibility provided by final § 1026.3(h)(6) will further expand access to the partial exemption.

The third change is to include loans secured by cooperative units in the TILA–RESPA Rule's coverage, whether or not cooperative units are treated as real property under applicable State law. As discussed in the section-by-section analysis of § 1026.19, State law varies, sometimes even within the same State, as to whether cooperative units are treated as real property. This change creates uniform application where integrated disclosures are issued for all covered transactions secured by cooperative units.

The final rule also includes a variety of technical corrections and clarifications, some of which may require one-time reprogramming costs, but otherwise the Bureau generally believes those changes to be burden reducing or burden neutral.

B. Potential Benefits and Costs to Consumers and Covered Persons

Tolerance for Total of Payments

Under this final rule, the same tolerances apply to the total of payments as apply, by statute, to the finance charge and disclosures affected by the finance charge. Because the existing rule does not provide for a tolerance for the total of payments, other than to the extent a total of payments misdisclosure results from a misdisclosure of the finance charge, under the existing rule, any misdisclosure of the total of payments that does not result from a misdisclosure of the finance charge could potentially subject a creditor to liability under TILA.

The Bureau believes that the adopted change will benefit creditors, in the limited circumstances where a small, within tolerance, misdisclosure in the total of payments occurs. Creditors and their assignees would be less likely to face litigation, and its accompanying costs and risks, over such errors.

The Bureau does not believe that creditors would bear any associated costs from the adopted provision, aside from one-time reprogramming costs, for those creditors that use proprietary software systems.

To the extent that creditors restrict credit in response to additional litigation or secondary market risks given the absence of explicit tolerances for the total of payments, the adopted provision would benefit consumers in the form of expanded credit or a reduced cost of credit.

Excluding Recording Fees and Transfer Taxes From § 1026.3(h) Exemption Requirements

Under this final rule, recording fees and transfer taxes will be excluded from the calculation of the 1-percent threshold (as specified in § 1026.3(h)(5)). As a result, the § 1026.3(h) partial exemption will be available for some loans that currently do not satisfy § 1026.3(h)(5) but satisfy the other provisions of § 1026.3(h). Additionally, under this final rule, creditors issuing loans that satisfy the criteria in § 1026.3(h), and thus qualify for the partial exemption in Regulation X § 1024.5(d)(2), will be exempted from providing the RESPA disclosures and will have the choice to provide either a TILA disclosure (described in § 1026.18) or a Loan Estimate and Closing Disclosure (described in § 1026.19(e) and (f), respectively).

These revisions benefit creditors by allowing them to provide the more streamlined disclosures described in § 1026.18 or the Loan Estimate and Closing Disclosure described in § 1026.19(e) and (f), respectively (without also having to provide the special information booklet described in § 1026.19(g)), in connection with loans that satisfy the criteria for the partial exemption at § 1026.3(h). In particular, more housing assistance loans originated by HFAs and others will qualify for the partial exemption, thereby reducing costs incurred under the baseline (described above), and increasing the wiliness of creditors to work with HFAs and other organizations in providing housing assistance loans. The Bureau does not believe that creditors would bear any associated costs from the adopted amendments to § 1026.3(h).

This provision may benefit consumers by making down payment assistance loans and other non-interest bearing housing assistance loans potentially more accessible. While the Bureau notes that the § 1026.18 disclosures do not require the provision of the full level of detailed disclosures required either by RESPA or under the TILA–RESPA integrated disclosure requirements, the loans eligible for the partial exemption at § 1026.3(h) generally have a simpler cost structure that is adequately communicated by the § 1026.18 TILA disclosures.

Including Cooperatives in the Coverage of the TILA–RESPA Final Rule

Under this final rule, consumer credit transactions secured by a cooperative unit will be covered by the TILA–RESPA Rule, whether or not applicable State law treats cooperative units as real property. The adopted provision benefits creditors who originate mortgages on cooperative units by eliminating any uncertainty regarding the applicable disclosures. Creditors who currently issue RESPA disclosures for loans secured by cooperative units would have to switch to the integrated disclosure on such loans. The Bureau believes the cost of such change to be minimal: The systems that generate the integrated disclosures must already be in place for other types of property.

The adopted provision may benefit consumers who borrow against cooperative units in States where such units are treated as personal property under applicable State law. Such consumers will receive an integrated disclosure which, the Bureau believes, is better designed to communicate cost information than is the legacy RESPA disclosure.

Other Technical Corrections and Clarifications

This final rule contains numerous technical corrections and clarifications. Although some of them may require a one-time reprogramming cost, the Bureau does not believe these changes will increase ongoing origination costs. The Bureau believes creditors will generally benefit from the adopted changes through greater clarity, and in some cases, additional optionality, regarding compliance with existing law.

Consumers would benefit from these changes by receiving more timely and more accurate disclosures.

C. Impact on Covered Persons With No More Than $10 Billion in Assets

The Bureau believes that covered persons with no more than $10 billion in assets will not be differentially affected by any of the adopted provisions. One possible exception is creditors that provide loans that satisfy criteria in § 1026.3(h): If the majority of such creditors have $10 billion or less in assets, the exemption of recording fees and transfer taxes from the § 1026.3(h)(5) 1-percent threshold and the permissible provision of the Loan Estimate and Closing Disclosure under § 1026.3(h)(6) would create a disproportional benefit for covered persons in that asset category.

D. Impact on Access to Credit

As pointed out above, the exemption of recording fees and transfer taxes from the § 1026.3(h)(5) 1-percent threshold and the increased flexibility in the permitted disclosures for loans that satisfy the criteria in § 1026.3(h) has the potential to improve access to housing assistance loans for consumers. Generally, a reduction in ambiguity regarding compliance with the law may potentially improve access to credit for all consumers. None of the changes is likely to have an adverse impact on access to credit.

E. Impact on Rural Areas

The Bureau believes that none of the changes is likely to have an adverse impact on consumers in rural areas.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (the 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 nonprofit organizations. The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

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. 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.

The undersigned certified that the proposal would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. The Bureau's conclusion that the rule will not have a significant economic impact on a substantial number of small entities is unchanged. Therefore, a FRFA is not required.[119]

Accordingly, the undersigned hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to Regulations Z and X have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170–0015 (Regulation Z) and 3170–0016 (Regulation X). Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule will not impose any significant change in ongoing the paperwork burden on covered persons. Some of the changes would require a one-time reprogramming cost.

List of Subjects in 12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

[119] 5 U.S.C. 605(b).

Subpart A—General

■ 2. Section 1026.1 is amended by revising paragraph (d)(5) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

* * * * *

(d) * * *

(5) Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end credit transactions and open-end credit plans that have rates or fees above specified amounts or certain prepayment penalties. Section 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 1026.34 prohibits specific acts and practices in connection with high-cost mortgages, as defined in § 1026.32(a). Section 1026.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 1026.35(a). Section 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling. Sections 1026.37 and 1026.38 set forth special disclosure requirements for certain closed-end transactions secured by real property or a cooperative unit, as required by § 1026.19(e) and (f).

* * * * *

■ 3. Section 1026.3 is amended by revising paragraph (h) introductory text and paragraphs (h)(5) and (6) to read as follows:

§ 1026.3 Exempt transactions.

* * * * *

(h) *Partial exemption for certain mortgage loans.* The special disclosure requirements in § 1026.19(g) and, unless the creditor chooses to provide the disclosures described in § 1026.19(e) and (f), in § 1026.19(e) and (f) do not apply to a transaction that satisfies all of the following criteria:

* * * * *

(5)(i) The costs payable by the consumer in connection with the transaction at consummation are limited to:

(A) Recording fees;

(B) Transfer taxes;

(C) A bona fide and reasonable application fee; and

(D) A bona fide and reasonable fee for housing counseling services; and

(ii) The total of costs payable by the consumer under paragraph (h)(5)(i)(C) and (D) of this section is less than 1 percent of the amount of credit extended; and

(6) The following disclosures are provided:

(i) Disclosures described in § 1026.18 that comply with this part; or

(ii) Alternatively, disclosures described in § 1026.19(e) and (f) that comply with this part.

Subpart C—Closed-End Credit

■ 4. Section 1026.19 is amended by revising the paragraph (e) heading, paragraphs (e)(1)(i), (e)(3)(iii), (e)(3)(iv)(E) and (F), the paragraph (f) heading, and paragraphs (f)(1)(i), (f)(4)(i), and (g)(1) to read as follows:

§ 1026.19 Certain mortgage and variable-rate transactions.

* * * * *

(e) *Mortgage loans—early disclosures*—(1) *Provision of disclosures*—(i) *Creditor.* In a closed-end consumer credit transaction secured by real property or a cooperative unit, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with good faith estimates of the disclosures in § 1026.37.

* * * * *

(3) * * *

(iii) *Variations permitted for certain charges.* An estimate of any of the charges specified in this paragraph (e)(3)(iii) is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under paragraph (e)(1)(i) of this section. For purposes of paragraph (e)(1)(i) of this section, good faith is determined under this paragraph (e)(3)(iii) even if such charges are paid to the creditor or affiliates of the creditor, so long as the charges are bona fide:

(A) Prepaid interest;

(B) Property insurance premiums;

(C) Amounts placed into an escrow, impound, reserve, or similar account;

(D) Charges paid to third-party service providers selected by the consumer consistent with paragraph (e)(1)(vi)(A) of this section that are not on the list provided under paragraph (e)(1)(vi)(C) of this section; and

(E) Property taxes and other charges paid for third-party services not required by the creditor.

(iv) * * *

(E) *Expiration.* The consumer indicates an intent to proceed with the transaction more than 10 business days, or more than any additional number of days specified by the creditor before the offer expires, after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section.

(F) *Delayed settlement date on a construction loan.* In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph (e)(3)(iv) of this section.

* * * * *

(f) *Mortgage loans—final disclosures*—(1) *Provision of disclosures*—(i) *Scope.* In a transaction subject to paragraph (e)(1)(i) of this section, the creditor shall provide the consumer with the disclosures required under § 1026.38 reflecting the actual terms of the transaction.

* * * * *

(4) *Transactions involving a seller*—(i) *Provision to seller.* In a transaction subject to paragraph (e)(1)(i) of this section that involves a seller, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.

* * * * *

(g) *Special information booklet at time of application*—(1) *Creditor to provide special information booklet.* Except as provided in paragraphs (g)(1)(ii) and (iii) of this section, the creditor shall provide a copy of the special information booklet (required pursuant to section 5 of the Real Estate Settlement Procedures Act (12 U.S.C. 2604) to help consumers applying for federally related mortgage loans understand the nature and cost of real estate settlement services) to a consumer who applies for a consumer credit transaction secured by real property or a cooperative unit.

(i) The creditor shall deliver or place in the mail the special information booklet not later than three business days after the consumer's application is received. However, if the creditor denies the consumer's application before the end of the three-business-day period, the creditor need not provide the booklet. If a consumer uses a mortgage broker, the mortgage broker shall provide the special information booklet and the creditor need not do so.

(ii) In the case of a home equity line of credit subject to § 1026.40, a creditor or mortgage broker that provides the consumer with a copy of the brochure entitled ''When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit,'' or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(iii) The creditor or mortgage broker need not provide the booklet to the consumer for a transaction, the purpose of which is not the purchase of a one-to-four family residential property, including, but not limited to, the following:

(A) Refinancing transactions;

(B) Closed-end loans secured by a subordinate lien; and

(C) Reverse mortgages.

* * * * *

■ 5. Section 1026.23 is amended by revising paragraphs (g)(1) and (2) and (h)(2) to read as follows:

§ 1026.23 Right of rescission.

* * * * *

(g) *Tolerances for accuracy*—(1) *One-half of 1 percent tolerance.* Except as provided in paragraphs (g)(2) and (h)(2) of this section:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(2) *One percent tolerance.* In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 1026.32), if there is no new advance and no consolidation of existing loans:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(h) * * *

(2) *Tolerance for disclosures.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than $35; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than $35; or

(B) Is greater than the amount required to be disclosed.

Subpart D—Miscellaneous

■ 6. Section 1026.25 is amended by revising the paragraph (c)(1) heading to read as follows:

§ 1026.25 Record retention.

* * * * *

(c) * * *

(1) *Records related to requirements for loans secured by real property or a cooperative unit*—* * *

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 7. Section 1026.37 is amended by revising paragraphs (b) introductory text, (b)(1), (c)(5)(i), (d)(2) introductory text, (d)(2)(i), (h)(1)(i), (h)(1)(iii), (h)(1)(v), (h)(1)(vii), (h)(2) introductory text, (h)(2)(ii) and (iii), and (o)(4) to read as follows:

§ 1026.37 Content of disclosures for certain mortgage transactions (Loan Estimate).

* * * * *

(b) *Loan terms.* A separate table under the heading ''Loan Terms'' that contains the following information and that satisfies the following requirements:

(1) *Loan amount.* The total amount the consumer will borrow, as reflected by the face amount of the note, labeled ''Loan Amount.''

* * * * *

(c) * * *

(5) * * *

(i) The taxable assessed value of the real property or cooperative unit securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction, for property taxes; and

* * * * *

(d) * * *

(2) *Optional alternative table for transactions without a seller or for simultaneous subordinate financing.* For transactions that do not involve a seller or for simultaneous subordinate financing, instead of the amount and statements described in paragraph (d)(1)(ii) of this section, the creditor may alternatively disclose, using the label ''Cash to Close'':

(i) The amount calculated in accordance with paragraph (h)(2)(iv) of this section;

* * * * *

(h) * * *

(1) * * *

(i) *Total closing costs.* The amount disclosed under paragraph (g)(6) of this section, labeled ''Total Closing Costs'';

* * * * *

(iii) *Down payment and other funds from borrower.* Labeled ''Down Payment/Funds from Borrower'':

(A)(*1*) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, the amount determined by subtracting the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) from the sale price of the property disclosed under paragraph (a)(7)(i) of this section, except as required by paragraph (h)(1)(iii)(A)(*2*) of this section;

(*2*) In a purchase transaction as defined in paragraph (a)(9)(i) of this section that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price of the property disclosed under paragraph (a)(7)(i) of this section, the amount of estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section; or

(B) In all transactions not subject to paragraph (h)(1)(iii)(A) of this section, the amount of estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section;

* * * * *

(v) *Funds for borrower.* The amount of funds for the consumer, labeled ''Funds for Borrower.'' The amount of the down payment and other funds from the consumer disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable, and of funds for the consumer disclosed under this paragraph (h)(1)(v), are determined by subtracting the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under paragraph (h)(1)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction;

(A) If the calculation under this paragraph (h)(1)(v) yields an amount that is a positive number, such amount is disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable, and $0 is disclosed under this paragraph (h)(1)(v);

(B) If the calculation under this paragraph (h)(1)(v) yields an amount that is a negative number, such amount is disclosed under this paragraph (h)(1)(v) as a negative number, and $0 is disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable;

(C) If the calculation under this paragraph (h)(1)(v) yields $0, then $0 is disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable, and under this paragraph (h)(1)(v);

* * * * *

(vii) *Adjustments and other credits.* The amount of all loan costs determined under paragraph (f) of this section and other costs determined under paragraph (g) of this section that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts not otherwise disclosed under paragraph (f) or (g) of this section that are required to be paid by the consumer at closing in a transaction disclosed under paragraph (h)(1)(iii)(A)(*1*) of this section or pursuant to a purchase and sale contract, labeled ''Adjustments and Other Credits''; and

* * * * *

(2) *Optional alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.* For transactions that do not involve a seller or for simultaneous subordinate financing, instead of the table described in paragraph (h)(1) above, the creditor may alternatively provide, in a separate table, under the master heading ''Closing Cost Details,'' under the heading ''Calculating Cash to Close,'' the total amount of cash or other funds that must be provided by the consumer at consummation with an itemization of that amount into the following component amounts:

* * * * *

(ii) *Total closing costs.* The amount disclosed under paragraph (g)(6) of this section, disclosed as a negative number if the amount disclosed under paragraph (g)(6) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (g)(6) of this section is a negative number, labeled ''Total Closing Costs'';

(iii) *Payoffs and payments.* The total amount of payoffs and payments to be made to third parties not otherwise disclosed under paragraphs (f) and (g) of this section, labeled ''Total Payoffs and Payments'';

* * * * *

(o) * * *

(4) *Rounding*—(i) *Nearest dollar.* (A) The dollar amounts required to be disclosed by paragraphs (b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l) of this section shall be rounded to the nearest whole dollar, except that the per-diem dollar amount required to be disclosed by paragraph (g)(2)(iii) of this section and the monthly dollar amounts required to be disclosed by paragraphs (g)(3)(i) through (iii) and (g)(3)(v) of this section shall not be rounded.

(B) The dollar amount required to be disclosed by paragraph (b)(1) of this section shall not be rounded, and if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(C) The dollar amounts required to be disclosed by paragraph (c)(2)(iv) of this section shall be rounded to the nearest whole dollar, if any of the component amounts are required by paragraph (o)(4)(i)(A) of this section to be rounded to the nearest whole dollar.

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(2) and (3) of this section shall be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros that occur to the right of the decimal place.

* * * * *

■ 8. Section 1026.38 is amended by revising paragraphs (a)(3)(iii), (d)(2) introductory text, (e) introductory text, (e)(2)(ii), (e)(2)(iii)(A)(*3*), (e)(4)(ii), (g)(1), (h)(3), (i)(1)(iii)(A)(*3*), (i)(4)(ii), (i)(6)(iv), (i)(7)(iii), (i)(8), (j)(2)(vi), (l)(7)(i), (o)(1), (t)(4)(ii), and (t)(5)(vii) introductory text to read as follows:

§ 1026.38 Content of disclosures for certain mortgage transactions (Closing Disclosure).

* * * * *

(a) * * *

(3) * * *

(iii) *Disbursement date.* The date the amount disclosed under paragraph (j)(3)(iii) (cash to close from or to borrower) or (k)(3)(iii) (cash from or to seller) of this section is expected to be paid in a purchase transaction under § 1026.37(a)(9)(i) to the consumer or seller, respectively, as applicable, except as provided in comment 38(a)(3)(iii)–1, or the date some or all of the loan amount disclosed under paragraph (b) of this section is expected to be paid to the consumer or a third party other than a settlement agent in a transaction that is not a purchase transaction under § 1026.37(a)(9)(i), labeled ''Disbursement Date.''

* * * * *

(d) * * *

(2) *Alternative table for transactions without a seller or for simultaneous subordinate financing.* For transactions that do not involve a seller or for simultaneous subordinate financing, if the creditor disclosed the optional alternative table under § 1026.37(d)(2), the creditor shall disclose, with the label ''Cash to Close,'' instead of the sum of the dollar amounts described in paragraph (d)(1)(ii) of this section:

* * * * *

(e) *Alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.* For transactions that do not involve a seller or for simultaneous subordinate financing, if the creditor disclosed the optional alternative table under § 1026.37(h)(2), the creditor shall disclose, instead of the table described in paragraph (i) of this section, in a separate table, under the heading ''Calculating Cash to Close,'' together with the statement ''Use this table to see what has changed from your Loan Estimate'':

* * * * *

(2) * * *

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (h)(1) of this section, disclosed as a negative number if the amount disclosed under paragraph (h)(1) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (h)(1) of this section is a negative number; and

(iii) * * *

(A) * * *

(*3*) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess and, if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section or, if applicable, a statement directing the consumer to the principal reduction disclosure under paragraph (t)(5)(vii)(B) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

* * * * *

(4) * * *

(ii) Under the subheading ''Final,'' the total amount of payoffs and payments made to third parties disclosed under paragraph (t)(5)(vii)(B) of this section, to the extent known, disclosed as a negative number if the total amount disclosed under paragraph (t)(5)(vii)(B) of this section is a positive number and disclosed as a positive number if the total amount disclosed under paragraph (t)(5)(vii)(B) of this section is a negative number;

* * * * *

(g) * * *

(1) *Taxes and other government fees.* Under the subheading ''Taxes and Other Government Fees,'' an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees and the total of all such itemized amounts that are designated borrower-paid at or before closing, as follows:

(i) On the first line:

(A) Before the columns described in paragraph (g) of this section, the total amount of fees for recording deeds and, separately, the total amount of fees for recording security instruments; and

(B) In the applicable column as described in paragraph (g) of this section, the total amounts paid for recording fees (including, but not limited to, the amounts in paragraph (g)(1)(i)(A) of this section); and

(ii) On subsequent lines, in the applicable column as described in paragraph (g) of this section, an itemization of transfer taxes, with the name of the government entity assessing the transfer tax.

* * * * *

(h) * * *

(3) The amount of lender credits as a negative number, labeled ''Lender Credits'' and designated borrower-paid at closing, and if a refund is provided pursuant to § 1026.19(f)(2)(v), a statement that this amount includes a credit for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such credit under § 1026.19(f)(2)(v).

* * * * *

(i) * * *

(1) * * *

(iii) * * *

(A) * * *

(*3*) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess, and if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section or, if a principal reduction is used to provide the refund, a statement directing the consumer to the principal reduction disclosure under paragraph (j)(1)(v) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

* * * * *

(4) * * *

(ii) Under the subheading ''Final'':

(A)(*1*) In a purchase transaction as defined in § 1026.37(a)(9)(i), the amount determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section and any amount of existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section from the sale price of the property disclosed under paragraph (a)(3)(vii)(A) of this section, labeled ''Down Payment/Funds from Borrower,'' except as required by paragraph (i)(4)(ii)(A)(*2*) of this section;

(*2*) In a purchase transaction as defined in § 1026.37(a)(9)(i) that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under paragraph (b) of this section and any amount of existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section exceeds the sale price disclosed under paragraph (a)(3)(vii)(A) of this section, the amount of funds from the consumer as determined in accordance with paragraph (i)(6)(iv) of this section labeled ''Down Payment/Funds from Borrower;'' or

(B) In all transactions not subject to paragraph (i)(4)(ii)(A) of this section, the amount of funds from the consumer as determined in accordance with paragraph (i)(6)(iv) of this section, labeled ''Down Payment/Funds from Borrower.''

* * * * *

(6) * * *

(iv) The ''Down Payment/Funds from Borrower'' to be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (B) of this section, as applicable, and ''Funds for Borrower'' to be disclosed under paragraph (i)(6)(ii) of this section are determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section and any amount for existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section (excluding any closing costs financed disclosed under paragraph (i)(3)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction disclosed under paragraphs (j)(1)(ii), (iii), and (v) of this section.

(A) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a positive number, such amount shall be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (B) of this section, as applicable, and $0 shall be disclosed under paragraph (i)(6)(ii) of this section.

(B) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a negative number, such amount shall be disclosed under paragraph (i)(6)(ii) of this section, stated as a negative number, and $0 shall be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (i)(4)(ii)(B) of this section, as applicable.

(C) If the calculation under this paragraph (i)(6)(iv) yields $0, $0 shall be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (i)(4)(ii)(B) of this section, as applicable, and under paragraph (i)(6)(ii) of this section.

(7) * * *

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(7):

(A) If the amount disclosed under paragraph (i)(7)(ii) of this section is different than the amount disclosed under paragraph (i)(7)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed:

(*1*) Under paragraph (j)(2)(v) of this section and in the seller-paid column under paragraphs (f) and (g) of this section; or

(*2*) Under either paragraph (j)(2)(v) of this section or in the seller-paid column under paragraphs (f) or (g) of this section, if the details are only disclosed under paragraph (j)(2)(v) or paragraph (f) or (g); or

(B) If the amount disclosed under paragraph (i)(7)(ii) of this section is equal to the amount disclosed under paragraph (i)(7)(i) of this section, a statement of that fact.

(8) *Adjustments and other credits.* (i) Under the subheading ''Loan Estimate,'' the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), labeled ''Adjustments and Other Credits.''

(ii) Under the subheading ''Final,'' the amount equal to the total of the amounts disclosed under paragraphs (j)(1)(iii) and (v) of this section, to the extent amounts in paragraphs (j)(1)(iii) and (v) were not included in the calculation required by paragraph (i)(4) or (6) of this section, and paragraphs (j)(1)(vi) through (x) of this section, reduced by the total of the amounts disclosed under paragraphs (j)(2)(vi) through (xi) of this section.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(8):

(A) If the amount disclosed under paragraph (i)(8)(ii) of this section is different than the amount disclosed under paragraph (i)(8)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraphs (j)(1)(iii) and (v) through (x) and (j)(2)(vi) through (xi) of this section, as applicable; or

(B) If the amount disclosed under paragraph (i)(8)(ii) of this section is equal to the amount disclosed under paragraph (i)(8)(i) of this section, a statement of that fact.

* * * * *

(j) * * *

(2) * * *

(vi) Descriptions and amounts of other items paid by or on behalf of the consumer and not otherwise disclosed under paragraphs (f), (g), (h), and (j)(2) of this section, labeled ''Other Credits,'' and descriptions and the amounts of any additional amounts owed the consumer but payable to the seller before the real estate closing, under the heading ''Adjustments'';

* * * * *

(l) * * *

(7) * * *

(i) Under the reference ''For now,'' a statement that an escrow account may also be called an impound or trust account, a statement of whether the creditor has established or will establish (at or before consummation) an escrow account in connection with the transaction, and the information required under paragraphs (l)(7)(i)(A) and (B) of this section:

(A) A statement that the creditor may be liable for penalties and interest if it fails to make a payment for any cost for which the escrow account is established, a statement that the consumer would have to pay such costs directly in the absence of the escrow account, and a table, titled ''Escrow,'' that contains, if an escrow account is or will be established, an itemization of the amounts listed in paragraphs (l)(7)(i)(A)(*1*) through (*4*) of this section;

(*1*) The total amount the consumer will be required to pay into an escrow account over the first year after consummation, labeled ''Escrowed Property Costs over Year 1,'' together with a descriptive name of each charge to be paid (in whole or in part) from the escrow account, calculated as the amount disclosed under paragraph (l)(7)(i)(A)(*4*) of this section multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation;

(*2*) The estimated amount the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in § 1026.43(b)(8) that are known to the creditor and that will not be paid using escrow account funds, labeled ''Non-Escrowed Property Costs over Year 1,'' together with a descriptive name of each such charge and a statement that the consumer may have to pay other costs that are not listed;

(*3*) The total amount disclosed under paragraph (g)(3) of this section, a statement that the payment is a cushion for the escrow account, labeled ''Initial Escrow Payment,'' and a reference to the information disclosed under paragraph (g)(3) of this section;

(*4*) The amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation, labeled ''Monthly Escrow Payment.''

(*5*) A creditor complies with the requirements of paragraphs (l)(7)(i)(A)(*1*) and (*4*) of this section if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17.

(B) A statement of whether the consumer will not have an escrow account, the reason why an escrow account will not be established, a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, a statement that the consumer may contact the creditor to inquire about the availability of an escrow account, and a table, titled ''No Escrow,'' that contains, if an escrow account will not be established, an itemization of the following:

(*1*) The estimated total amount the consumer will pay directly for the mortgage-related obligations described in § 1026.43(b)(8) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled ''Property Costs over Year 1''; and

(*2*) The amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled ''Escrow Waiver Fee.''

* * * * *

(o) * * *

(1) *Total of payments.* The ''Total of Payments,'' using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. The disclosed total of payments shall be treated as accurate if the amount disclosed as the total of payments:

(i) Is understated by no more than $100; or

(ii) Is greater than the amount required to be disclosed.

* * * * *

(t) * * *

(4) * * *

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b), (f)(1), (n), and (o)(4) and (5) of this section shall be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point.

* * * * *

(5) * * *

(vii) *Transaction without a seller or simultaneous subordinate financing transaction.* The following modifications to form H–25 of appendix H to this part may be made for a transaction that does not involve a seller or for simultaneous subordinate financing, and for which the alternative tables are disclosed under paragraphs (d)(2) and (e) of this section, as illustrated by form H–25(J) of appendix H to this part:

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open End Credit Offered to College Students

■ 9. In *Supplement I to Part 1026—Official Interpretations:*

■ a. Under *Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability,* under *1(d) Organization, Paragraph 1(d)(5)* is revised.

■ b. Under *Section 1026.2—Definitions and Rules of Construction,* under *2(a)(11) Consumer,* paragraph 3 is revised.

■ c. Under *Section 1026.3—Exempt Transactions, 3(h) Partial exemption for certain mortgage loans* is revised.

■ d. Under *Section 1026.17—General Disclosure Requirements:*

■ i. Under *17(c) Basis of Disclosures and Use of Estimates,* under *Paragraph 17(c)(6),* paragraph 5 is revised.

■ ii. Under *17(f) Early Disclosures,* paragraphs 1 and 2 are revised.

■ e. Under *Section 1026.18—Content of Disclosures:*

■ i. Paragraph 3 is revised.

■ ii. Under *18(g) Payment Schedule,* paragraph 6 is revised.

■ iii. Under *18(s) Interest Rate and Payment Summary for Mortgage Transactions,* paragraphs 1 and 4 are revised.

■ f. Under *Section 1026.19—Certain Mortgage and Variable-Rate Transactions:*

■ i. Under *19(e) Mortgage loans secured by real property—Early disclosures:*

■ A. The heading is revised.

■ B. *19(e)(1)(i) Creditor* is revised.

■ C. Under *19(e)(1)(iii) Timing,* paragraph 5 is added.

■ D. Under *19(e)(1)(vi) Shopping for settlement service providers,* paragraphs 1 through 4 are revised.

■ E. Under *19(e)(3)(i) General rule,* paragraph 1 is revised.

■ F. Under *19(e)(3)(ii) Limited increases permitted for certain charges,* paragraphs 1 and 2 are revised and paragraph 6 is added.

■ G. Under *19(e)(3)(iii) Variations permitted for certain charges,* paragraphs 2 and 3 are revised and paragraph 4 is added.

■ H. Under *19(e)(3)(iv) Revised estimates,* paragraph 2 is revised and paragraphs 4 and 5 are added.

■ I. *19(e)(3)(iv)(D) Interest rate dependent charges* is revised.

■ J. *19(e)(3)(iv)(E) Expiration* is revised.

■ ii. Under *19(f) Mortgage loans secured by real property—Final disclosures:*

■ A. The heading is revised.

■ B. Under *19(f)(1)(i) Scope,* paragraph 1 is revised.

■ C. Under *19(f)(2)(iii) Changes due to events occurring after consummation,* paragraph 2 is added.

■ D. *19(f)(2)(v) Refunds related to the good faith analysis* is revised.

■ E. Under *19(f)(3)(ii) Average charge,* paragraph 3 is revised.

■ F. *19(f)(4)(i) Provision to seller* is revised.

■ g. Under *Section 1026.23—Right of Rescission:*

■ i. Under *23(g) Tolerances for Accuracy,* paragraph 1 is added.

■ ii. Under *23(h) Special Rules for Foreclosures, 23(h)(2) Tolerance for Disclosures* is revised.

■ h. Under *Section 1026.25—Record Retention,* under *25(c) Records Related to Certain Requirements for Mortgage Loans,* the heading for *25(c)(1)* is revised.

■ i. Under S*ection 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate):*

■ i. Under *37(a) General information:*

■ A. *37(a)(7) Sale price* is revised.

■ B. Under *37(a)(8) Loan term,* paragraph 3 is added.

■ C. Under *37(a)(9) Purpose,* paragraph 1 is revised.

■ D. Under *37(a)(10) Product,* paragraph 2 is revised.

■ E. Under *37(a)(13) Rate lock,* paragraph 2 is revised and paragraph 4 is added.

■ ii. Under *37(b) Loan terms:*

■ A. *37(b)(2) Interest rate* is revised.

■ B. Under *37(b)(3) Principal and interest payment,* paragraph 2 is revised.

■ C. Under *37(b)(6)(iii) Increase in periodic payment,* paragraph 1 is revised.

■ iii. Under *37(c) Projected payments:*

■ A. Paragraph 2 is added.

■ B. *Paragraph 37(c)(1)(iii)(B)* is revised.

■ C. Under *Paragraph 37(c)(4)(iv),* paragraph 2 is revised.

■ iv. Under *37(d) Costs at closing,* the heading for *37(d)(2)* and paragraph 1 are revised.

■ v. Under *37(f) Closing cost details; loan costs:*

■ A. Paragraph 3 is added.

■ B. Under *37(f)(6) Use of addenda,* paragraph 3 is added.

■ vi. Under *37(g) Closing cost details; other costs,* under *Paragraph 37(g)(6)(ii),* paragraph 1 is revised.

■ vii. Under *37(h) Calculating cash to close:*

■ A. Under *37(h)(1) For all transactions,* paragraph 2 is added.

■ B. *37(h)(1)(ii), 37(h)(1)(iii), 37(h)(1)(v),* and *37(h)(1)(vi)* are revised.

■ C. Under *37(h)(1)(vii) Adjustments and other credits,* paragraphs 1, 4, 5, and 6 are revised.

■ D. *37(h)(2)* and *37(h)(2)(iii)* are revised.

■ viii. Under *37(k) Contact information,* paragraph 3 is revised.

■ ix. Under *37(l) Comparisons:*

■ A. Under *Paragraph 37(l)(1)(i),* paragraph 1 is revised.

■ B. Under *37(l)(3) Total interest percentage,* paragraph 1 is revised.

■ x. Under *37(o) Form of disclosures, 37(o)(4)(i)(A)* and *37(o)(4)(ii)* are revised.

■ j. Under *Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure):*

■ i. Paragraph 4 is added.

■ ii. Under *38(a) General information:*

■ A. *38(a)(3)(iii) Disbursement date* is added.

■ B. Under *38(a)(3)(vii) Sale price,* paragraph 1 is revised.

■ C. Under *38(a)(4) Transaction information,* paragraph 2 is revised and paragraph 4 is added.

■ iii. Under *38(d) Costs at closing,* the heading for *38(d)(2)* and paragraph 1 are revised.

■ iv. Under *38(e) Alternative calculating cash to close table for transactions without a seller:*

■ A. The heading is revised, paragraphs 1 and 3 are revised, and paragraph 6 is added.

■ B. Under *Paragraph 38(e)(2)(iii)(A),* paragraphs 2 and 3 are revised.

■ C. *Paragraph 38(e)(3)(iii)(B)* is revised.

■ v. Under *38(f) Closing cost details; loan costs,* paragraph 2 is added.

■ vi. Under *38(g) Closing costs details; other costs:*

■ A. Under *38(g)(1) Taxes and other government fees,* paragraph 3 is added.

■ B. Under *38(g)(2) Prepaids,* paragraph 3 is revised.

■ vii. Under *38(i) Calculating cash to close:*

■ A. Paragraphs 2 and 3 are revised and paragraph 5 is added.

■ B. Under *Paragraph 38(i)(1)(iii)(A),* paragraphs 2 and 3 are revised.

■ C. *38(i)(3) Closing costs financed* is added.

■ D. *Paragraph 38(i)(4)(ii)(A)* is revised.

■ E. *Paragraph 38(i)(4)(ii)(B)* is revised.

■ F. *Paragraph 38(i)(4)(iii)(A)* is revised.

■ G. *38(i)(5) Deposit* is revised.

■ H. *Paragraph 38(i)(6)(ii)* is revised.

■ I. *Paragraph 38(i)(7)(iii)(A)* is added.

■ J. *Paragraph 38(i)(8)(ii)* is revised.

■ viii. Under *38(j) Summary of borrower's transaction:*

■ A. Paragraph 3 is revised.

■ B. *Paragraph 38(j)(1)(ii)* is revised.

■ C. *Paragraph 38(j)(1)(v)* is revised.

■ D. Under *Paragraph 38(j)(2)(vi),* paragraphs 2 and 5 are revised and paragraph 6 is added.

■ E. *Paragraph 38(j)(2)(xi)* is revised.
■ F. Under *Paragraph 38(j)(4)(i),* paragraph 1 is revised.
■ ix. Under *38(k) Summary of seller's transaction:*
■ A. Paragraph 1 is revised.
■ B. *38(k)(1) Itemization of amounts due to seller* is added.
■ C. *Paragraph 38(k)(2)(vii)* is added.
■ x. Under *38(l) Loan disclosures:*
■ A. Under *38(l)(7) Escrow account,* paragraphs 1 and 2 are added.
■ B. *Paragraph 38(l)(7)(i)(A)(2)* is revised.
■ C. *Paragraph 38(l)(7)(i)(A)(4)* is revised.
■ D. *Paragraph 38(l)(7)(i)(A)(5)* is added.
■ E. *Paragraph 38(l)(7)(i)(B)(1)* is revised.
■ xi. Under *38(o) Loan calculations:*
■ A. Paragraph 1 is added.
■ B. *38(o)(1) Total of payments* is revised.
■ xii. Under *38(t) Form of disclosures:*
■ A. *38(t)(3) Form* is revised.
■ B. *38(t)(5)(v)* and *38(t)(5)(vi)* are added.
■ C. The heading for *38(t)(5)(vii)* and paragraph 2 are revised.
■ D. *Paragraph 38(t)(5)(vii)(B)* is added.
■ k. Under *Appendix D—Multiple-Advance Construction Loans,* paragraph 7 is revised.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

* * * * *

1(d) Organization.

Paragraph 1(d)(5).

1. *Effective date.* i. *General.* The Bureau's revisions to Regulation X and Regulation Z published on December 31, 2013 (the TILA–RESPA Final Rule) apply to covered loans (closed-end credit transactions that are secured by real property or a cooperative unit, whether or not treated as real property under State or other applicable law) for which the creditor or mortgage broker receives an application on or after October 3, 2015 (the effective date), except that § 1026.19(e)(2), the amendments to § 1026.28(a)(1), and the amendments to the commentary to § 1026.29 became effective on October 3, 2015, without respect to whether an application was received as of that date. Additionally, §§ 1026.20(e) and 1026.39(d)(5), as amended or adopted by the TILA–RESPA Final Rule, took effect on October 3, 2015, for transactions for which the creditor or mortgage broker received an application on or after October 3, 2015, and take effect October 1, 2018, with respect to transactions for which a creditor or mortgage broker received an application prior to October 3, 2015.

ii. *Pre-application activities.* The provisions of § 1026.19(e)(2) apply prior to a consumer's receipt of the disclosures required by § 1026.19(e)(1)(i) and therefore restrict activity that may occur prior to receipt of an application by a creditor or mortgage broker. These provisions include § 1026.19(e)(2)(i), which restricts the fees that may be imposed on a consumer, § 1026.19(e)(2)(ii), which requires a statement to be included on written estimates of terms or costs specific to a consumer, and § 1026.19(e)(2)(iii), which prohibits creditors from requiring the submission of documents verifying information related to the consumer's application. Accordingly, the provisions of § 1026.19(e)(2) are effective on October 3, 2015, without respect to whether an application has been received on that date.

iii. *Determination of preemption.* The amendments to § 1026.28 and the commentary to § 1026.29 govern the preemption of State laws, and thus the amendments to those provisions and associated commentary made by the TILA–RESPA Final Rule are effective on October 3, 2015, without respect to whether an application has been received on that date.

iv. *Post-consummation escrow cancellation disclosure and partial payment disclosure.* A creditor, servicer, or covered person, as applicable, must provide the disclosures required by §§ 1026.20(e) and 1026.39(d)(5) for transactions for which the conditions in § 1026.20(e) or § 1026.39(d)(5), as applicable, exist on or after October 1, 2018, regardless of when the corresponding applications were received. For transactions in which such conditions exist on or after October 3, 2015, through September 30, 2018, a creditor, servicer, or covered person, as applicable, complies with §§ 1026.20(e) and 1026.39(d)(5) if it provides the mandated disclosures in all cases or if it provides them only in cases where the corresponding applications were received on or after October 3, 2015.

v. *Examples.* For purposes of the following examples, an application received before or after the effective date is any submission for the purpose of obtaining an extension of credit that satisfies the definition in § 1026.2(a)(3), as adopted by the TILA–RESPA Final Rule, even if that definition was not yet in effect on the date in question. Cross-references in the following examples to provisions of Regulation Z refer to those provisions as adopted or amended by the TILA–RESPA Final Rule, together with any subsequent amendments, unless noted otherwise.

A. *Application received on or after effective date of the TILA–RESPA Final Rule.* Assume a creditor receives an application on October 3, 2015, and that consummation of the transaction occurs on October 31, 2015. The amendments of the TILA–RESPA Final Rule, including the requirement to provide the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f), apply to the transaction. The creditor is also required to provide the special information booklet under § 1026.19(g).

B. *Application received before effective date of the TILA–RESPA Final Rule.* Assume a creditor receives an application on September 30, 2015, and that consummation of the transaction occurs on October 30, 2015. The requirement to provide the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f) does not apply to the transaction. Instead, the creditor and the settlement agent must provide the disclosures required by § 1026.19, as it existed prior to the effective date of the TILA–RESPA Final Rule, and by Regulation X, 12 CFR 1024.8. Similarly, the creditor must provide the special information booklet required by Regulation X, 12 CFR 1024.6. However, the provisions of § 1026.19(e)(2) apply to the transaction beginning on October 3, 2015, because they became effective on October 3, 2015, without respect to whether an application was received by the creditor or mortgage broker on that date.

C. *Predisclosure written estimates.* Assume a creditor receives a request from a consumer for a written estimate of terms or costs specific to the consumer on October 3, 2015, before the consumer submits an application to the creditor and thus before the consumer has received the disclosures required by § 1026.19(e)(1)(i). The creditor, if it provides such a written estimate to the consumer, must comply with § 1026.19(e)(2)(ii) and provide the required statement on the written estimate, even though the creditor has not received an application on that date.

D. *Request for preemption determination.* Assume a creditor submits a request to the Bureau under § 1026.28(a)(1) for a determination of whether a State law is inconsistent with the disclosure requirements in Regulation Z on October 3, 2015. Because the amendments to § 1026.28(a)(1) are effective on that date and do not depend on whether the creditor has received an application, § 1026.28(a)(1) is applicable to the request on that date, and the Bureau would make a determination based on the provisions of Regulation Z in effect on that date, including the requirements of § 1026.19(e) and (f).

E. *Effective dates for the post-consummation escrow cancelation disclosure and partial payment disclosure.* Assume a creditor receives an application on October 10, 2010, and that the loan was consummated on November 19, 2010. Assume further that, on December 19, 2016, the escrow account established in connection with the mortgage loan was canceled or the loan is sold to another covered person. A creditor, servicer, or covered person, as applicable, may provide the disclosures required under §§ 1026.20(e) and 1026.39(d)(5) to the consumer, but the creditor, servicer, or covered person, as applicable, is not required to provide those disclosures in this case. Assume the same circumstances, except that the escrow account established in connection with the loan is canceled or the mortgage loan is sold to another covered person on April 14, 2020. A creditor, servicer, or covered person, as applicable, must provide the disclosures in §§ 1026.20(e) and 1026.39(d)(5), as applicable, because a condition requiring these disclosures occurred after October 1, 2018 (thus the date the application was received is irrelevant).

2. *2017 TILA–RESPA Amendments.* i. *Generally.* Except as provided in comment 1(d)(5)–2.ii, compliance with the

amendments to this part effective on October 10, 2017 (the 2017 TILA–RESPA Amendments) is mandatory with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018. Except as provided in comment 1(d)(5)–2.ii, for transactions for which a creditor or mortgage broker received an application prior to October 1, 2018, from the effective date of the 2017 TILA–RESPA Amendments:

A. A person has the option of complying either: with 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on October 9, 2017, together with any amendments to 12 CFR part 1026 that become effective after October 9, 2017, other than the 2017 TILA–RESPA Amendments; and

B. An act or omission violates 12 CFR part 1026 only if it violates both: 12 CFR part 1026 as it is in effect; and 12 CFR part 1026 as it was in effect on October 9, 2017, together with any amendments to 12 CFR part 1026 that become effective after October 9, 2017, other than the 2017 TILA–RESPA Amendments.

ii. *Post-consummation escrow cancellation disclosure and partial payment disclosure.* Comment 1(d)(5)–1.iv sets forth the transactions to which the disclosures required by §§ 1026.20(e) and 1026.39(d)(5) are applicable.

Section 1026.2—Definitions and Rules of Construction

* * * * *

2(a)(11) Consumer

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3. *Trusts.* Credit extended to trusts established for tax or estate planning purposes or to land trusts, as described in comment 3(a)–10, is considered to be extended to a natural person for purposes of the definition of consumer.

* * * * *

Section 1026.3—Exempt Transactions

* * * * *

3(h) Partial exemption for certain mortgage loans.

1. *Partial exemption.* Section 1026.3(h) exempts certain transactions from the disclosures described in § 1026.19(g), and, under certain circumstances, § 1026.19(e) and (f). Section 1026.3(h) exempts transactions from § 1026.19(e) and (f) if the creditor chooses to provide disclosures described in § 1026.18 that comply with this part pursuant to § 1026.3(h)(6)(i), but does not exempt transactions from § 1026.19(e) and (f) if the creditor chooses to provide disclosures described in § 1026.19(e) and (f) that comply with this part pursuant to § 1026.3(h)(6)(ii). Creditors may provide, at their option, either the disclosures described in § 1026.18 or the disclosures described in § 1026.19(e) and (f). In providing these disclosures, creditors must comply with all provisions of this part relating to those disclosures. Section 1026.3(h) does not exempt transactions from any of the other requirements of this part, to the extent they are applicable. For transactions that would otherwise be subject to § 1026.19(e), (f), and (g), creditors must comply with all other applicable requirements of this part, including the consumer's right to rescind the transaction under § 1026.23, to the extent that provision is applicable.

2. *Establishing compliance.* The conditions that the transaction not require the payment of interest under § 1026.3(h)(3) and that repayment of the amount of credit extended be forgiven or deferred in accordance with § 1026.3(h)(4) must be reflected in the loan contract. The other requirements of § 1026.3(h) need not be reflected in the loan contract, but the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a) or (c), as applicable. In particular, because the exemption in § 1026.3(h) means the creditor is not required to provide the disclosures of closing costs under § 1026.37 or § 1026.38 (unless the creditor chooses to provide disclosures described in § 1026.19(e) and (f) that comply with this part), the creditor must retain evidence reflecting that the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, a bona fide and reasonable application fee, and a bona fide and reasonable housing counseling fee, and that the total of application and housing counseling fees is less than 1 percent of the amount of credit extended, in accordance with § 1026.3(h)(5). Unless the itemization of the amount financed provided to the consumer sufficiently details this requirement, the creditor must establish compliance with § 1026.3(h)(5) by some other written document and retain it in accordance with § 1026.25(a) or (c), as applicable.

3. *Relationship to partial exemption for certain federally related mortgage loans.* Regulation X provides a partial exemption from certain Regulation X disclosure requirements in 12 CFR 1024.5(d). The partial exemption in Regulation X, 12 CFR 1024.5(d)(2) provides that certain Regulation X disclosure requirements do not apply to a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2(b), that satisfies the criteria in § 1026.3(h) of this part. For a federally related mortgage loan that is not otherwise covered by Regulation Z, lenders may satisfy the criteria in § 1026.3(h)(6) by providing the disclosures described in § 1026.18 that comply with this part or the disclosures described in § 1026.19(e) and (f) that comply with this part.

4. *Recording fees.* See comment 37(g)(1)–1 for a discussion of what constitutes a recording fee.

5. *Transfer taxes.* See comment 37(g)(1)–3 for a discussion of what constitutes a transfer tax.

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Section 1026.17—General Disclosure Requirements

* * * * *

17(c) Basis of Disclosures and Use of Estimates

* * * * *

Paragraph 17(c)(6)

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5. *Allocation of costs.* When a creditor uses the special rule in § 1026.17(c)(6) to disclose credit extensions as multiple transactions, fees and charges must be allocated for purposes of calculating disclosures. In the case of a construction-permanent loan that a creditor chooses to disclose as multiple transactions, the creditor must allocate to the construction transaction finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) that would not be imposed but for the construction financing. For example, inspection and handling fees for the staged disbursement of construction loan proceeds must be included in the disclosures for the construction phase and may not be included in the disclosures for the permanent phase. If a creditor charges separate amounts for finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) for the construction phase and the permanent phase, such amounts must be allocated to the phase for which they are charged. If a creditor charges an origination fee for construction financing only but charges a greater origination fee for construction-permanent financing, the difference between the two fees must be allocated to the permanent phase. All other finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) must be allocated to the permanent financing. Fees and charges that are not used to compute the finance charge under § 1026.4 or points and fees under § 1026.32(b)(1) may be allocated between the transactions in any manner the creditor chooses. For example, a reasonable appraisal fee paid to an independent, third-party appraiser may be allocated in any manner the creditor chooses because it would be excluded from the finance charge pursuant to § 1026.4(c)(7) and excluded from points and fees pursuant to § 1026.32(b)(1)(iii).

* * * * *

17(f) Early Disclosures

1. *Change in rate or other terms.* Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in § 1026.17(f) even if the prior disclosures would be considered accurate under the tolerances in § 1026.18(d) or 1026.22(a). To illustrate:

i. *Transactions not secured by real property or a cooperative unit.* A. For transactions not secured by real property or a cooperative unit, if disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction not secured by real property or a cooperative unit, if early disclosures are marked as estimates and the disclosed annual percentage rate is within ⅛ of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

C. If disclosures for transactions not secured by real property or a cooperative unit are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. *See* § 1026.18(d)(2).

ii. *Reverse mortgages.* In a transaction subject to § 1026.19(a) and not § 1026.19(e) and (f), assume that, at the time the disclosures required by § 1026.19(a) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Assume further that consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. The creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

iii. *Transactions secured by real property or a cooperative unit other than reverse mortgages.* For transactions secured by real property or a cooperative unit other than reverse mortgages, assume that, at the time the disclosures required by § 1026.19(e) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Assume further that consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. The creditor must make the disclosures required by § 1026.19(f) three days before consummation, and the disclosures required by § 1026.19(f) must take into account the amount of per-diem interest that will be collected at consummation.

2. *Variable rate.* The addition of a variable rate feature to the credit terms, after early disclosures are given, requires new disclosures. See § 1026.19(e) and (f) to determine when new disclosures are required for transactions secured by real property or a cooperative unit, other than reverse mortgages.

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Section 1026.18—Content of Disclosures

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3. *Scope of coverage.* i. Section 1026.18 applies to closed-end consumer credit transactions, other than transactions that are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end consumer credit transactions that are secured by real property or a cooperative unit, other than reverse mortgages subject to § 1026.33. Accordingly, the disclosures required by § 1026.18 apply only to closed-end consumer credit transactions that are:

A. Unsecured;

B. Secured by personal property that is not a dwelling;

C. Secured by personal property (other than a cooperative unit) that is a dwelling and are not also secured by real property; or

D. Reverse mortgages subject to § 1026.33.

ii. Of the foregoing transactions that are subject to § 1026.18, the creditor discloses a payment schedule under § 1026.18(g) for those described in paragraphs i.A and i.B of this comment. For transactions described in paragraphs i.C and i.D of this comment, the creditor discloses an interest rate and payment summary table under § 1026.18(s). See also comments 18(g)–6 and 18(s)–4 for additional guidance on the applicability to different transaction types of §§ 1026.18(g) or (s) and 1026.19(e) and (f).

iii. Because § 1026.18 does not apply to transactions secured by real property or a cooperative unit, other than reverse mortgages, references in the section and its commentary to ''mortgages'' refer only to transactions described in paragraphs i.C and i.D of this comment, as applicable.

* * * * *

18(g) Payment Schedule

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6. *Mortgage transactions.* Section 1026.18(g) applies to closed-end transactions, other than transactions that are subject to § 1026.18(s) or § 1026.19(e) and (f). Section 1026.18(s) applies to closed-end transactions secured by real property or a dwelling, unless they are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end transactions secured by real property or a cooperative unit, other than reverse mortgages. Thus, if a closed-end consumer credit transaction is secured by real property, a cooperative unit, or a dwelling and the transaction is a reverse mortgage or the dwelling is personal property but not a cooperative unit, then the creditor discloses an interest rate and payment summary table in accordance with § 1026.18(s). *See* comment 18(s)–4. If a closed-end consumer credit transaction is secured by real property or a cooperative unit and is not a reverse mortgage, the creditor discloses a projected payments table in accordance with §§ 1026.37(c) and 1026.38(c), as required by § 1026.19(e) and (f). In all such cases, the creditor is not subject to the requirements of § 1026.18(g). On the other hand, if a closed-end consumer credit transaction is not secured by real property or a dwelling (for example, if it is unsecured or secured by an automobile), the creditor discloses a payment schedule in accordance with § 1026.18(g) and is not subject to the requirements of § 1026.18(s) or §§ 1026.37(c) and 1026.38(c).

* * * * *

18(s) Interest Rate and Payment Summary for Mortgage Transactions

1. *In general.* Section 1026.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for reverse mortgages and certain transactions secured by dwellings that are personal property but not cooperative units. The information in § 1026.18(s)(2) through (4) is required to be in the form of a table, except as otherwise provided, with headings and format substantially similar to model clause H–4(E), H–4(F), H–4(G), or H–4(H) in appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause. Where § 1026.18(s)(2) through (4) or the applicable model clause requires that a column or row of the table be labeled using the word ''monthly'' but the periodic payments are not due monthly, the creditor should use the appropriate term, such as ''bi-weekly'' or ''quarterly.'' In all cases, the table should have no more than five vertical columns corresponding to applicable interest rates at various times during the loan's term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of § 1026.18(s) in § 1026.18(s)(7).

* * * * *

4. *Scope of coverage in relation to § 1026.19(e) and (f).* Section 1026.18(s) applies to transactions secured by real property or a dwelling, other than transactions that are subject to § 1026.19(e) and (f). Those provisions apply to closed-end transactions secured by real property or a cooperative unit, other than reverse mortgages. Accordingly, § 1026.18(s) governs only closed-end reverse mortgages and closed-end transactions secured by a dwelling, other than a cooperative, that is personal property (such as a mobile home that is not deemed real property under State or other applicable law).

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Section 1026.19—Certain Mortgage and Variable-Rate Transactions

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19(e) Mortgage loans—Early disclosures.

* * * * *

19(e)(1) Provision of disclosures.

19(e)(1)(i) Creditor.

1. *Requirements.* Section 1026.19(e)(1)(i) requires early disclosure of credit terms in closed-end credit transactions that are secured by real property or a cooperative unit, other than reverse mortgages. These disclosures must be provided in good faith. Except as otherwise provided in § 1026.19(e), a disclosure is in good faith if it is consistent with § 1026.17(c)(2)(i). Section 1026.17(c)(2)(i) provides that if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. The ''reasonably available'' standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. See comment 17(c)(2)(i)–1 for an explanation of the standard set forth in § 1026.17(c)(2)(i). See comment 17(c)(2)(i)–2 for labeling disclosures required under § 1026.19(e) that are estimates.

2. *Cooperative units.* Section 1026.19(e)(1)(i) requires early disclosure of credit terms in closed-end credit transactions, other than reverse mortgages, that are secured by real property or a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

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19(e)(1)(iii) Timing.

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5. *Multiple-advance construction loans.* Section 1026.19(e)(1)(iii) generally requires a creditor to deliver the Loan Estimate or place it in the mail not later than the third business day after the creditor receives the consumer's application and not later than the seventh business day before consummation. When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, § 1026.17(c)(6)(ii) and comment 17(c)(6)–2 permit creditors to treat the construction phase and the permanent phase as either one transaction, with one combined disclosure, or more than one transaction, with a separate disclosure for each transaction. For construction—permanent transactions disclosed as one transaction, the creditor complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail one combined disclosure required by § 1026.19(e)(1)(i) not later than the third business day after the creditor receives an application and not later than the seventh business day before consummation. For construction—permanent transactions disclosed as a separate construction phase and a separate permanent phase for which an application for both the construction and permanent financing has been received, the creditor complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail the separate disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation. A creditor may also provide a separate disclosure required by § 1026.19(e)(1)(i) for the permanent phase before receiving an application for permanent financing at any time not later than the seventh business day before consummation. To illustrate:

i. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for only the construction financing no later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

ii. Assume the creditor receives a consumer's application for both construction and permanent financing on Monday, June 1. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for both the construction and permanent financing, disclosed as either one transaction or separate transactions, no later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

iii. Assume the creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor receives the consumer's application for permanent financing on Monday, June 8. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for the construction financing no later than Thursday, June 4, the third business day after the creditor received the consumer's application for the construction financing only, and not later than the seventh business day before consummation of the construction transaction. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for the permanent financing no later than Thursday, June 11, the third business day after the creditor received the consumer's application for the permanent financing, and not later than the seventh business day before consummation of the permanent financing transaction.

iv. Assume the same facts as in comment 19(e)(1)(iii)–5.ii, under which the creditor provides the disclosures required by § 1026.19(e)(1)(i) for both construction financing and permanent financing. If the creditor generally conducts separate closings for the construction financing and the permanent financing or expects that the construction financing and the permanent financing may have separate closings, providing separate Loan Estimates for the construction financing and for the permanent financing allows the creditor to deliver separate Closing Disclosures for the separate phases. For example, assume further that the consumer has requested permanent financing after receiving separate Loan Estimates for the construction financing and for the permanent financing, that consummation of the construction financing is scheduled for July 1, and that consummation of the permanent financing is scheduled on or about June 1 of the following year. The creditor may provide the construction financing Closing Disclosure at least three business days before consummation of that transaction on July 1 and delay providing the permanent financing Closing Disclosure until three business days before consummation of that transaction on or about June 1 of the following year, in accordance with § 1026.19(f)(1)(ii). The creditor may also issue a revised Loan Estimate for the permanent financing at any time prior to 60 days before consummation, following the procedures under § 1026.19(e)(3)(iv)(F).

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19(e)(1)(vi) Shopping for settlement service providers.

1. *Permission to shop.* Section 1026.19(e)(1)(vi)(A) permits creditors to impose reasonable requirements regarding the qualifications of the provider. For example, the creditor may require that a settlement agent chosen by the consumer must be appropriately licensed in the relevant jurisdiction. In contrast, a creditor does not permit a consumer to shop for purposes of § 1026.19(e)(1)(vi) if the creditor requires the consumer to choose a provider from a list provided by the creditor. Whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances. The requirements of § 1026.19(e)(1)(vi)(B) and (C) do not apply if the creditor does not permit the consumer to shop consistent with § 1026.19(e)(1)(vi)(A).

2. *Disclosure of services for which the consumer may shop.* If a creditor permits a consumer to shop for a settlement service, § 1026.19(e)(1)(vi)(B) requires the creditor to identify settlement services required by the creditor for which the consumer is permitted to shop in the disclosures provided pursuant to § 1026.19(e)(1)(i). See § 1026.37(f)(3) regarding the content and format for disclosure of services required by the creditor for which the consumer is permitted to shop.

3. *Written list of providers.* If the creditor permits the consumer to shop for a settlement service it requires, § 1026.19(e)(1)(vi)(C) requires the creditor to provide the consumer with a written list identifying at least one available provider of that service and stating that the consumer may choose a different provider for that service. The settlement service providers identified on the written list required by § 1026.19(e)(1)(vi)(C) must correspond to the required settlement services for which the consumer may shop, disclosed under § 1026.37(f)(3). See form H–27 in appendix H to this part for a model list. Creditors using form H–27 in appendix H properly are deemed to be in compliance with § 1026.19(e)(1)(vi)(C). Creditors may make changes in the format or content of form H–27 in appendix H and be deemed to be in compliance with § 1026.19(e)(1)(vi)(C), so long as the changes do not affect the substance, clarity, or meaningful sequence of the form. An acceptable change to form H–27 in appendix H includes, for example, deleting the column for estimated fee amounts.

4. *Identification of available providers.* Section 1026.19(e)(1)(vi)(C) provides that the creditor must identify settlement service providers, that are available to the consumer, for the settlement services that are required by the creditor for which a consumer is permitted to shop. A creditor does not comply with the identification requirement in § 1026.19(e)(1)(vi)(C) unless it provides sufficient information to allow the consumer to contact the provider, such as the name under which the provider does business and the provider's address and telephone number. Similarly, a creditor does not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if it provides a written list consisting of only settlement service providers that are no longer in business or that do not provide services where the consumer or property is located.

* * * * *

19(e)(3) Good faith determination for estimates of closing costs.

19(e)(3)(i) General rule.

1. *Requirement.* Section 1026.19(e)(3)(i) provides the general rule that an estimated closing cost disclosed under § 1026.19(e) is not in good faith if the charge paid by or imposed on the consumer exceeds the amount originally disclosed under § 1026.19(e)(1)(i). Although § 1026.19(e)(3)(ii) and (iii) provide exceptions to the general rule, the charges that are generally subject to § 1026.19(e)(3)(i) include, but are not limited to, the following:

i. Fees paid to the creditor.

ii. Fees paid to a mortgage broker.

iii. Fees paid to an affiliate of the creditor or a mortgage broker.

iv. Fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider for a settlement service.

v. Transfer taxes.

* * * * *

19(e)(3)(ii) Limited increases permitted for certain charges.

1. *Requirements.* Section 1026.19(e)(3)(ii) provides that certain estimated charges are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed pursuant to § 1026.19(e) by more than 10 percent. Section 1026.19(e)(3)(ii) permits this limited increase for only the following items:

i. Fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the third-party service, consistent with § 1026.19(e)(1)(vi)(A).

ii. Recording fees.

2. *Aggregate increase limited to ten percent.* Under § 1026.19(e)(3)(ii)(A), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increases by more than 10 percent, regardless of whether a particular charge increases by more than 10 percent. This is true even if an individual charge was omitted from the estimate provided under § 1026.19(e)(1)(i) and then imposed at consummation. The following examples illustrate the determination of good faith for charges subject to § 1026.19(e)(3)(ii):

i. Assume that, in the disclosures provided under § 1026.19(e)(1)(i), the creditor includes a $300 estimated fee for a settlement agent, the settlement agent fee is included in the category of charges subject to § 1026.19(e)(3)(ii), and the sum of all charges subject to § 1026.19(e)(3)(ii) (including the settlement agent fee) equals $1,000. In this case, the creditor does not violate § 1026.19(e)(3)(ii) if the actual settlement agent fee exceeds the estimated settlement agent fee by more than 10 percent (*i.e.,* the fee exceeds $330), provided that the sum of all such actual charges does not exceed the sum of all such estimated charges by more than 10 percent (*i.e.,* the sum of all such charges does not exceed $1,100).

ii. Assume that, in the disclosures provided under § 1026.19(e)(1)(i), the sum of all estimated charges subject to § 1026.19(e)(3)(ii) equals $1,000. If the creditor does not include an estimated charge for a notary fee but a $10 notary fee is charged to the consumer, and the notary fee is subject to § 1026.19(e)(3)(ii), then the creditor does not violate § 1026.19(e)(1)(i) if the sum of all amounts charged to the consumer subject to § 1026.19(e)(3)(ii) does not exceed $1,100, even though an individual notary fee was not included in the estimated disclosures provided under § 1026.19(e)(1)(i).

* * * * *

6. *Shopping for a third-party service.* For good faith to be determined under § 1026.19(e)(3)(ii) a creditor must permit a consumer to shop consistent with § 1026.19(e)(1)(vi)(A). Section 1026.19(e)(1)(vi)(A) provides that a creditor permits a consumer to shop for a settlement service if the creditor permits the consumer to select the provider of that service, subject to reasonable requirements. If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) good faith is determined under § 1026.19(e)(3)(ii), unless the settlement service provider is the creditor or an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i). As noted in comment 19(e)(1)(vi)–1, whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

19(e)(3)(iii) Variations permitted for certain charges.

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2. *Good faith requirement for required services chosen by the consumer.* If a service is required by the creditor, the creditor permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi)(A), the creditor provides the list required under § 1026.19(e)(1)(vi)(C), and the consumer chooses a service provider that is not on that list to perform that service, then the actual amounts of such fees need not be compared to the original estimates for such fees to perform the good faith analysis required under § 1026.19(e)(3)(i) or (ii). Differences between the amounts of such charges disclosed under § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will choose a settlement agent not identified by the creditor on the written list provided under § 1026.19(e)(1)(vi)(C), and the creditor discloses an unreasonably low estimated settlement agent fee of $20 when the average prices for settlement agent fees in that area are $150, then the under-disclosure does not comply with § 1026.19(e)(3)(iii) and good faith is determined under § 1026.19(e)(3)(i). If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the written list required under § 1026.19(e)(1)(vi)(C), good faith is determined under § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii) unless the settlement service provider is the creditor or an affiliate of the creditor in which case good faith is determined under § 1026.19(e)(3)(i). As noted in comment 19(e)(1)(vi)–1 whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

3. *Good faith requirement for property taxes or non-required services chosen by the consumer.* Differences between the amounts of estimated charges for property taxes or services not required by the creditor disclosed under § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor must include the charge for that item in the disclosures provided under § 1026.19(e)(1)(i), but the actual amount of the inspection fee need not be compared to the original estimate for the inspection fee to perform the good faith analysis required by § 1026.19(e)(3)(iii). The original estimated charge, or lack of an estimated charge for a particular service, complies with § 1026.19(e)(3)(iii) if it is made based on the best information reasonably available to the creditor at the time that the estimate was provided. But, for example, if the subject property is located in a jurisdiction where consumers are customarily represented at closing by their own attorney, even though it is not a requirement, and the creditor fails to include a fee for the consumer's attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided under § 1026.19(e)(1)(i), then the creditor's failure to disclose, or unreasonably low estimation, does not comply with § 1026.19(e)(3)(iii). Similarly, the amount disclosed for property taxes must be based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the creditor fails to include a charge for property taxes, or includes an unreasonably low estimate for that charge, on the original estimates provided under § 1026.19(e)(1)(i), then the creditor's failure to disclose, or unreasonably low estimation, does not comply with § 1026.19(e)(3)(iii) and the charge for property tax would be subject to the good faith determination under § 1026.19(e)(3)(i).

4. *Bona fide charges.* In covered transactions, § 1026.19(e)(1)(i) requires the creditor to provide the consumer with good faith estimates of the disclosures in § 1026.37. Section 1026.19(e)(3)(iii) provides that an estimate of the charges listed in § 1026.19(e)(3)(iii) is in good faith if it is consistent with the best information reasonably available to the creditor at the time the disclosure is provided and that good faith is determined under § 1026.19(e)(3)(iii) even if such charges are paid to the creditor or affiliates of the creditor, so long as the charges are bona fide. For determining good faith under § 1026.19(e)(1)(i), to be bona fide, charges must be lawful and for services that are actually performed.

19(e)(3)(iv) Revised estimates.

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2. *Actual increase.* A creditor may determine good faith under § 1026.19(e)(3)(i) and (ii) based on the increased charges reflected on revised disclosures only to the extent that the reason for revision, as identified in § 1026.19(e)(3)(iv)(A) through (F), actually increased the particular charge. For example, if a consumer requests a rate lock extension, then the revised disclosures on which a creditor relies for purposes of determining good faith under § 1026.19(e)(3)(i) may reflect a new rate lock extension fee, but the fee may be no more than the rate lock extension fee charged by the creditor in its usual course of business, and the creditor may not rely on changes to other charges unrelated to the rate lock extension for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii).

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4. *Revised disclosures for general informational purposes.* Section 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, *e.g.,* to keep the consumer apprised of updated information, even if the revised disclosures may not be used for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii). See comment 19(e)(3)(iv)(A)–1.ii for an example in which the creditor issues revised disclosures even though the sum of all costs subject to the 10 percent tolerance category has not increased by more than 10 percent.

5. *Best information reasonably available.* Regardless of whether a creditor may use particular disclosures for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), except as otherwise provided in § 1026.19(e), any disclosures must be based on the best information reasonably available to the creditor at the time they are provided to the consumer. *See* § 1026.17(c)(2)(i) and comment 17(c)(2)(i)–1. For example, if the creditor issues revised disclosures reflecting a new rate lock extension fee for purposes of determining good faith under § 1026.19(e)(3)(i), other charges unrelated to the rate lock extension must be reflected on the revised disclosures based on the best information reasonably available to the creditor at the time the revised disclosures are provided. Nonetheless, any increases in those other charges unrelated to the rate lock extension may not be used for the purposes of determining good faith under § 1026.19(e)(3).

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19(e)(3)(iv)(D) Interest rate dependent charges.

1. *Requirements.* If the interest rate is not locked when the disclosures required by § 1026.19(e)(1)(i) are provided, then, no later than three business days after the date the interest rate is subsequently locked, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed under § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following example illustrates this requirement:

i. Assume a creditor sets the interest rate by executing a rate lock agreement with the consumer. If such an agreement exists when the original disclosures required under § 1026.19(e)(1)(i) are provided, then the actual points and lender credits are compared to the estimated points disclosed under § 1026.37(f)(1) and lender credits included in the original disclosures provided under § 1026.19(e)(1)(i) for the purpose of determining good faith under § 1026.19(e)(3)(i). If the consumer enters into a rate lock agreement with the creditor after the disclosures required under § 1026.19(e)(1)(i) were provided, then § 1026.19(e)(3)(iv)(D) requires the creditor to provide, no later than three business days after the date that the consumer and the creditor enter into a rate lock agreement, a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed under § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. Provided that the revised version of the disclosures required under § 1026.19(e)(1)(i) reflect any revised points disclosed under § 1026.37(f)(1) and lender credits, the actual points and lender credits are compared to the revised points and lender credits for the purpose of determining good faith under § 1026.19(e)(3)(i).

2. *After the Closing Disclosure is provided.* Under § 1026.19(e)(3)(iv)(D), no later than three business days after the date the interest rate is locked, the creditor must provide to the consumer a revised version of the Loan Estimate as required by § 1026.19(e)(1)(i). Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the Loan Estimate as required by § 1026.19(e)(1)(i) on or after the date on which the creditor provides the Closing Disclosure as required by § 1026.19(f)(1)(i). If the interest rate is locked on or after the date on which the creditor provides the Closing Disclosure and the Closing Disclosure is inaccurate as a result, then the creditor must provide the consumer a corrected Closing Disclosure, at or before consummation, reflecting any changed terms, pursuant to § 1026.19(f)(2). If the rate lock causes the Closing Disclosure to become inaccurate before consummation in a manner listed in § 1026.19(f)(2)(ii), the creditor must ensure that the consumer receives a corrected Closing Disclosure no later than three business days before consummation, as provided in that paragraph.

19(e)(3)(iv)(E) Expiration.

1. *Requirements.* If the consumer indicates an intent to proceed with the transaction more than 10 business days after the disclosures were originally provided under § 1026.19(e)(1)(iii), for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i). Section 1026.19(e)(3)(iv)(E) requires no justification for the change to the original estimate other than the lapse of 10 business days. For example, assume a creditor includes a $500 underwriting fee on the disclosures provided under § 1026.19(e)(1)(i) and the creditor delivers those disclosures on a Monday. If the consumer indicates intent to proceed 11 business days later, the creditor may provide new disclosures with a $700 underwriting fee. In this example, § 1026.19(e) and § 1026.25 require the creditor to document that a new disclosure was provided under § 1026.19(e)(3)(iv)(E) but do not require the creditor to document a reason for the increase in the underwriting fee.

2. *Longer time period.* For transactions in which the interest rate is locked for a specific period of time, § 1026.37(a)(13)(ii) requires the creditor to provide the date and time (including the applicable time zone) when that period ends. If the creditor establishes a period greater than 10 business days after the disclosures were originally provided (or subsequently extends it to such a longer period) before the estimated closing costs expire, notwithstanding the 10-business-day period discussed in comment 19(e)(3)(iv)(E)–1, that longer time period becomes the relevant time period for purposes of § 1026.19(e)(3)(iv)(E). Accordingly, in such a case, the creditor may not issue revised disclosures for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii) under § 1026.19(e)(3)(iv)(E) until after the longer time period has expired. A creditor establishes such a period greater than 10 business days by communicating the greater time period to the consumer, including through oral communication.

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19(f) Mortgage loans—Final disclosures.

19(f)(1) Provision of disclosures.

19(f)(1)(i) Scope.

1. *Requirements.* Section 1026.19(f)(1)(i) requires disclosure of the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction, for closed-end credit transactions that are secured by real property or a cooperative unit, other than reverse mortgages subject to § 1026.33. For example, if the creditor requires the consumer to pay money into a reserve account for the future payment of taxes, the creditor must disclose to the consumer the exact amount that the consumer is required to pay into the reserve account. If the disclosures provided under § 1026.19(f)(1)(i) do not contain the actual terms of the transaction, the creditor does not violate § 1026.19(f)(1)(i) if the creditor provides corrected disclosures that contain the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements in § 1026.19(f)(1)(ii) and (f)(2). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer adds a mobile notary service to the terms of the transaction on Tuesday, June 2, the creditor complies with § 1026.19(f)(1)(i) if it provides disclosures reflecting the revised terms of the transaction on or after Tuesday, June 2, assuming that the corrected disclosures are also provided at or before consummation, under § 1026.19(f)(2)(i).

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19(f)(2) Subsequent changes.

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19(f)(2)(iii) Changes due to events occurring after consummation.

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2. *Per-diem interest.* Under § 1026.19(f)(2)(iii), if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor must provide the consumer corrected disclosures, except as described in this comment. A creditor is not required to provide corrected disclosures under § 1026.19(f)(2)(iii) if the only changes that would be required to be disclosed in the corrected disclosure are changes to per-diem interest and any disclosures affected by the change in per-diem interest, even if the amount of per-diem interest actually paid by

the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). Nonetheless, if a creditor is providing a corrected disclosure under § 1026.19(f)(2)(iii) for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the creditor must disclose in the corrected disclosures under § 1026.19(f)(2)(iii) the correct amount of the per-diem interest and provide corrected disclosures for any disclosures that are affected by the change in per-diem interest.

* * * * *

19(f)(2)(v) Refunds related to the good faith analysis.

1. *Requirements.* Section 1026.19(f)(2)(v) provides that, if amounts paid at consummation exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. For example, assume that at consummation the consumer must pay four itemized charges that are subject to the good faith determination under § 1026.19(e)(3)(i). If the actual amounts paid by the consumer for the four itemized charges subject to § 1026.19(e)(3)(i) exceed their respective estimates on the disclosures required under § 1026.19(e)(1)(i) by $30, $25, $25, and $15, then the total would exceed the limitations prescribed by § 1026.19(e)(3)(i) by $95. If, further, the amounts paid by the consumer for services that are subject to the good faith determination under § 1026.19(e)(3)(ii) totaled $1,190, but the respective estimates on the disclosures required under § 1026.19(e)(1)(i) totaled only $1,000, then the total would exceed the limitations prescribed by § 1026.19(e)(3)(ii) by $90. The creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds $185 to the consumer no later than 60 days after consummation. The creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures reflecting the $185 refund of the excess amount collected no later than 60 days after consummation. See comments 38–4 and 38(h)(3)–2 for additional guidance on disclosing refunds.

19(f)(3) Charges disclosed.

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19(f)(3)(ii) Average charge.

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3. *Uniform use.* If a creditor chooses to use an average charge for a settlement service for a particular loan within a class, § 1026.19(f)(3)(ii)(C) requires the creditor to use that average charge for that service on all loans within the class. For example:

i. Assume a creditor elects to use an average charge for appraisal fees. The creditor defines a class of transactions as all fixed rate loans originated between January 1 and April 30 secured by real property or a cooperative unit located within a particular metropolitan statistical area. The creditor must then charge the average appraisal charge to all consumers obtaining fixed rate loans originated between May 1 and August 30 secured by real property or a cooperative unit located within the same metropolitan statistical area.

ii. The example in paragraph i of this comment assumes that a consumer would not be required to pay the average appraisal charge unless an appraisal was required on that particular loan. Using the example above, if a consumer applies for a loan within the defined class, but already has an appraisal report acceptable to the creditor from a prior loan application, the creditor may not charge the consumer the average appraisal fee because an acceptable appraisal report has already been obtained for the consumer's application. Similarly, although the creditor defined the class broadly to include all fixed rate loans, the creditor may not require the consumer to pay the average appraisal charge if the particular fixed rate loan program the consumer applied for does not require an appraisal.

* * * * *

19(f)(4) Transactions involving a seller.

19(f)(4)(i) Provision to seller.

1. *Requirement.* Section 1026.19(f)(4)(i) requires the settlement agent to provide the seller with the disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. The settlement agent complies with this provision by providing a copy of the Closing Disclosure provided to the consumer, if the Closing Disclosure also contains the information under § 1026.38 relating to the seller's transaction or, alternatively, by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

2. *Simultaneous subordinate financing.* In a purchase transaction with simultaneous subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the first-lien transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)–1 if the first-lien Closing Disclosure records the entirety of the seller's transaction. If the first-lien Closing Disclosure does not record the entirety of the seller's transaction, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with both the first-lien and simultaneous subordinate financing transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)–1.

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Section 1026.23—Right of Rescission

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23(g) Tolerances for Accuracy

1. *Example.* See comment 38(o)–1 for examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

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23(h) Special Rules for Foreclosures

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23(h)(2) Tolerance for Disclosures

1. *General.* The tolerance for disclosure of the finance charge is based on the accuracy of the total finance charge rather than its component charges. For transactions subject to § 1026.19(e) and (f), the tolerance for disclosure of the total of payments is based on the accuracy of the total of payments, taken as a whole, rather than its component charges.

2. *Example.* See comment 38(o)–1 for examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

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Section 1026.25—Record Retention

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25(c) Records Related to Certain Requirements for Mortgage Loans.

25(c)(1) Records related to requirements for loans secured by real property or a cooperative unit.

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Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

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37(a) General information.

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37(a)(7) Sale price.

1. *Estimated property value.* In transactions where there is no seller, such as in a refinancing, § 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer, which may include, at the creditor's option, the estimated value of the improvements to be made on the property in transactions involving construction. The creditor may use the estimate provided by the consumer at application unless it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, in which case the creditor must use its own estimate. If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction. In a transaction that involves a seller, if the sale price is not yet known, the creditor complies with § 1026.37(a)(7) if it discloses the estimated value of the property that it used as the basis for the disclosures in the Loan Estimate.

2. *Personal property.* In transactions involving personal property that is separately valued from real property, only the value of the real property or cooperative unit is disclosed under § 1026.37(a)(7). Where personal property is included in the sale price of the real property or cooperative unit

(for example, if the consumer is purchasing the furniture inside the dwelling), however, § 1026.37(a)(7) permits disclosure of the aggregate price without any reduction for the appraised or estimated value of the personal property.

37(a)(8) Loan term.

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3. *Loan term start date.* See comment app. D–7.i for an explanation of how a creditor discloses the loan term of a multiple-advance loan to finance the construction of a dwelling that may be permanently financed by the same creditor.

37(a)(9) Purpose.

1. *General.* Section 1026.37(a)(9) requires disclosure of the consumer's intended use of the credit. In ascertaining the consumer's intended use, § 1026.37(a)(9) requires the creditor to consider all relevant information known to the creditor at the time of the disclosure. If the purpose is not known, the creditor may rely on the consumer's stated purpose. The following examples illustrate when each of the permissible purposes should be disclosed:

i. *Purchase.* The consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. In a purchase transaction with simultaneous subordinate financing, the simultaneous subordinate loan is also disclosed with the purpose ''Purchase.''

ii. *Refinance.* The consumer refinances an existing obligation already secured by the consumer's dwelling to change the rate, term, or other loan features and may or may not receive cash from the transaction. For example, in a refinance with no cash provided, the new amount financed does not exceed the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. Conversely, in a refinance with cash provided, the consumer refinances an existing mortgage obligation and receives money from the transaction that is in addition to the funds used to pay the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. In such a transaction, the consumer may, for example, use the newly-extended credit to pay off the balance of the existing mortgage and other consumer debt, such as a credit card balance.

iii. *Construction.* Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-permanent loan). In a construction-only loan, the borrower may be required to make interest-only payments during the loan term with the balance commonly due at the end of the construction project. For additional guidance on disclosing construction-permanent loans, see § 1026.17(c)(6)(ii), comments 17(c)(6)–2, –3, and –5, and appendix D to this part.

iv. *Home equity loan.* The creditor is required to disclose that the credit is for a ''home equity loan'' if the creditor intends to extend credit for any purpose other than a purchase, refinancing, or construction. This disclosure applies whether the loan is secured by a first or subordinate lien.

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37(a)(10) Product.

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2. *Additional features.* When disclosing a loan product with at least one of the features described in § 1026.37(a)(10)(ii), § 1026.37(a)(10)(iii) and (iv) require the disclosure of only the first applicable feature in the order of § 1026.37(a)(10)(ii) and that it be preceded by the time period or the length of the introductory period and the frequency of the first adjustment period, as applicable, followed by a description of the loan product and its time period as provided for in § 1026.37(a)(10)(i). For example:

i. *Negative amortization.* Some loan products, such as ''payment option'' loans, permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the unpaid interest is added to the principal balance. Where the loan product includes a loan feature that may cause the loan balance to increase, the disclosure required by § 1026.37(a)(10)(ii)(A) is preceded by the time period that the borrower is permitted to make payments that result in negative amortization (*e.g.,* ''2 Year Negative Amortization''), followed by the loan product type. Thus, a fixed rate product with a step-payment feature for the first two years of the legal obligation that may negatively amortize is disclosed as ''2 Year Negative Amortization, Fixed Rate.''

ii. *Interest only.* When disclosing an ''Interest Only'' feature, as defined in § 1026.18(s)(7)(iv), the applicable time period must precede the label ''Interest Only.'' Thus, a fixed rate loan with only interest due for the first five years of the loan term is disclosed as ''5 Year Interest Only, Fixed Rate.'' If the interest only feature fails to cover the total interest due, then, as required by § 1026.37(a)(10)(iii), the disclosure must reference the negative amortization feature and not the interest only feature (*e.g.,* ''5 Year Negative Amortization, Fixed Rate''). See comment app. D–7.ii for an explanation of the disclosure of the time period of an interest only feature for a construction loan or a construction-permanent loan.

iii. *Step payment.* When disclosing a step payment feature (which is sometimes referred to instead as a graduated payment), the period of time at the end of which the scheduled payments will change must precede the label ''Step Payment'' (*e.g.,* ''5 Year Step Payment'') followed by the name of the loan product. Thus, a fixed rate mortgage subject to a 5-year step payment plan is disclosed as a ''5 Year Step Payment, Fixed Rate.''

iv. *Balloon payment.* If a loan product includes a ''balloon payment,'' as that term is defined in § 1026.37(b)(5), the disclosure of the balloon payment feature, including the year the payment is due, precedes the disclosure of the loan product. Thus, if the loan product is a step rate with an introductory rate that lasts for three years and adjusts each year thereafter until the balloon payment is due in the seventh year of the loan term, the disclosure required is ''Year 7 Balloon Payment, 3/1 Step Rate.'' If the loan product includes more than one balloon payment, only the earliest year that a balloon payment is due shall be disclosed.

v. *Seasonal payment.* If a loan product includes a seasonal payment feature, § 1026.37(a)(10)(ii)(E) requires that the creditor disclose the feature. The feature is not, however, required to be disclosed with any preceding time period. Disclosure of the label ''Seasonal Payment'' without any preceding number of years satisfies this requirement.

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37(a)(13) Rate lock.

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2. *Expiration date.* The disclosure required by § 1026.37(a)(13)(ii) related to estimated closing costs is required regardless of whether the interest rate is locked for a specific period of time or whether the terms and costs are otherwise accepted or extended. If the consumer fails to indicate an intent to proceed with the transaction within 10 business days after the disclosures were originally provided under § 1026.19(e)(1)(iii) (or within any longer time period established by the creditor), then, for determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i). *See* comment 19(e)(3)(iv)(E)–2.

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4. *Revised disclosures.* Once the consumer indicates an intent to proceed within the time specified by the creditor under § 1026.37(a)(13)(ii), the date and time at which estimated closing costs expire are left blank on any subsequent revised disclosures. The creditor may extend the period of availability to expire beyond the time disclosed under § 1026.37(a)(13)(ii). If the consumer indicates an intent to proceed within that longer time period, the date and time at which estimated closing costs expire are left blank on subsequent revised disclosures, if any. *See* comment 19(e)(3)(iv)–5.

37(b) Loan terms.

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37(b)(2) Interest rate.

1. *Interest rate at consummation not known.* Where the interest rate that will apply at consummation is not known at the time the creditor must deliver the disclosures required by § 1026.19(e), § 1026.37(b)(2) requires disclosure of the fully-indexed rate, defined as the index plus the margin at consummation. Although § 1026.37(b)(2) refers to the index plus margin ''at consummation,'' if the index value that will be in effect at consummation is unknown at the time the disclosures are provided under § 1026.19(e)(1)(iii), *i.e.,* within three business days after receipt of a consumer's application, the fully-indexed rate disclosed under § 1026.37(b)(2) may be based on the index in effect at the time the disclosure is delivered. The index in effect at consummation (or the time the disclosure is delivered under § 1026.19(e)) need not be used if the contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies

that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 days before consummation (or any earlier date of disclosure) in calculating the fully-indexed rate to be disclosed. See comment app. D–7.iii for an explanation of the disclosure of the permanent financing interest rate for a construction-permanent loan.

37(b)(3) Principal and interest payment.

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2. *Initial periodic payment if not known.* Under § 1026.37(b)(3), the initial periodic payment amount that will be due under the terms of the legal obligation must be disclosed. If the initial periodic payment is not known because it will be based on an interest rate at consummation that is not known at the time the disclosures required by § 1026.19(e) must be provided, for example, if it is based on an external index that may fluctuate before consummation, § 1026.37(b)(3) requires that the disclosure be based on the fully-indexed rate disclosed under § 1026.37(b)(2). See comment 37(b)(2)–1 for guidance regarding calculating the fully-indexed rate.

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37(b)(6) Adjustments after consummation.

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37(b)(6)(iii) Increase in periodic payment.

1. *Additional information regarding increase in periodic payment.* A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the scheduled frequency of adjustments to the periodic principal and interest payment by using the phrases ''Adjusts every'' and ''starting in.'' A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment by using the phrase ''Can go as high as'' and then indicating the date at the end of that phrase or, for a scheduled maximum amount, such as under a step payment loan, ''Goes as high as.'' A creditor complies with the requirement under § 1026.37(b)(6)(iii) to indicate that there is a period during which only interest is required to be paid and the due date of the last periodic payment of such period using the phrase ''Includes only interest and no principal until.'' See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3). See comment app. D–7.iv for an explanation of the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.

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37(c) Projected payments.

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2. *Construction loans.* See comment app. D–7.v for an explanation of the projected payments disclosure for a construction or construction-permanent loan.

37(c)(1) Periodic payment or range of payments.

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Paragraph 37(c)(1)(iii).

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Paragraph 37(c)(1)(iii)(B).

1. *Multiple events occurring in a single year.* If multiple changes to periodic principal and interest payments would result in more than one separate periodic payment or range of payments in a single year, § 1026.37(c)(1)(iii)(B) requires the creditor to disclose the range of payments that would apply during the year in which the events occur. For example:

i. Assume a loan with a 30-year term with a payment that adjusts every month for the first 12 months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment and the periodic payment that would apply after each payment adjustment during the first 12 months, which single range represents the minimum payment and maximum payment, respectively. Under § 1026.37(c)(1)(i)(D), the creditor also discloses, as an additional separate periodic payment or range of payments, the periodic principal and interest payment or range of payments that would apply after the payment becomes fixed.

ii. Assume instead a loan with a 30-year term with a payment that adjusts upward at three months and at six months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment, the periodic payment that would apply after the payment adjustment that occurs at three months, and the periodic payment that would apply after the payment adjustment that occurs at six months, which single range represents the minimum payment and maximum payment, respectively, which would apply during the first year of the loan. Under § 1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment or range of payments, because that is the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the first year of the loan.

iii. Assume that the same loan has a payment that, instead of becoming fixed after the adjustment at six months, adjusts once more at 18 months and becomes fixed thereafter. The creditor discloses the same single range of payments for year one. Under § 1026.37(c)(1)(i)(D), the creditor separately discloses the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment in year two. Under § 1026.37(c)(1)(i)(A) and (c)(3)(ii), beginning in the next year in the sequence (*i.e.,* in year three), the creditor separately discloses the periodic payment that would apply after the payment adjustment that occurs at 18 months. See comment 37(c)(3)(ii)–1 regarding subheadings that state the years.

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37(c)(4) Taxes, insurance, and assessments.

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Paragraph 37(c)(4)(iv).

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2. *Amounts paid by the creditor using escrow account funds.* Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed under § 1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If only a portion of the amounts disclosed under § 1026.37(c)(4)(ii), including, without limitation, property taxes, homeowner's insurance, and assessments, will be paid by the creditor using escrow account funds, the creditor may indicate that only a portion of the amounts disclosed will be paid using escrow account funds, such as by using the word ''some.''

37(d) Costs at closing.

37(d)(2) Optional alternative table for transactions without a seller or for simultaneous subordinate financing.

1. *Optional use.* The optional alternative disclosure of the estimated cash to close provided for in § 1026.37(d)(2) may be used by a creditor only in a transaction without a seller or a simultaneous subordinate financing transaction. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first-lien Closing Disclosure will record the entirety of the seller's transaction. Creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under § 1026.37(h)(2).

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37(f) Closing cost details; loan costs.

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3. *Construction loan inspection and handling fees.* Inspection and handling fees for the staged disbursement of construction loan proceeds, including draw fees, are loan costs associated with the transaction for purposes of § 1026.37(f). If inspection and handling fees are collected at or before consummation, the total of such fees is disclosed in the loan costs table. If inspection and handling fees will be collected after consummation, the total of such fees is disclosed in a separate addendum and the fees are not counted for purposes of the calculating cash to close table. See comment 37(f)(6)–3 for a description of an addendum used to disclose inspection and handling fees that will be collected after consummation. See also comments 38(f)–2 and app. D–7.vii. If the number of inspections and disbursements is not known at the time the disclosures are provided, the creditor discloses the fees that will be collected based on the best information reasonably available to the creditor at the time the disclosure is provided. *See* comment 19(e)(1)(i)–1. See § 1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures.

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37(f)(6) Use of addenda.

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3. Addendum for post-consummation inspection and handling fees. A creditor makes the disclosures required by § 1026.37(f) and comment 37(f)–3 for construction loan inspection and handling fees collected after consummation by disclosing the total of such fees under the heading ''Inspection and Handling Fees Collected After Closing'' in an addendum, which may be the addendum pursuant to § 1026.37(f)(6) or any other addendum or additional page under § 1026.37. *See* comment 37(o)(1)–1. For purposes of comment 38(f)–2, the addendum may be any addendum or additional page under § 1026.38. If the actual amount of such fees is not known at the time the disclosures are provided, the disclosures in the addendum are based upon the best information reasonably available to the creditor at the time the disclosure is provided. *See* comment 19(e)(1)(i)–1. For example, such information could include amounts the creditor has previously charged in similar construction transactions or the amount of estimated inspection and handling fees used by the creditor for purposes of setting the construction loan's commitment amount.

37(g) Closing cost details; other costs.

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37(g)(6) Total closing costs.

Paragraph 37(g)(6)(ii).

1. *Lender credits.* Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in § 1026.37(g)(6)(ii). Such lender credits include non-specific lender credits as well as specific lender credits. *See* comment 19(e)(3)(i)–5.

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37(h) Calculating cash to close.

37(h)(1) For all transactions.

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2. *Simultaneous subordinate financing.* On the Loan Estimate for simultaneous subordinate financing purchase transactions, the sale price disclosed under § 1026.37(a)(7)(i) is not used under § 1026.37(h)(1) for the calculating cash to close table calculations that include the sale price as a component of the calculation. For example, sale price is generally included in the closing costs financed calculation under § 1026.37(h)(1)(ii) as a component of the estimated total amount of payments to third parties. However, for simultaneous subordinate financing transactions, the estimated total amount of payments to third parties would not include the sale price. The estimated total amount of payments to third parties only includes payments occurring in the simultaneous subordinate financing transaction other than payments toward the sale price.

37(h)(1)(ii) Closing costs financed.

1. *Calculation of amount.* The amount of closing costs financed disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed under § 1026.37(f) and (g) from the loan amount disclosed under § 1026.37(b)(1). The estimated total amount of payments to third parties includes the sale price disclosed under § 1026.37(a)(7)(i), if applicable, unless otherwise excluded under comment 37(h)(1)–2. Other examples of payments to third parties not otherwise disclosed under § 1026.37(f) and (g) include the amount of construction costs for transactions that involve improvements to be made on the property and payoffs of secured or unsecured debt. If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.37(h)(1)(ii). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that the absolute value of the amount disclosed under § 1026.37(h)(1)(ii) does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6).

2. *Loan amount.* The loan amount disclosed under § 1026.37(b)(1), a component of the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note.

37(h)(1)(iii) Down payment and other funds from borrower.

1. *Down payment and funds from borrower calculation.* For purposes of § 1026.37(h)(1)(iii)(A)(*1*), the down payment and funds from borrower amount is calculated as the difference between the sale price of the property disclosed under § 1026.37(a)(7)(i) and the sum of the loan amount and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv). The calculation is independent of any loan program or investor requirements.

2. *Funds for borrower.* Section 1026.37(h)(1)(iii)(A)(*2*) requires that, in a purchase transaction as defined in paragraph (a)(9)(i) of this section that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price disclosed under § 1026.37(a)(7)(i), the amount of funds from the consumer is determined in accordance with § 1026.37(h)(1)(v). Section 1026.37(h)(1)(iii)(B) requires that, for all non-purchase transactions, the amount of estimated funds from the consumer is determined in accordance with § 1026.37(h)(1)(v). Pursuant to § 1026.37(h)(1)(v), the amount to be disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (B) is determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. When the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(1)(iii) as ''Down Payment/Funds from Borrower,'' and $0 is disclosed under § 1026.37(h)(1)(v) as ''Funds for Borrower.'' When the result of the calculation is negative, that amount is disclosed as a negative number under § 1026.37(h)(1)(v) as ''Funds for Borrower,'' and $0 is disclosed under § 1026.37(h)(1)(iii) as ''Down Payment/Funds from Borrower.'' When the result is $0, $0 is disclosed as ''Down Payment/Funds from Borrower'' and ''Funds for Borrower'' under § 1026.37(h)(1)(iii) and (v), respectively.

* * * * *

37(h)(1)(v) Funds for borrower.

1. *No funds for borrower.* When the down payment and other funds from the borrower is determined in accordance with § 1026.37(h)(1)(iii)(A)(*1*), the amount disclosed under § 1026.37(h)(1)(v) as funds for the borrower is $0.

2. *Total amount of existing debt satisfied in the transaction.* The amounts disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (B), as applicable, and (h)(1)(v) are determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable.

37(h)(1)(vi) Seller credits.

1. *Non-specific seller credits to be disclosed.* Non-specific seller credits, *i.e.,* general payments from the seller to the consumer that do not pay for a particular fee on the disclosures provided under § 1026.19(e)(1), known to the creditor at the time of delivery of the Loan Estimate, are disclosed under § 1026.37(h)(1)(vi). For example, a creditor may learn the amount of seller credits that will be paid in the transaction from information obtained from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

2. *Seller credits for specific charges.* To the extent known by the creditor at the time of delivery of the Loan Estimate, specific seller credits, *i.e.,* seller credits for specific items disclosed under § 1026.37(f) and (g), may be either disclosed under § 1026.37(h)(1)(vi) or reflected in the amounts disclosed for those specific items under § 1026.37(f) and (g). For example, if the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay half of a $100 required pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under § 1026.37(f) with a $50 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose the required pest inspection fee as $50 under § 1026.37(f), reflecting the specific seller credit in the amount disclosed for the pest inspection fee. If the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay the entire $100 pest

inspection fee, the creditor may either disclose the required pest inspection fee as $100 under § 1026.37(f) with a $100 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose nothing under § 1026.37(f), reflecting that the specific seller credit will cover the entire pest inspection fee.

37(h)(1)(vii) Adjustments and other credits.

1. *Other credits known at the time the Loan Estimate is issued.* Amounts expected to be paid at closing by third parties not otherwise associated with the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed under § 1026.37(h)(1)(vii). Amounts expected to be provided in advance of closing by third parties, including family members, not otherwise associated with the transaction are not required to be disclosed under § 1026.37(h)(1)(vii).

* * * * *

4. *Other credits to be disclosed.* Credits other than those from the creditor or seller are disclosed under § 1026.37(h)(1)(vii). Disclosure of other credits is, like other disclosures under § 1026.37, subject to the good faith requirement under § 1026.19(e)(1)(i). See § 1026.19(e)(1)(i) and comments 17(c)(2)(i)–1 and 19(e)(1)(i)–1. The creditor may obtain information regarding items to be disclosed under § 1026.37(h)(1)(vii), for example, from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

5. *Proceeds from subordinate financing or other source.* Funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii) on the first-lien transaction Loan Estimate.

6. *Reduction in amounts for adjustments.* Adjustments that require additional funds from the consumer in a transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(*1*) or pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v), are only included in the amount disclosed under § 1026.37(h)(1)(vii) if such amounts are not included in the calculation under § 1026.37(h)(1)(iii)(A)(*2*) or (B) or § 1026.37(h)(1)(v) as debt being satisfied in the transaction. Other examples of adjustments for additional funds from the consumer include payoffs of secured or unsecured debt in a purchase transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(*1*) or prorations for property taxes and homeowner's association dues. The total amount disclosed under § 1026.37(h)(1)(vii) is a sum of adjustments requiring additional funds from the consumer, calculated as positive amounts, and other credits, such as those provided for in comment 37(h)(1)(vii)–1, calculated as negative amounts.

* * * * *

37(h)(2) Optional alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.

1. *Optional use.* The optional alternative disclosure of the calculating cash to close table in § 1026.37(h)(2) may only be provided by a creditor in a transaction without a seller or for simultaneous subordinate financing. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The use of this alternative table for transactions without a seller or for simultaneous subordinate financing is optional, but creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under § 1026.37(d)(2).

37(h)(2)(iii) Payoffs and payments.

1. *Examples.* Examples of the amounts incorporated in the total amount disclosed under § 1026.37(h)(2)(iii) include, but are not limited to: Payoffs of existing liens secured by the property identified under § 1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmen's liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; construction costs associated with the transaction that the consumer will be obligated to pay in any transaction in which the creditor is otherwise permitted to use the alternative calculating cash to close table; and payments to other third parties for outstanding debts of the consumer, excluding settlement services, as required to be paid as a condition for the extension of credit. Amounts that will be paid with funds provided by the consumer, including partial payments, such as a portion of construction costs, or amounts that will be paid by third parties and will be disclosed on the Closing Disclosure under § 1026.38(t)(5)(vii)(B), are calculated as credits, using positive numbers, in the total amount disclosed under § 1026.37(h)(2)(iii).

2. *Disclosure of subordinate financing.* i. *First-lien Loan Estimate.* On the Loan Estimate for a first-lien transaction disclosed with the optional alternative table pursuant to § 1026.37(h)(2), such as a refinance transaction that also has simultaneous subordinate financing, the proceeds of the simultaneous subordinate financing are included, as a positive number, in the total amount disclosed under § 1026.37(h)(2)(iii). The total amount disclosed under § 1026.37(h)(2)(iii) is a negative number unless the proceeds from the subordinate financing and any amounts entered as credits as discussed in comment 37(h)(2)(iii)–1 equal or exceed the total amount of other payoffs and payments that are included in the calculation under § 1026.37(h)(2)(iii). If the proceeds from the subordinate financing and any amounts entered as credits as discussed in comment 37(h)(2)(iii)–1 equal or exceed the total amount of other payoffs and payments that are included in the calculation under § 1026.37(h)(2)(iii), the total amount disclosed under § 1026.37(h)(2)(iii) is disclosed as $0 or a positive number.

ii. *Simultaneous subordinate financing Loan Estimate.* On the simultaneous subordinate financing Loan Estimate disclosed with the optional alternative table pursuant to § 1026.37(h)(2), the proceeds of the subordinate financing that will be applied to the first-lien transaction may be included in the payoffs and payments disclosure under § 1026.37(h)(2)(iii).

* * * * *

37(k) Contact information.

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3. *Contact.* Section 1026.37(k)(2) requires the disclosure of the name and NMLSR ID of the person who is the primary contact for the consumer, labeled ''Loan Officer.'' The loan officer is generally the natural person employed by the creditor or mortgage broker disclosed under § 1026.37(k)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.37(k)(2), as applicable.

* * * * *

37(l) Comparisons.

37(l)(1) In five years.

* * * * *

Paragraph 37(l)(1)(i).

1. *Calculation of total payments in five years.* The amount disclosed under § 1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. For guidance on how to calculate interest for mortgage loans that are Adjustable Rate products under § 1026.37(a)(10)(i)(A) for purposes of § 1026.37(l)(1)(i), see comment 17(c)(1)–10. In addition, for purposes of § 1026.37(l)(1)(i), the creditor should assume that the consumer makes payments as scheduled and on time. For purposes of § 1026.37(l)(1)(i), mortgage insurance means ''mortgage insurance or any functional equivalent'' as defined under comment 37(c)(1)(i)(C)–1 and includes prepaid or escrowed mortgage insurance. Loan costs are those costs disclosed under § 1026.37(f).

* * * * *

37(l)(3) Total interest percentage.

1. *General.* When calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time and will not make any additional payments. The creditor includes prepaid interest that the consumer will pay when calculating the total interest percentage. Prepaid interest that is disclosed as a negative number under §§ 1026.37(g)(2) or 1026.38(g)(2) is included as a negative value when calculating the total interest percentage.

* * * * *

37(o) Form of disclosures.

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37(o)(4) Rounding.

* * * * *

37(o)(4)(i) Nearest dollar.

Paragraph 37(o)(4)(i)(A).

1. *Rounding of dollar amounts.* Section 1026.37(o)(4)(i)(A) requires that certain dollar amounts be rounded to the nearest whole dollar. For example, under § 1026.37(o)(4)(i)(A), periodic mortgage

insurance payments are rounded and disclosed to the nearest dollar, such that a periodic mortgage insurance payment of $164.50 is disclosed under § 1026.37(c)(2)(ii) as $165, but a periodic mortgage insurance payment of $164.49 is disclosed as $164. The per-diem amount disclosed under § 1026.37(g)(2)(iii) and the monthly amounts for the initial escrow payment at closing disclosed pursuant to § 1026.37(g)(3)(i) through (iii) and (v) do not include partial cents. Dollar amounts are rounded or truncated to the nearest whole cent. For example, under § 1026.37(g)(2)(iii), the creditor discloses per-diem interest of $68.1254 as $68.13 or $68.12. See form H–24(B) in appendix H to this part for an illustration of per-diem amounts for homeowner's insurance disclosed pursuant to § 1026.37(g)(3)(i).

* * * * *

37(o)(4)(ii) Percentages.

1. *Decimal places.* Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed rounding exact amounts to three decimal places, but the creditor does not disclose trailing zeros to the right of the decimal point. For example, a 2.4999 percent annual percentage rate is disclosed as ''2.5%'' under § 1026.37(o)(4)(ii). Similarly, a 7.005 percent annual percentage rate is disclosed as ''7.005%,'' and a 7.000 percent annual percentage rate is disclosed as ''7%.''

* * * * *

Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

* * * * *

4. *Reductions in principal balance.* A principal reduction that occurs immediately or very soon after closing must be disclosed in the summaries of transactions table on the standard Closing Disclosure pursuant to § 1026.38(j)(1)(v) or in the payoffs and payments table on the alternative Closing Disclosure pursuant to § 1026.38(t)(5)(vii)(B). The disclosure of a principal reduction under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) includes the following elements: (1) The amount of the principal reduction; (2) the phrase ''principal reduction'' or a similar phrase; (3) for a principal reduction disclosure under § 1026.38(t)(5)(vii)(B) only, the name of the payee; (4) if applicable to the transaction, the phrase ''Paid Outside of Closing'' or ''P.O.C.'' and the name of the party making the payment; and (5) if the principal reduction is used to satisfy the requirements of § 1026.19(f)(2)(v), a statement that the principal reduction is being provided to offset charges that exceed the legal limits, using any language that meets the clear and conspicuous standard under § 1026.38(t)(1)(i). If a creditor is required to disclose the name of the party making the payment or that the principal reduction is being provided to offset charges that exceed the legal limits, and there is insufficient space under the § 1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure for these elements of the principal reduction disclosure, the creditor may omit these elements from the § 1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure. If the creditor omits these elements from the § 1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure, the creditor must provide a complete principal reduction disclosure under an appropriate heading on an additional page, in accordance with § 1026.38(j) and (t)(5)(ix), as applicable, with a reference to the abbreviated principal reduction disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B).

i. *Principal reduction not paid with closing funds.* A principal reduction is disclosed in the summaries of transactions table under § 1026.38(j)(1)(v) and marked with the phrase ''Paid Outside of Closing'' or the abbreviation ''P.O.C.'' pursuant to § 1026.38(j)(4)(i), or in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) marked with the phrase ''Paid Outside of Closing'' or the abbreviation ''P.O.C.,'' if it is not paid from closing funds. For a principal reduction disclosed under § 1026.38(j)(1)(v) that is not paid from closing funds, the amount of the principal reduction is not included in computing the summaries of transactions totals under § 1026.38(j) or the cash to close disclosures under § 1026.38(i). For a principal reduction disclosed under § 1026.38(t)(5)(vii)(B) that is not paid from closing funds, the amount of the principal reduction is not included in computing the total payoffs and payments amount disclosed under § 1026.38(t)(5)(vii)(B) or the cash to close amount disclosed under § 1026.38(e)(5)(ii). For example, a creditor providing a $500 principal reduction to satisfy the refund requirements of § 1026.19(f)(2)(v) discloses the principal reduction under § 1026.38(j)(1)(v) by providing in Section K of the summaries of transactions table a statement such as ''$500.00 Principal Reduction for exceeding legal limits P.O.C. Lender,'' and not including the amount of the principal reduction in the summaries of transactions totals under § 1026.38(j) or the calculating cash to close disclosures under § 1026.38(i). Alternatively, if there is insufficient space under § 1026.38(j)(1)(v) for a creditor to disclose the name of the party making the payment or a statement that the principal reduction is being provided to offset charges that exceed the legal limits, a creditor may disclose a statement such as ''$500.00 Principal Reduction P.O.C.'' under § 1026.38(j)(1)(v) and a statement on an additional page such as ''$500.00 Principal Reduction for exceeding legal limits P.O.C. Lender. See Section K on page 3.''

ii. *Principal reduction paid with closing funds.* A principal reduction is disclosed in the summaries of transactions table under § 1026.38(j)(1)(v) or in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) without the phrase ''Paid Outside of Closing'' or the abbreviation ''P.O.C.'' if it is paid from closing funds. The amount of a principal reduction that is paid with closing funds is included in the applicable calculations required under § 1026.38. For example, in a refinance transaction using the alternative tables on the Closing Disclosure, a creditor discloses a $1,000 principal reduction to reduce the cash provided to the consumer by providing in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) a statement such as ''Principal Reduction to Consumer'' under the column heading ''TO'' and ''$1,000.00'' under the column heading ''AMOUNT,'' and by including such amount in the total payoffs and payments amount under § 1026.38(t)(5)(vii)(B) and in the cash to close amount under § 1026.38(e)(5)(ii). In this example, the creditor must disclose the following elements under § 1026.38(t)(5)(vii)(B): The amount of the principal reduction, the phrase ''principal reduction'' or a similar phrase, and the name of the payee. The creditor should not include in the disclosure the phrase ''Paid Outside of Closing'' or ''P.O.C.'' and the name of the party making the payment, or a statement that the principal reduction is being provided to offset charges that exceed the legal limits, because those principal reduction disclosure elements are not applicable to the transaction in this particular example. The creditor may not use an addendum for the principal reduction disclosure in this example.

38(a) General information.

38(a)(3) Closing information.

* * * * *

38(a)(3)(iii) Disbursement date.

1. *Simultaneous subordinate financing disbursement date.* The disbursement date on the simultaneous subordinate financing Closing Disclosure is the date some or all of the subordinate financing loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party other than a settlement agent.

* * * * *

38(a)(3)(vii) Sale price.

1. *No seller.* In transactions where there is no seller, such as in a refinancing, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. To comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine approval of the credit transaction. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to ''Estimated Prop. Value.'' The creditor may use the estimate provided by the consumer at application but, if it has performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose the estimate it used for purposes of approving the credit transaction. For transactions involving construction where there is no seller, the creditor must disclose the value of the property that is used to determine the approval of the credit transaction, including improvements to be made on the property if those improvements are used in determining the approval of the credit transaction.

* * * * *

38(a)(4) Transaction information.

2. *No seller transactions or simultaneous subordinate financing transactions.* In transactions where there is no seller, such as in a refinancing or home equity loan, or for simultaneous subordinate financing purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction, the disclosure under § 1026.38(a)(4)(ii) may be left blank. *See also* § 1026.38(t)(5)(vii)(A).

* * * * *

4. *Consumers.* Section 1026.38(a)(4)(i) requires disclosure of the consumer's name and mailing address, labeled ''Borrower.'' For purposes of § 1026.38(a)(4)(i), the term ''consumer'' is limited to persons to whom the credit is offered or extended. For guidance on how to disclose multiple consumers, see comment 38(a)(4)–1.

* * * * *

38(d) Costs at closing.

38(d)(2) Alternative table for transactions without a seller or for simultaneous subordinate financing.

1. *Required use.* The disclosure of the alternative cash to close table in § 1026.38(d)(2) may only be provided by a creditor in a transaction without a seller or for a simultaneous subordinate financing transaction. In a purchase transaction, the alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative table for transactions without a seller or for simultaneous subordinate financing transactions is required if the Loan Estimate provided to the consumer disclosed the optional alternative table under § 1026.37(d)(2) and must be used in conjunction with the use of the alternative calculating cash to close disclosure under § 1026.38(e). See comments 38(j)–3 and 38(k)(2)(vii)–1 for disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing transaction and a seller contributes to the costs of the subordinate financing. See also comments 38(t)(5)(vii)(B)–1 and –2 for the requirement to disclose the seller's contributions, if any, toward the subordinate financing in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure.

* * * * *

38(e) Alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.

1. *Required use.* The disclosure of the table in § 1026.38(e) may only be provided by a creditor in a transaction without a seller or for a simultaneous subordinate financing transaction. In a purchase transaction, the alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing is required for transactions in which the Loan Estimate provided to the consumer disclosed the optional alternative table under § 1026.37(h)(2), and must be used in conjunction with the alternative disclosure under § 1026.38(d)(2).

* * * * *

3. *Statements of differences.* The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. *See* comment 38(t)(4)–1. Any amount in the ''Final'' column of the alternative calculating cash to close table under § 1026.38(e) is shown to two decimal places unless otherwise required. Pursuant to § 1026.38(t)(4)(i)(C), however, any amount in the ''Loan Estimate'' column of the alternative calculating cash to close table under § 1026.38(e) is rounded to the nearest dollar amount to match the corresponding estimated amount disclosed on the Loan Estimate's calculating cash to close table under § 1026.37(h). For purposes of § 1026.38(e)(1)(iii), (2)(iii), and (4)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the amounts in the ''Loan Estimate'' column of the total closing costs row disclosed under § 1026.38(e)(2)(i) is $12,500, but the non-rounded estimate of total closing costs is $12,500.35, and the ''Final'' column of the total closing costs row disclosed under § 1026.38(e)(2)(ii) is $12,500.35, then, even though the table would appear to show a $0.35 increase in total closing costs, no statement of such increase is given under § 1026.38(e)(2)(iii).

* * * * *

6. *Estimated amounts.* The amounts disclosed on the alternative calculating cash to close table under the subheading ''Loan Estimate'' under § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer under § 1026.19(e).

* * * * *

38(e)(2) Total closing costs.

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Paragraph 38(e)(2)(iii)(A).

* * * * *

2. *Disclosure of excess amounts above limitations on increases in closing costs.*

i. Because certain closing costs, individually, are generally subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (*e.g.,* fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (*e.g.,* recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), § 1026.38(e)(2)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

ii. Under § 1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation. For example, if the Loan Estimate included under ''Services You Cannot Shop For'' a $30 charge for a ''title courier fee,'' but the title company elects to hand-deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the ''Total Closing Costs'' that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third party service was actually provided, albeit at a lower amount than estimated. For an example, see form H–25 of appendix H to this part.

iii. Under § 1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading ''Services You Can Shop For'' may be subject to different limitations depending on the circumstances. Although § 1026.19(e)(3)(iii) provides exceptions to the general rule, such a charge would generally be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

3. *Statements regarding excess amount and any credit to the consumer.* Section 1026.38(e)(2)(iii)(A) requires a statement that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) or a principal reduction under § 1026.38(t)(5)(vii)(B), if provided under § 1026.19(f)(2)(v). See form H–25(F) in appendix H to this part for examples of such statements under § 1026.38(h)(3). *See also* comments 38–4 and 38(h)(3)–2.

38(e)(3) Closing costs paid before closing.

* * * * *

Paragraph 38(e)(3)(iii)(B).

1. *Equal amount.* Under § 1026.38(e)(3)(iii)(B), the creditor gives a statement that the ''Final'' amount disclosed under § 1026.38(e)(3)(ii) is equal to the ''Loan Estimate'' amount disclosed under § 1026.38(e)(3)(i), only if the ''Final'' amount is $0, because the ''Loan Estimate'' amount is always disclosed as $0 under § 1026.38(e)(3)(i). *See* comment 38(e)(3)(i)–1.

38(f) Closing cost details; loan costs.

* * * * *

2. *Construction loan inspection and handling fees.* Construction loan inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.38(f). For information on how to disclose inspection and handling fees for the staged disbursement of construction loan proceeds if the amount or number of such fees or when they will be collected is not known at or before consummation, see comments 37(f)–3, 37(f)(6)–3, and app. D–7.vii. See § 1026.17(e) and its commentary

concerning the effect of subsequent events that cause inaccuracies in disclosures.

* * * * *

38(g) Closing costs details; other costs.

38(g)(1) Taxes and other government fees.

* * * * *

3. *Recording fees.* i. *Fees for recording deeds and security instruments.* Section 1026.38(g)(1)(i)(A) requires, on the first line under the subheading ''Taxes and Other Government Fees'' and before the columns described in § 1026.38(g), disclosure of the total fees expected to be paid to State and local governments for recording deeds and, separately, the total fees expected to be paid to State and local governments for recording security instruments. On a line labeled ''Recording Fees,'' form H–25 of appendix H to this part illustrates such disclosures with the additional labels ''Deed'' and ''Mortgage,'' respectively.

ii. *Total of all recording fees.* Section 1026.38(g)(1)(i)(B) requires, on the first line under the subheading ''Taxes and Other Government Fees'' and in the applicable column described in § 1026.38(g), disclosure of the total amounts paid for recording fees, including but not limited to the amounts subject to § 1026.38(g)(1)(i)(A). The total amount disclosed under § 1026.38(g)(1)(i)(B) also includes recording fees expected to be paid to State and local governments for recording any other instrument or document to preserve marketable title or to perfect the creditor's security interest in the property. See comments 37(g)(1)–1, –2, and –3 for discussions of the difference between transfer taxes and recording fees.

38(g)(2) Prepaids.

* * * * *

3. *No prepaid interest.* If interest is not collected for any period between closing and the date from which interest will be collected with the first monthly payment, then $0.00 is disclosed under § 1026.38(g)(2).

* * * * *

38(i) Calculating cash to close.

* * * * *

2. *Statements of differences.* The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. *See* comment 38(t)(4)–1. Any amount in the ''Final'' column of the calculating cash to close table under § 1026.38(i) is shown to two decimal places unless otherwise required. Under § 1026.38(t)(4)(i)(C), however, any amount in the ''Loan Estimate'' column of the calculating cash to close table under § 1026.38(i) is rounded to the nearest dollar amount to match the corresponding estimated amount disclosed on the Loan Estimate's calculating cash to close table under § 1026.37(h). For purposes of § 1026.38(i)(1)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the amount in the ''Loan Estimate'' column of the total closing costs row disclosed under § 1026.38(i)(1)(i) is $12,500, but the non-rounded estimate of total closing costs is $12,500.35, and the amount in the ''Final'' column of the total closing costs row disclosed under § 1026.38(i)(1)(ii) is $12,500.35, then, even though the table would appear to show a $0.35 increase in total closing costs, no statement of such increase is given under § 1026.38(i)(1)(iii).

3. *Statements that the consumer should see details.* The provisions of § 1026.38(i)(4)(iii)(A), (5)(iii)(A), (7)(iii)(A), and (8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(j). Form H–25 of appendix H to this part contains some examples of these statements. For example, § 1026.38(i)(5)(iii)(A) requires a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(ii). The following statement, which is similar to that shown on form H–25(B) of appendix H to this part for § 1026.38(i)(7)(iii)(A), ''See Deposit in Section L,'' in which the words ''Section L'' are in boldface font, complies with this provision. In addition, for example, the statement ''See details in Sections K and L,'' in which the words ''Sections K and L'' are in boldface font, complies with the requirement under § 1026.38(i)(8)(iii)(A). See form H–25(B) of appendix H to this part for an example of the statement required by § 1026.38(i)(8)(iii)(A). See also comment 38(i)(7)(iii)(A)–1 for additional examples that comply with the requirements under § 1026.38(i)(7)(iii)(A).

* * * * *

5. *Estimated amounts.* The amounts disclosed in the ''Loan Estimate'' column of the calculating cash to close table under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer.

38(i)(1) Total closing costs.

Paragraph 38(i)(1)(iii)(A).

* * * * *

2. *Disclosure of excess amounts above limitations on increases in closing costs.* i. Because certain closing costs, individually, are generally subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (*e.g.,* fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (*e.g.,* recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), § 1026.38(i)(1)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

ii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation. For example, if the Loan Estimate included under ''Services You Cannot Shop For'' a $30 charge for a ''title courier fee,'' but the title company elects to hand-deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the ''Total Closing Costs'' that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third-party service was actually provided, albeit at a lower amount than estimated.

iii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading ''Services You Can Shop For'' may be subject to different limitations depending on the circumstances. Although § 1026.19(e)(3)(iii) provides exceptions to the general rule, such a charge would generally be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third-party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

3. *Statements regarding excess amount and any credit to the consumer.* Section 1026.38(i)(1)(iii)(A)(*3*) requires statements that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3), or a principal reduction under § 1026.38(j)(1)(v), if either is provided under § 1026.19(f)(2)(v). See form H–25(F) of appendix H to this part for examples of such statements under § 1026.38(h)(3). *See also* comments 38–4 and 38(h)(3)–2.

* * * * *

38(i)(3) Closing costs financed.

1. *Calculation of amount.* i. *Generally.* The amount of closing costs financed disclosed under § 1026.38(i)(3) is determined by subtracting the total amount of payments to third parties not otherwise disclosed under § 1026.38(f) and (g) from the loan amount disclosed under § 1026.38(b). The total amount of payments to third parties includes the sale price of the property disclosed under § 1026.38(j)(1)(ii). Other examples of payments to third parties not otherwise disclosed under § 1026.38(f) and (g) include the amount of construction costs for transactions that involve improvements to be made on the property, and payoffs of secured or unsecured debt. If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.38(i)(3). If the result of the calculation is positive, that amount is disclosed as a negative number under § 1026.38(i)(3), but only to the extent that the absolute value of the amount

disclosed under § 1026.38(i)(3) does not exceed the total amount of closing costs disclosed under § 1026.38(h)(1).

ii. *Simultaneous subordinate financing.* For simultaneous subordinate financing transactions, no sale price will be disclosed under § 1026.38(j)(1)(ii), and therefore no sale price will be included in the closing costs financed calculation as a payment to third parties. The total amount of payments to third parties only includes payments occurring in the simultaneous subordinate financing transaction other than payments toward the sale price.

2. *Loan amount.* The loan amount disclosed under § 1026.38(b), a component of the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note.

38(i)(4) Down payment/funds from borrower.

Paragraph 38(i)(4)(ii)(A).

1. *Down payment and funds from borrower calculation.* Under § 1026.38(i)(4)(ii)(A)(*1*), the down payment and funds from borrower amount is calculated as the difference between the sale price of the property disclosed under § 1026.38(a)(3)(vii)(A) and the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv), except as required by § 1026.38(i)(4)(ii)(A)(*2*). The calculation is independent of any loan program or investor requirements. The ''Final'' amount disclosed for ''Down Payment/Funds from Borrower'' reflects any change, following delivery of the Loan Estimate, in the amount of down payment and other funds required of the consumer. This change might result, for example, from an increase in the purchase price of the property.

2. *Funds for borrower.* Section 1026.38(i)(4)(ii)(A)(*2*) requires that, in a purchase transaction as defined in § 1026.37(a)(9)(i) that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) exceeds the sale price disclosed under § 1026.38(a)(3)(vii)(A), the amount of funds from the consumer is determined in accordance with § 1026.38(i)(6)(iv). Pursuant to § 1026.38(i)(6)(iv), the ''Final'' amount of ''Down Payment/Funds from Borrower'' to be disclosed under § 1026.38(i)(4)(ii)(A)(*2*) is determined by subtracting the sum of the loan amount and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The amount of ''Down Payment/Funds from Borrower'' under the subheading ''Final'' is disclosed either as a positive number or $0, depending on the result of the calculation. When the result of the calculation is positive, that amount is disclosed under § 1026.38(i)(4)(ii)(A)(*2*) as ''Down Payment/Funds from Borrower,'' and $0 is disclosed under § 1026.38(i)(6)(ii) as ''Funds for Borrower.'' When the result of the calculation is negative, that amount is disclosed under § 1026.38(i)(6)(ii) as ''Funds for Borrower,'' and $0 is disclosed under § 1026.38(i)(4)(ii)(A)(*2*) as ''Down Payment/Funds from Borrower.'' When the result is $0, $0 is disclosed as ''Down Payment/Funds from Borrower'' and ''Funds for Borrower'' under § 1026.38(i)(4)(ii)(A)(*2*) and (6)(ii), respectively. An increase in the amount of ''Down Payment/Funds from Borrower'' under the subheading ''Final'' relative to the corresponding amount under the subheading ''Loan Estimate'' might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the transaction. For additional discussion of the determination of the ''Down Payment/Funds from Borrower'' amount, see comment 38(i)(6)(ii)–1.

Paragraph 38(i)(4)(ii)(B).

1. *Funds for borrower.* Section 1026.38(i)(4)(ii)(B) requires that, in all transactions not subject to § 1026.38(i)(4)(ii)(A), the ''Final'' amount disclosed for ''Down Payment/Funds from Borrower'' is the amount determined in accordance with § 1026.38(i)(6)(iv). Pursuant to § 1026.38(i)(6)(iv), the ''Final'' amount of ''Down Payment/Funds from Borrower'' to be disclosed under § 1026.38(i)(4)(ii)(B) is determined by subtracting the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The ''Final'' amount of ''Down Payment/Funds from Borrower'' is disclosed either as a positive number or $0, depending on the result of the calculation. When the result of the calculation is positive, that amount is disclosed under § 1026.38(i)(4)(ii)(B) as ''Down Payment/Funds from Borrower,'' and $0 is disclosed under § 1026.38(i)(6)(ii) as ''Funds for Borrower.'' When the result of the calculation is negative, that amount is disclosed under § 1026.38(i)(6)(ii) as ''Funds for Borrower,'' and $0 is disclosed under § 1026.38(i)(4)(ii)(B) as ''Down Payment/Funds from Borrower.'' When the result is $0, $0 is disclosed as ''Down Payment/Funds from Borrower'' and ''Funds for Borrower'' under § 1026.38(i)(4)(ii)(B) and (6)(ii), respectively. An increase in the ''Final'' amount of ''Down Payment/Funds from Borrower'' relative to the corresponding ''Loan Estimate'' amount might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the transaction. For additional discussion of the determination of the ''Down Payment/Funds from Borrower'' amount, see comment 38(i)(6)(ii)–1.

Paragraph 38(i)(4)(iii)(A).

1. *Statement of differences.* Section 1026.38(i)(4)(iii)(A) requires, as applicable, a statement that the consumer has increased or decreased this payment, along with a statement that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. The applicable disclosure to be referenced corresponds to the label on the Closing Disclosure under which the information accounting for the increase in the ''Down Payment/Funds from Borrower'' amount is disclosed. For example, in a transaction that is a purchase as defined in § 1026.37(a)(9)(i), if the purchase price of the property has increased and therefore caused the ''Down Payment/Funds from Borrower'' amount to increase, the statement, ''You increased this payment. See details in Section K,'' with the words ''increased'' and ''Section K'' in boldface, complies with this requirement. In a purchase or refinancing transaction, in the event the amount of the credit extended by the creditor has decreased and therefore caused the ''Down Payment/Funds from Borrower'' amount to increase, the statement can read, for example, ''You increased this payment. See details in Section L,'' with the same in boldface.

38(i)(5) Deposit.

1. *When no deposit.* Section 1026.38(i)(5) requires the disclosure in the calculating cash to close table of the deposit required to be disclosed under § 1026.37(h)(1)(iv) and under § 1026.38(j)(2)(ii), under the subheadings ''Loan Estimate'' and ''Final,'' respectively. Under § 1026.37(h)(1)(iv), for all transactions other than a purchase transaction as defined in § 1026.37(a)(9)(i), the amount required to be disclosed is $0. In a purchase transaction in which no deposit is paid in connection with the transaction, under §§ 1026.37(h)(1)(iv) and 1026.38(i)(5)(i) and (ii) the amount required to be disclosed is $0.

38(i)(6) Funds for borrower.

Paragraph 38(i)(6)(ii).

1. *Final funds for borrower.* Section 1026.38(i)(6)(ii) provides that the ''Final'' amount for ''Funds for Borrower'' is determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the ''Final'' amount of ''Funds for Borrower'' to be disclosed under § 1026.38(i)(6)(ii) is determined by subtracting the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The amount is disclosed under § 1026.38(i)(6)(ii) either as a negative number or as $0, depending on the result of the calculation. The ''Final'' amount of ''Funds for Borrower'' disclosed under § 1026.38(i)(6)(ii) is an amount to be disbursed to the consumer or a designee of the consumer at consummation, if any.

2. *No funds for borrower.* When the down payment and funds from the borrower is determined in accordance with § 1026.38(i)(4)(ii)(A)(*1*), the amount disclosed under § 1026.38(i)(6)(ii) as ''Funds for Borrower'' is $0.

38(i)(7) Seller credits.

* * * * *

Paragraph 38(i)(7)(iii)(A).

1. *Statement that the consumer should see details.* Under § 1026.38(i)(7)(iii)(A), if the

amount disclosed under § 1026.38(i)(7)(ii) in the ''Final'' column is not equal to the amount disclosed under § 1026.38(i)(7)(i) in the ''Loan Estimate'' column (unless the difference is due to rounding), the creditor must disclose a statement that the consumer should see the details disclosed either: (1) Under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of the closing cost details table under § 1026.38(f) or (g); or (2) if the difference is attributable only to general seller credits disclosed under § 1026.38(j)(2)(v), or only to specific seller credits disclosed in the seller-paid column of the closing cost details table under § 1026.38(f) or (g), under only the applicable provision. If, for example, a decrease in the seller credits disclosed under § 1026.38(i)(7)(ii) is attributable only to a decrease in general (*i.e.,* lump sum) seller credits, then a statement is given under the subheading ''Did this change?'' in the calculating cash to close table that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of § 1026.38(f) or (g), or that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table. Form H–25(B) in appendix H to this part demonstrates this disclosure where the decrease in seller credits is attributable only to a decrease in general seller credits and the creditor choses only to reference the applicable provision; form H–25(B)'s statement ''See Seller Credits in Section L,'' in which the words ''Section L'' are in boldface font, complies with this requirement. Where the decrease in the seller credits disclosed under § 1026.38(i)(7)(ii) is attributable to specific and general seller credits, or the creditor does not elect to reference only the applicable provision, then a statement is given under the subheading ''Did this change?'' that the consumer should see both the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of the closing cost details table under § 1026.38(f) or (g). For example, the statement ''See Seller-Paid column on page 2 and Seller Credits in Section L,'' in which the words ''Seller-Paid'' and ''Section L'' are in boldface font, complies with this requirement.

38(i)(8) Adjustments and other credits.

Paragraph 38(i)(8)(ii).

1. *Adjustments and other credits.* Under § 1026.38(i)(8)(ii), the ''Final'' amount for ''Adjustments and Other Credits'' would include, for example, prorations of taxes or homeowner's association fees, utilities used but not paid for by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the consummation, and interest on loan assumptions. This category also includes generalized credits toward closing costs given by parties other than the seller. For additional guidance regarding adjustments and other credits, see commentary to §§ 1026.37(h)(1)(vii) and 1026.38(j)(2)(vi) and (xi). If the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

* * * * *

38(j) Summary of borrower's transaction.

* * * * *

3. *Identical amounts.* The amounts disclosed under the following provisions of § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of § 1026.38(k): § 1026.38(j)(1)(ii) and (k)(1)(ii); § 1026.38(j)(1)(iii) and (k)(1)(iii); if the amount disclosed under § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, § 1026.38(j)(1)(v) and (k)(1)(iv); § 1026.38(j)(1)(vii) and (k)(1)(vi); § 1026.38(j)(1)(viii) and (k)(1)(vii); § 1026.38(j)(1)(ix) and (k)(1)(viii); § 1026.38(j)(1)(x) and (k)(1)(ix); § 1026.38(j)(2)(iv) and (k)(2)(iv); unless seller contributions toward simultaneous subordinate financing are disclosed under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure and § 1026.38(k)(2)(vii) on the first-lien Closing Disclosure, § 1026.38(j)(2)(v) and (k)(2)(vii); § 1026.38(j)(2)(viii) and (k)(2)(x); § 1026.38(j)(2)(ix) and (k)(2)(xi); § 1026.38(j)(2)(x) and (k)(2)(xii); and § 1026.38(j)(2)(xi) and (k)(2)(xiii).

38(j)(1) Itemization of amounts due from borrower.

Paragraph 38(j)(1)(ii).

1. *Contract sales price and personal property.* Section 1026.38(j)(1)(ii) requires disclosure of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items. On the simultaneous subordinate financing Closing Disclosure, no contract sales price is disclosed under § 1026.38(j)(1)(ii). Personal property is defined by State law, but could include such items as carpets, drapes, and appliances. Manufactured homes are not considered personal property under § 1026.38(j)(1)(ii).

Paragraph 38(j)(1)(v).

1. *Contractual adjustments.* Section 1026.38(j)(1)(v) requires disclosure of amounts not otherwise disclosed under § 1026.38(j) that are owed to the seller but payable to the consumer after the real estate closing. For example, the following items must be disclosed and listed under the heading ''Adjustments'' under § 1026.38(j), to the extent applicable:

i. The balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption transaction;

ii. Any rent that the consumer will collect after the real estate closing for a period of time prior to the real estate closing; and

iii. The treatment of any tenant security deposit.

2. *Other consumer charges.* The amounts disclosed under § 1026.38(j)(1)(v) which are for charges owed by the consumer at the real estate closing not otherwise disclosed under § 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). For example, the amounts paid to any holders of existing liens on the property in a refinance transaction, construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of other secured or unsecured debt, any outstanding real estate property taxes, and principal reductions are disclosed under § 1026.38(j)(1)(v) without a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). See comment 38–4 for an explanation of how to disclose a principal reduction under § 1026.38(j)(1)(v).

3. *Simultaneous subordinate financing Closing Disclosure.* On the simultaneous subordinate financing Closing Disclosure, the proceeds of the subordinate financing applied to the first-lien transaction may be included in the summaries of transactions table under § 1026.38(j)(1)(v). See also comments 37(h)(1)(v)–2 and 37(h)(1)(vii)–6 for an explanation of how to disclose on the Loan Estimate amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v).

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38(j)(2) Itemization of amounts already paid by or on behalf of borrower.

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Paragraph 38(j)(2)(vi).

* * * * *

2. *Subordinate financing proceeds on first-lien Closing Disclosure.* Any financing arrangements or other new loans not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) must be disclosed under § 1026.38(j)(2)(vi) on the first-lien Closing Disclosure. For example, if the consumer is using a second mortgage loan to finance part of the purchase price, whether from the same creditor, another creditor, or the seller, the principal amount of the second loan must be disclosed with a brief explanation on the first-lien Closing Disclosure. In this example, the principal amount of the subordinate financing is disclosed on the summaries of transactions table for the borrower's transaction either on line 04 under the subheading ''L. Paid Already by or on Behalf of Borrower at Closing,'' or under the subheading ''Other Credits.'' If the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds must also be listed, and may be listed on the same line as the principal amount of the subordinate financing on the first-lien Closing Disclosure. For an example, see form H–25(C) of appendix H to this part.

* * * * *

5. *Gift funds.* A credit must be disclosed only for any money or other payments made at closing by third parties, including family members, not otherwise associated with the transaction, along with a description of the nature of the funds provided under § 1026.38(j)(2)(vi). Amounts provided in advance of the real estate closing to consumers by third parties, including family members, not otherwise associated with the transaction, are not required to be disclosed under § 1026.38(j)(2)(vi).

6. *Adjustments.* Section 1026.38(j)(2)(vi) requires the disclosure of any additional amounts not already disclosed under § 1026.38(f), (g), (h), and (j)(2), that are owed to the consumer but payable to the seller before the real estate closing. The disclosures made under § 1026.38(j)(2)(vi) must also include a description for each disclosed

amount. For example, rent paid to the seller from a tenant before the real estate closing for a period extending beyond the real estate closing is disclosed by identifying the amount as rent from a tenant under the heading ''Adjustments.'' See also § 1026.38(k)(2)(viii), which requires disclosure of a description and amount of any and all other obligations required to be paid by the seller at the real estate closing.

Paragraph 38(j)(2)(xi).

1. *Examples.* Section 1026.38(j)(2)(xi) requires the disclosure of any amounts the consumer is expected to pay after the real estate closing that are attributable in part to a period of time prior to the real estate closing. Examples of items that would be disclosed under § 1026.38(j)(2)(xi) include:

i. Utilities used but not paid for by the seller; and

ii. Interest on loan assumptions.

* * * * *

38(j)(4) Items paid outside of closing funds.

Paragraph 38(j)(4)(i).

1. *Charges not paid with closing funds.* Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed under § 1026.38(j) be marked as ''paid outside of closing'' or ''P.O.C.'' The disclosure must identify the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person. For an example of a disclosure of a charge not made from closing funds, see form H–25(D) of appendix H to this part. For an explanation of what constitutes closing funds, see § 1026.38(j)(4)(ii). See also comment 38–4 for an explanation of how to disclose a principal reduction that is not paid from closing funds.

* * * * *

38(k) Summary of seller's transaction.

1. *Transactions with no seller or simultaneous subordinate financing transactions.* Section 1026.38(k) does not apply in a transaction where there is no seller, such as a refinance transaction or a transaction with a construction purpose as defined in § 1026.37(a)(9)(iii), or in a simultaneous subordinate financing purchase transaction as defined in § 1026.37(a)(9)(i) if the first-lien Closing Disclosure records the entirety of the seller's transaction.

* * * * *

38(k)(1) Itemization of amounts due to seller.

1. *Simultaneous subordinate financing.* Section 1026.38(k) does not apply in a simultaneous subordinate financing purchase transaction as defined in § 1026.37(a)(9)(i) if the first-lien Closing Disclosure records the entirety of the seller's transaction. If § 1026.38(k) applies to a simultaneous subordinate financing transaction, § 1026.38(k) is completed based only on the terms and conditions of the simultaneous subordinate financing transaction and no contract sales price is disclosed under § 1026.38(k)(1)(ii) on the Closing Disclosure for the simultaneous subordinate financing.

38(k)(2) Itemization of amounts due from seller.

* * * * *

Paragraph 38(k)(2)(vii).

1. *Simultaneous subordinate financing—seller contribution.* If a simultaneous subordinate financing transaction is disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include any contributions from the seller toward the simultaneous subordinate financing that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. For example, assume the simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e) and the seller contributes $200.00 toward the closing costs of the simultaneous subordinate financing. The simultaneous subordinate financing Closing Disclosure must include the $200.00 contribution in the payoffs and payments table pursuant to § 1026.38(t)(5)(vii)(B) and comments 38(t)(5)(vii)(B)–1 and –2. The first-lien Closing Disclosure must include the $200.00 contribution in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii).

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38(l) Loan disclosures.

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38(l)(7) Escrow account.

1. *Definition of escrow account.* For a description of an escrow account for purposes of the escrow account disclosure under § 1026.38(l)(7), see the definition of ''escrow account'' in 12 CFR 1024.17(b).

2. *Addenda.* Additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure under § 1026.38(l)(7). *See* § 1026.38(t)(5)(ix). A reference such as ''See attached page for additional information'' must be placed in the applicable section of the Closing Disclosure, if an additional page is used to list all items required to be shown.

Paragraph 38(l)(7)(i)(A)(2).

1. *Estimated costs not paid by escrow account funds.* Section 1026.38(l)(7)(i)(A)(*2*) requires the creditor to estimate the amount the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in § 1026.43(b)(8) that are known to the creditor and that will not be paid using escrow account funds. The creditor discloses this amount only if an escrow account will be established.

2. *During the first year.* Section 1026.38(l)(7)(i)(A)(*2*) requires disclosure based on payments during the first year after consummation. Alternatively, if the creditor elects to make the disclosures required by § 1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) based on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, then the creditor may make the disclosures required by § 1026.38(l)(7)(i)(A)(*2*) based on a 12-month period beginning with the borrower's initial payment date (rather than beginning with consummation). *See* comment 38(l)(7)(i)(A)(*5*)–1.

Paragraph 38(l)(7)(i)(A)(4).

1. *Estimated costs paid using escrow account funds.* The amount the consumer will be required to pay into an escrow account with each periodic payment during the first year after consummation disclosed under § 1026.38(l)(7)(i)(A)(*4*) is equal to the sum of the amount of estimated escrow payments disclosed under § 1026.38(c)(1) (as described in § 1026.37(c)(2)(iii)) and the amount the consumer will be required to pay into an escrow account to pay some or all of the mortgage insurance premiums disclosed under § 1026.38(c)(1) (as described in § 1026.37(c)(2)(ii)).

Paragraph 38(l)(7)(i)(A)(5).

1. *During the first year.* Section 1026.38(l)(7)(i)(A)(*4*) requires disclosure of the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation. Section 1026.38(l)(7)(i)(A)(*1*) requires a disclosure, labeled ''Escrowed Property Costs over Year 1,'' calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation. For example, creditors may base such disclosures on less than 12 payments if, based on the payment schedule dictated by the legal obligation, fewer than 12 periodic payments will be made to the escrow account during the first year after consummation. Alternatively, § 1026.38(l)(7)(i)(A)(*5*) permits the creditor to base the disclosures required by § 1026.38(l)(7)(i)(A)(*1*) and (*4*) on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, even if those disclosures differ from what would otherwise be disclosed under § 1026.38(l)(7)(i)(A)(*1*) and (*4*)—as, for example, when there are fewer than 12 periodic payments scheduled to be made to the escrow account during the first year after consummation.

Paragraph 38(l)(7)(i)(B)(1).

1. *Estimated costs paid directly by the consumer.* The creditor discloses an amount under § 1026.38(l)(7)(i)(B)(*1*) only if no escrow account will be established.

2. *During the first year.* Section 1026.38(l)(7)(i)(B)(*1*) requires disclosure based on payments during the first year after consummation. A creditor may comply with this requirement by basing the disclosure on a 12-month period beginning with the borrower's initial payment date or on a 12-month period beginning with consummation.

* * * * *

38(o) Loan calculations.

1. *Examples.* Section 1026.38(o)(1) and (2) sets forth the accuracy requirements for the total of payments and the finance charge, respectively. The following examples illustrate the interaction of these provisions:

i. Assume that loan costs that are designated borrower-paid at or before closing and that are part of the finance charge (see § 1026.4 for calculation of the finance charge) are understated by more than $100. For example, assume that borrower-paid loan origination fees (see § 1026.4(a)) are cumulatively understated by $150, resulting in the amounts disclosed as the total of payments and the finance charge both being understated by more than $100. Both the disclosed total of payments and the disclosed finance charge would not be accurate for purposes of § 1026.38(o)(1) and (2), respectively.

ii. Assume that loan costs that are designated borrower-paid at or before closing and that are not part of the finance charge are understated by more than $100. For example, assume that borrower-paid property appraisal and inspection fees that are excluded from the finance charge under § 1026.4(c)(7)(iv) are cumulatively understated by $150, resulting in the amount disclosed as the total of payments being understated by more than $100. The disclosed total of payments would not be accurate for purposes of § 1026.38(o)(1), but the disclosed finance charge would be accurate for purposes of § 1026.38(o)(2).

38(o)(1) Total of payments.

1. *Calculation of total of payments.* The total of payments is the total, expressed as a dollar amount, the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled, through the end of the loan term. The total of payments excludes charges that would otherwise be included as components of the total of payments if such charges are designated on the Closing Disclosure as paid by seller or paid by others. A seller or other party, such as the creditor, may agree to offset payments of principal, interest, mortgage insurance, or loan costs, whether in whole or in part, through a specific credit, for example through a specific seller or lender credit. Because these amounts are not paid by the consumer, they are excluded from the total of payments calculation. Non-specific credits, however, are generalized payments to the consumer that do not pay for a particular fee and therefore do not offset amounts for purposes of the total of payments calculation. For guidance on the amounts included in the total of payments calculation, see the ''In 5 Years'' disclosure under § 1026.37(l)(1)(i) and comment 37(l)(1)(i)–1. For a discussion of lender credits, see comment 19(e)(3)(i)–5. For a discussion of seller credits, see comment 38(j)(2)(v)–1.

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38(t) Form of disclosures.

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38(t)(3) Form.

1. *Non-federally related mortgage loans.* For a transaction that is not a federally related mortgage loan, the creditor is not required to use form H–25 of appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1)(i). Even when the creditor elects not to use the model form, § 1026.38(t)(1)(ii) requires that the disclosures contain only the information required by § 1026.38(a) through (s), and that the creditor make the disclosures in the same order as they occur in form H–25, use the same headings, labels, and similar designations as used in the form (many of which also are expressly required by § 1026.38(a) through (s)), and position the disclosures relative to those designations in the same manner as shown in the form. In order to be in a format substantially similar to form H–25, the disclosures required by § 1026.38 must be provided on letter size (8.5″ x 11″) paper.

* * * * *

38(t)(5) Exceptions.

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38(t)(5)(v) Separation of consumer and seller information.

1. *Permissible form modifications to separate consumer and seller information.* The modifications to the form permitted by § 1026.38(t)(5)(v) may be made by the creditor in any one of the following ways:

i. Leave the applicable disclosure blank concerning the seller or consumer on the form provided to the other party;

ii. Omit the table or label, as applicable, for the disclosure concerning the seller or consumer on the form provided to the other party; or

iii. Provide to the seller, or assist the settlement agent in providing to the seller, a modified version of the form under § 1026.38(t)(5)(vi), as illustrated by form H–25(I) of appendix H to this part.

2. *Provision of separate disclosure to consumer.* If applicable State law prohibits sharing with the consumer the information disclosed under § 1026.38(k), a creditor may provide a separate form to the consumer. A creditor may also provide a separate form to the consumer in any other situation where the creditor in its discretion chooses to do so, such as based on the seller's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)–1.

3. *Provision of separate disclosure to seller.* To separate the information of the consumer and seller under § 1026.38(t)(5)(v), a creditor may assist the settlement agent in providing (or provide when acting as a settlement agent) a separate form to the seller where applicable State law prohibits sharing with the seller the information disclosed under § 1026.38(a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f), or (g), with respect to closing costs paid by the consumer, or § 1026.38(i), (j), (l) through (p), or (r), with respect to closing costs paid by the creditor and mortgage broker. A creditor may also assist the settlement agent in providing (or provide when acting as a settlement agent) a separate form to the seller in any other situation where the creditor in its discretion chooses to do so, such as based on the consumer's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)–1.

38(t)(5)(vi) Modified version of the form for a seller or third-party.

1. For permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)–1.

38(t)(5)(vii) Transaction without a seller or simultaneous subordinate financing transaction.

* * * * *

2. *Appraised property value.* The modifications permitted by § 1026.38(t)(5)(vii) do not specifically refer to the label required by § 1026.38(a)(3)(vii)(B) for transactions that do not involve a seller, because the label is required by that section and therefore is not a modification. As required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller and is modified under § 1026.38(t)(5)(vii) must contain the label ''Appraised Prop. Value'' or ''Estimated Prop. Value'' where there is no appraisal.

Paragraph 38(t)(5)(vii)(B).

1. *Amounts paid by third parties.* Under § 1026.38(t)(5)(vii)(B), the payoffs and payments table itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer, including designees of the consumer. Designees of the consumer for purposes of § 1026.38(t)(5)(vii)(B) include third parties who provide funds on behalf of the consumer. Such amounts may be disclosed as credits in the payoffs and payments table. Some examples of amounts paid by third parties that may be disclosed as credits on the payoffs and payments table under § 1026.38(t)(5)(vii)(B) include gift funds, grants, proceeds from loans that satisfy the partial exemption criteria in § 1026.3(h), and, on the Closing Disclosure for a simultaneous subordinate financing transaction, contributions from a seller for costs associated with the subordinate financing.

2. *Disclosure of subordinate financing.* i. *First-lien Closing Disclosure.* On the Closing Disclosure for a first-lien transaction disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), such as a refinance transaction, that also has simultaneous subordinate financing, the proceeds of the subordinate financing are included in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) by disclosing, as a credit, the principal amount of the subordinate financing, and, if the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds. The creditor may list the principal amount and net proceeds of the subordinate financing on the same line. For example, the creditor may disclose the principal amount of the subordinate financing under the subheading ''To'' with a description of the payment, and the net proceeds of the subordinate financing under the subheading ''Amount.''

ii. *Simultaneous subordinate financing Closing Disclosure.* On the Closing Disclosure for a simultaneous subordinate financing transaction disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), the proceeds of the subordinate financing applied to the first-lien transaction may be included in the payoffs and payments table under § 1026.38(t)(5)(vii)(B).

iii. *Simultaneous subordinate financing—seller contribution.* If a creditor discloses the alternative tables pursuant to § 1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure, the creditor must also disclose as a credit in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure, any contributions from the seller toward the simultaneous subordinate financing. For example, assume the subordinate-lien creditor provides the alternative tables pursuant to § 1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing

Disclosure and the seller contributes $200.00 toward the closing costs of the simultaneous subordinate financing. The subordinate-lien creditor must disclose the $200.00 contribution as a credit on the simultaneous subordinate financing Closing Disclosure in the payoffs and payments table under § 1026.38(t)(5)(vii)(B). See also comments 38(j)–3 and 38(k)(2)(vii)–1 for disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing transaction and a seller contributes to the costs of the subordinate financing.

3. *Other examples.* For additional examples of items disclosed under § 1026.38(t)(5)(vii)(B), see comment 37(h)(2)(iii)–1. See also comment 38–4 for an explanation of how to disclose a principal reduction under § 1026.38(t)(5)(vii)(B).

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Appendix D—Multiple-Advance Construction Loans

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7. *Relation to §§ 1026.37 and 1026.38.* Creditors may use, at their option, the following methods to estimate and disclose the terms of multiple-advance construction loans pursuant to §§ 1026.37 and 1026.38. As stated in comment app. D–1, appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances is unknown at consummation.

i. *Loan term.* A. *Disclosure as single transaction.* If the construction and permanent financing are disclosed as a single transaction, the loan term disclosed is the total combined term of the construction period and the permanent period. For example, if the term of the construction financing is 12 months and the term of the permanent financing is 30 years, and the two phases are disclosed as a single transaction, the loan term disclosed is 31 years.

B. *Term of permanent financing.* The loan term of the permanent financing is counted from the date that interest for the permanent financing periodic payments begins to accrue, regardless of when the permanent phase is disclosed.

ii. *Product.* A. *Separate construction loan disclosure.* If the construction financing is disclosed separately and has payments of interest only, the time period of the ''Interest Only'' feature that is disclosed as part of the product disclosure under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is the period during which interest-only payments are actually made and excludes any final balloon payment of principal and interest. For example, the product disclosure for a fixed rate, interest-only construction loan with a term of 12 months in which there will be 11 monthly interest payments and a final balloon payment of principal and interest is ''11 mo. Interest Only, Fixed Rate.''

B. *Combined construction-permanent disclosure.* If a single, combined construction-permanent disclosure is provided, the time period of the ''Interest Only'' feature that is disclosed as part of the product disclosure under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is the full term of the interest-only construction financing plus any interest-only period for the permanent financing. For example, the product disclosure for a single disclosure, fixed rate, construction-permanent loan with a 12 month interest-only construction phase where the interest rate is not subject to modification upon conversion to the permanent phase is ''1 Year Interest Only, Fixed Rate.'' If the first year of the permanent phase in this example also has a 12 month interest-only period, the product disclosure is ''2 Year Interest Only, Fixed Rate.''

C. *Product when interest rate at consummation not known.* If the interest rate for the permanent phase is not known at consummation for a construction-permanent loan using a single, combined construction-permanent disclosure or using separate disclosures for the permanent phase, the creditor shall disclose the loan product under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) as ''Adjustable Rate.'' If the interest rate may increase under the terms of the legal obligation from the disclosures provided at consummation, the loan product description is ''Adjustable Rate'' in such cases, even if the interest rate will be fixed for the term of the permanent phase once it is set.

iii. *Interest rate.* If the permanent financing has an adjustable rate at consummation and separate disclosures are provided, the rate disclosed for the permanent financing is the fully-indexed rate pursuant to § 1026.37(b)(2) and its commentary. If the permanent financing has a fixed rate that will not be adjusted when the construction phase converts to the permanent phase, that fixed rate is used for disclosure purposes. If the permanent financing has a rate that may adjust when the construction phase converts to the permanent phase, the permanent financing has an adjustable rate. If the legal obligation for a loan secured by the consumer's principal dwelling provides that the permanent financing interest rate may adjust when the construction financing converts to permanent financing, and such adjustment to the interest rate results in a corresponding adjustment to the payment, the creditor provides the disclosures pursuant to § 1026.20(c), but not (d), if the interest rate for the permanent phase will be fixed after the conversion.

iv. *Increase in periodic payment.* If the amounts or timing of advances is unknown at or before consummation and the appendix D assumption that applies if interest is payable only on the amount advanced for the time it is outstanding is used to calculate the periodic payment:

A. A creditor discloses ''YES'' as the answer to ''Can this amount increase after closing?'' pursuant to § 1026.37(b)(6)(iii) whether the creditor provides separate construction disclosures or combined construction-permanent disclosures, even though calculation of the construction financing periodic payments using the assumptions in appendix D produces interest-only periodic payments that are equal in amount.

B. A creditor that discloses ''YES'' as the answer to ''Can this amount increase after closing?'' pursuant to § 1026.37(b)(6)(iii) may use months or years for the § 1026.37(b)(6)(iii) disclosures, consistent with comment 37(b)(6)–1. For example, for a 10-month construction loan, the first § 1026.37(b)(6)(iii) disclosure bullet may disclose, ''Adjusts every mo. starting in mo. 1'' and the second § 1026.37(b)(6)(iii) disclosure bullet may disclose, ''Can go as high as $[insert maximum possible periodic principal and interest payment] in year 1''. The calculation of the maximum possible periodic principal and interest payment disclosed is based on the maximum principal balance that could be outstanding during the construction phase. As part of the ''First Change/Amount'' disclosure in the ''Adjustable Payment (AP) Table'' pursuant to § 1026.37(i)(5)(i), the creditor may omit and leave blank the amount or range corresponding to the first periodic principal and interest payment that may change. In such cases, the creditor must still disclose the timing of the first change, which is the number of the earliest possible payment (*e.g.,* 1st payment) that may change under the terms of the legal obligation.

C. When separate construction disclosures or the combined construction-permanent disclosures are provided for adjustable-rate construction financing, a creditor provides the § 1026.37(b)(6)(iii) disclosures reflecting changes that are due to changes in the interest rate and changes that are due to changes in the total amount advanced. Such a creditor discloses ''YES'' as the answer to ''Can this amount increase after closing?'' pursuant to § 1026.37(b)(6), because the initial periodic payment may increase based upon an increase in the interest rate in addition to a change based on the total amount advanced. Such a creditor also discloses a reference to the adjustable payment table required by § 1026.37(i), disclosed as provided in comment app. D–7.iv.B, because that disclosure reflects both a change due to a change in the total amount advanced, which is a change to the periodic principal and interest payment that is not based on an adjustment to the interest rate, as well as the fact that there are interest-only payments. Such a creditor also includes a reference to the adjustable interest rate table required by § 1026.37(j) because that disclosure reflects a change due to a change in the interest rate.

v. *Projected payments table.* A creditor must disclose a projected payments table for certain transactions secured by real property or a cooperative unit, pursuant to §§ 1026.37(c) and 1026.38(c), instead of the general payment schedule required by § 1026.18(g) or the interest rate and payments summary table required by § 1026.18(s). Accordingly, some home construction loans that are secured by real property or a cooperative unit are subject to §§ 1026.37(c) and 1026.38(c) and not § 1026.18(g). See comment app. D–6 for a discussion of transactions that are subject to § 1026.18(s). Under § 1026.17(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction. The following are illustrations of the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c), under each of the § 1026.17(c)(6)(ii) alternatives:

A. If a creditor uses appendix D and elects pursuant to § 1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §§ 1026.37(c) and 1026.38(c). Under §§ 1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments ''in disclosing the payment schedule under § 1026.18(g)'' does not apply because the transaction is governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). If interest is payable only on the amount actually advanced for the time it is outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumptions in appendix D, part I.A.1. Also, because the construction phase is being disclosed as a separate transaction and its periodic payments do not repay the principal, the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), unless the transaction has negative amortization, interest-only, or step payment features, consistent with the requirement at § 1026.37(a)(10)(iii). In addition, the creditor must provide the balloon payment disclosures pursuant to §§ 1026.37(b)(5), 1026.37(b)(7)(ii), and 1026.38(b) and disclose the balloon payment in the projected payments table.

B. If the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under appendix D, part II.C.2, the projected payments table reflects the interest-only payments during the construction phase in a first column. The first column also reflects the amortizing payments, and mortgage insurance and escrow payments, if any, for the permanent phase if the term of the construction phase is not a full year. The following column(s) reflect the payments for the permanent phase. If interest is payable only on the amount actually advanced for the time it is outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.

C. Consistent with comments 37(c)(2)(ii)–1 and 37(c)(2)(iii)–1, when the loan is disclosed as one transaction and only the terms of the legal obligation for the permanent phase require mortgage insurance or escrow, the way the creditor discloses the escrow and mortgage insurance depends on whether the first column of the projected payments table exclusively discloses the construction phase. If the first column of the projected payments table exclusively discloses the construction phase, the creditor discloses ''0'' in the first column of the projected payments table for mortgage insurance and a hyphen or dash in the first column of the projected payments table for escrow. If the first column discloses both the construction phase and the permanent phase payments, the amount of the mortgage insurance premium or escrow payment (if any) for the permanent phase is disclosed in the first column.

vi. *Disclosure of construction costs.*

A. Construction costs are the costs of improvements to be made to the property that the consumer contracts for in connection with the financing transaction and that will be paid in whole or in part with loan proceeds.

B. On the Loan Estimate, a creditor factors construction costs into the funds for borrower calculation under § 1026.37(h)(1)(v). Because these amounts are disclosed under § 1026.38(j)(1)(v) on the Closing Disclosure, they are included in existing debt that is factored into the funds for borrower calculation under § 1026.37(h)(1)(v). Comment 37(h)(1)(v)–2 explains that the total amount of all existing debt being satisfied in the transaction that is used in the funds for borrower calculation is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. For transactions without a seller or for simultaneous subordinate financing, construction costs may instead be disclosed under § 1026.37(h)(2)(iii) in the optional alternative calculating cash to close table.

C. A creditor discloses the amount of construction costs on the Closing Disclosure under § 1026.38(j)(1)(v) in the summaries of transactions table and factors them into the down payment/funds from borrower and funds for borrower calculation under § 1026.38(i)(4) and (6). For transactions without a seller or for simultaneous subordinate financing, construction costs may instead be disclosed under § 1026.38(t)(5)(vii)(B) in the optional alternative calculating cash to close table.

D. A creditor in some cases places a portion of a construction loan's proceeds in a reserve or other account at consummation. The amount of such an account, at the creditor's option, may be disclosed separately from other construction costs under § 1026.38(j)(1)(v) if space permits, or may be included in the amount disclosed for construction costs under § 1026.38(j)(1)(v). If the creditor chooses to disclose separately the amount of loan proceeds placed in a reserve or other account at consummation, the creditor may disclose the amount as a separate itemized cost, along with an itemized cost for the balance of the construction costs, in accordance with the disclosure and calculation options described in comments app. D–7.vi–B and C. The amount may be labeled with any accurate term, so long as any label the creditor uses is in accordance with the ''clear and conspicuous'' standard explained at comment 37(f)(5)–1. If the amount placed in an account is disclosed separately, the balance of construction costs disclosed excludes the amount placed in an account to avoid double counting.

vii. *Construction loan inspection and handling fees.* Comment 4(a)–1.ii.A provides that inspection and handling fees, including draw fees, for the staged disbursement of construction loan proceeds are part of the finance charge. Comment 37(f)–3 states that such inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.37(f) and, as such, must be disclosed accurately as part of the Loan Estimate. These fees must also be disclosed accurately as part of the Closing Disclosure. Comment 38(f)–2 refers to explanations under comments 37(f)–3 and 37(f)(6)–3 for making these disclosures. Comment 37(f)–3 explains that, if such fees are collected at or before consummation, they are disclosed in the loan costs table. If such fees will be collected after consummation, they are disclosed in a separate addendum and are not counted for purposes of the calculating cash to close table. Comment 37(f)(6)–3 explains how to disclose inspection and handling fees that will be collected after consummation in an addendum. Under comment 38(f)–2, the same explanation applies to an addendum used for disclosing such fees in the Closing Disclosure. Comment 37(l)(1)–1 explains that the amount disclosed under § 1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, and that loan costs are those costs disclosed under § 1026.37(f). Construction loan inspection and handling fees are loan costs that must be included in the sum of the ''In 5 Years'' disclosure under § 1026.37(l)(1) and the ''Total of Payments'' disclosure under § 1026.38(o)(1) because they are disclosed under § 1026.37(f), even when they are disclosed on an addendum.

* * * * *

Dated: July 6, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–15764 Filed 8–10–17; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2017–0018]

RIN 3170–AA61

Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act and the Truth in Lending Act that are implemented in Regulation Z. The proposed amendments relate to when a creditor may compare charges paid by or imposed on the consumer to amounts disclosed on a Closing Disclosure, instead of a Loan Estimate, to determine if an estimated closing cost was disclosed in good faith. Specifically, the proposed amendments would permit creditors to do so regardless of when the Closing Disclosure is provided relative to consummation.

DATES: Comments must be received on or before October 10, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2017–0018 or RIN 3170–AA61, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2017–0018 or RIN 3170–AA61 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. 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 1275 First Street NE., Washington, DC 20002, 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: Pedro De Oliveira, Counsel, and David Friend and Priscilla Walton-Fein, Senior Counsels, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at 202–435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The TILA–RESPA Rule [1] requires creditors to provide consumers with good faith estimates of the loan terms and closing costs required to be disclosed on a Loan Estimate. Under the rule, an estimated closing cost is disclosed in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed, except as otherwise provided in § 1026.19(e)(3)(ii) through (iv).[2] Section 1026.19(e)(3)(ii) provides that, for certain types of third-party services and recording fees, estimates are considered to be disclosed in good faith if the total paid by or imposed on the consumer for those types of charges does not exceed the disclosed amount by more than 10 percent.[3] Section 1026.19(e)(3)(iii) provides that estimates of certain other types of charges are in good faith if the estimate is consistent with the best information reasonably available to the creditor at the time it was disclosed.[4]

Section 1026.19(e)(3)(iv) permits creditors, in certain limited circumstances, to use revised estimates, instead of the estimate originally disclosed to the consumer, to compare to the charges actually paid by or imposed on the consumer for purposes of determining whether an estimated closing cost was disclosed in good faith. Section 1026.19(e)(4) contains rules for the provision and receipt of those revised estimates, including a requirement that any revised estimates used to determine good faith must be provided to the consumer within three business days of the creditor receiving information sufficient to establish that the reason for revision applies. If the conditions for revising the estimates used to determine good faith are met, creditors generally may provide these revised estimates on revised Loan Estimates or, in certain circumstances, on Closing Disclosures. The creditor cannot provide revised estimates on a Loan Estimate on or after the date the Closing Disclosure is provided to the consumer and the consumer must receive any revised Loan Estimate no later than four business days prior to consummation.[5] However, if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) (*i.e.,* within three business days of the time the creditor received information sufficient to establish the reason for revision) and consummation, the creditor may provide the revised estimate on a Closing Disclosure.[6] This is referred to herein as the ''four-business day limit.''

On July 28, 2016, the Bureau proposed amendments to make additional clarifications and technical amendments to the TILA–RESPA Rule (2016 Proposal).[7] The proposal also

[1] In November 2013, pursuant to sections 1098 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau issued the Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (2013 TILA–RESPA Final Rule), combining certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan into two new forms: A Loan Estimate and Closing Disclosure. 78 FR 79730 (Dec. 31, 2013). The Bureau has since finalized amendments to the 2013 TILA–RESPA Final Rule, including in January 2015 (*see* 80 FR 8767 (Feb. 19, 2015) (January 2015 Amendments)) and in July 2015 (*see* 80 FR 43911 (July 24, 2015) (July 2015 Amendments)). The 2013 TILA–RESPA Final Rule and subsequent amendments to that rule are referred to collectively herein as the TILA–RESPA Rule.

[2] 12 CFR 1026.19(e)(3)(i).

[3] This section also requires that, for the 10 percent tolerance to apply, the charge for the third-party service must not be paid to the creditor or an affiliate of the creditor and the creditor must permit the consumer to shop for the third-party service, consistent with § 1026.19(e)(1)(vi). *See* 12 CFR 1026.19(e)(3)(ii)(B)–(C).

[4] Section 1026.19(e)(3)(iii) provides that an estimate of the following charges is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount originally disclosed: (1) Prepaid interest; (2) property insurance premiums; (3) amounts placed into an escrow, impound, reserve, or similar account; (4) charges paid to third-party service providers selected by the consumer consistent with § 1026.19(e)(1)(vi)(A) that are not on the list provided pursuant to § 1026.19(e)(1)(vi)(C); and (5) charges paid for third-party services not required by the creditor.

[5] 12 CFR 1026.19(e)(4)(ii).

[6] *Id.* at comment 19(e)(4)(ii)–1.

[7] 81 FR 54317 (Aug. 15, 2016).

contained several limited substantive changes that the Bureau identified as potential solutions to specific implementation challenges. Among the clarifying changes in the 2016 Proposal was the proposed addition of comment 19(e)(4)(ii)–2. When issuing the 2016 Proposal, the Bureau believed that stakeholders generally understood that, if certain conditions are met, creditors may use an initial Closing Disclosure to reflect changes in costs that will be used to determine if an estimated closing cost was disclosed in good faith. Proposed comment 19(e)(4)(ii)–2 was intended to clarify that, if the conditions for issuing a revised estimate are met, creditors may similarly use corrected Closing Disclosures under § 1026.19(f)(2)(i) or (ii) to reflect changes in costs that will be used to determine if an estimated closing cost was disclosed in good faith.

Despite the Bureau's limited intent regarding proposed comment 19(e)(4)(ii)–2, numerous commenters interpreted it as change that would broaden creditors' ability to compare charges paid by or imposed on the consumer to amounts disclosed on a Closing Disclosure to determine if an estimated closing cost was disclosed in good faith. Although commenters were not uniform in their interpretations of proposed comment 19(e)(4)(ii)–2, many interpreted it as allowing creditors to use corrected Closing Disclosures to reflect changes in costs that will be used to determine if an estimated closing cost was disclosed in good faith, irrespective of when the corrected Closing Disclosure was provided relative to the timing of consummation. These commenters generally interpreted the proposal as retaining the four-business day limit for using initial Closing Disclosures to reflect changes in costs for purposes of determining if an estimated closing cost was disclosed in good faith. Commenters who interpreted the proposal to effectuate this substantive change were broadly supportive of it.

Concurrent with issuing this proposal, the Bureau is issuing a final rule amending the TILA–RESPA Rule. The Bureau is not, however, finalizing comment 19(e)(4)(ii)–2 as it appeared in the 2016 Proposal and discussed above. Instead, the Bureau is issuing this proposal, as the Bureau now believes that it is appropriate to pose explicitly the question of whether to remove the current four-business day limit for resetting tolerances with both initial and corrected Closing Disclosures. The Bureau recognizes that some stakeholders may not have commented on proposed comment 19(e)(4)(ii)–2 in the 2016 Proposal because they understood it as a narrower change than the broader question posed here. As described below, under the current proposal, creditors could use either initial or corrected Closing Disclosures to reflect changes in costs for purposes of determining if an estimated closing cost was disclosed in good faith, regardless of when the Closing Disclosure is provided relative to consummation.

II. Legal Authority

The Bureau is issuing this proposal pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act, including the authorities discussed below. In general, the provisions of Regulation Z that this proposal would amend were previously adopted by the Bureau in the TILA–RESPA Rule, in reliance on one or more of the authorities discussed below. The Bureau is issuing this proposal in reliance on the same authority and for the same reasons relied on in adopting the relevant provisions of the TILA–RESPA Rule, which are described in detail in the Legal Authority and Section-by-Section Analysis parts of the 2013 TILA–RESPA Final Rule and January 2015 Amendments, respectively.[8]

A. The Integrated Disclosure Mandate

Section 1032(f) of the Dodd-Frank Act required the Bureau to propose, for public comment, rules and model disclosures combining the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determined that any proposal issued by the Federal Reserve Board (Board) and the Department of Housing and Urban Development (HUD) carried out the same purpose.[9] In addition, the Dodd-Frank Act amended section 105(b) of TILA and section 4(a) of RESPA to require the integration of the TILA disclosures and the disclosures required by sections 4 and 5 of RESPA.[10] The Bureau provided additional discussion of this integrated disclosure mandate in the 2013 TILA–RESPA Final Rule.[11]

B. Truth in Lending Act

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a)[12] directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various available credit terms and avoid the uninformed use of credit.[13] In enacting TILA, Congress found that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.[14] Strengthened competition among financial institutions is a goal of TILA, achieved through the meaningful disclosure of credit terms.[15] For the reasons discussed below, the Bureau proposes these amendments pursuant to its authority under TILA section 105(a). The Bureau believes the proposed amendments effectuate the purpose of TILA under TILA section 102(a) of meaningful disclosure of credit terms to consumers and facilitate compliance with the statute by clarifying when particular disclosures may be provided. The proposal would also further TILA's goals by ensuring more reliable estimates, which would foster competition among financial institutions. The proposal would also prevent circumvention or evasion of TILA.

TILA section 129B(e). Dodd-Frank Act section 1405(a) amended TILA to add new section 129B(e).[16] That section authorizes the Bureau to prohibit or condition terms, acts, or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary, or proper to ensure that responsible,

[8] 78 FR 79730, 79753–56, 79834–37 (Dec. 31, 2013); 80 FR 8767, 8768–70 (Feb. 19, 2015).

[9] Public Law 111–203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(f)).

[10] Public Law 111–203, 124 Stat. 1376, 2108 (2010) (codified at 15 U.S.C. 1604(b)); Public Law 111–203, 124 Stat. 1376, 2103 (2010) (codified at 12 U.S.C. 2603(a)).

[11] 78 FR 79730, 79753–54 (Dec. 31, 2013).

[12] 15 U.S.C. 1604(a).

[13] *Id.* at 1601(a).

[14] *Id.*

[15] The Bureau provided additional discussion of the history of TILA section 105(a) and its interaction with the provisions of TILA section 129 that apply to high-cost mortgages in the 2013 TILA–RESPA Final Rule. As the Bureau explained, the Bureau's authority under TILA section 105(a) to make adjustments and exceptions applies to all transactions subject to TILA, including high-cost mortgages, except with respect to the provisions of TILA section 129 that apply uniquely to such high-cost mortgages. 78 FR 79730, 79754 (Dec. 31, 2013).

[16] Public Law 111–203, 124 Stat. 1376, 2141 (2010) (codified at 15 U.S.C. 1639B(e)).

affordable mortgage credit remains available to consumers in a manner consistent with the purposes of sections 129B and 129C of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower. In developing rules under TILA section 129B(e), the Bureau has considered whether the rules are in the interest of the borrower, as required by the statute. The Bureau is issuing this proposal pursuant to its authority under TILA section 129B(e). The Bureau believes the proposal is consistent with TILA section 129B(e).

C. Real Estate Settlement Procedures Act Section 19(a)

Section 19(a) of RESPA authorizes the Bureau to prescribe such rules and regulations and to make such interpretations and grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA.[17] One purpose of RESPA is to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs.[18] In addition, in enacting RESPA, Congress found that consumers are entitled to greater and more timely information on the nature and costs of the settlement process and to be protected from unnecessarily high settlement charges caused by certain abusive practices in some areas of the country.[19]

In developing rules under RESPA section 19(a), the Bureau has considered the purposes of RESPA, including to effect certain changes in the settlement process that will result in more effective advance disclosure of settlement costs. The Bureau proposes these amendments pursuant to its authority under RESPA section 19(a). For the reasons discussed below, the Bureau believes the proposal is consistent with those purposes by fostering more effective advance disclosure to home buyers and sellers of settlement costs.

D. Dodd-Frank Act

Dodd-Frank Act section 1032. Section 1032(a) of the Dodd-Frank Act provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.[20] The authority granted to the Bureau in section 1032(a) is broad and empowers the Bureau to prescribe rules regarding the disclosure of the features of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features. Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.[21] Accordingly, in developing the TILA–RESPA Rule under Dodd-Frank Act section 1032(a), the Bureau considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. Moreover, the Bureau has considered the evidence developed through its consumer testing of the integrated disclosures as well as prior testing done by the Board and HUD regarding TILA and RESPA disclosures. See part III of the 2013 TILA–RESPA Final Rule for a discussion of the Bureau's consumer testing.[22] The Bureau proposes these amendments pursuant to its authority under Dodd-Frank Act section 1032(a). For the reasons discussed below, the Bureau believes that the proposal is consistent with Dodd-Frank Act section 1032(a) by promoting full, accurate, and effective disclosure of the features of consumer credit transactions secured by real property in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

Dodd-Frank Act section 1405(b). Section 1405(b) of the Dodd-Frank Act provides that, notwithstanding any other provision of title XIV of the Dodd-Frank Act, in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Bureau may exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Bureau determines that such exemption or modification is in the interest of consumers and in the public interest.[23] Section 1401 of the Dodd-Frank Act, which amends TILA section 103(cc)(5), generally defines a residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling, other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan.[24] Notably, the authority granted by section 1405(b) applies to disclosure requirements generally and is not limited to a specific statute or statutes. Accordingly, Dodd-Frank Act section 1405(b) is a broad source of authority to exempt from or modify the disclosure requirements of TILA and RESPA. In developing rules for residential mortgage loans under Dodd-Frank Act section 1405(b), the Bureau has considered the purposes of improving consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures and the interests of consumers and the public. The Bureau proposes these amendments pursuant to its authority under Dodd-Frank Act section 1405(b). For the reasons discussed below, the Bureau believes the proposal is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

III. Proposed Implementation Period

The Bureau seeks comment on when the changes proposed should be effective. The Bureau believes that these changes should enable industry to comply with the TILA–RESPA Rule more cost-effectively and that industry should be able to implement these changes relatively quickly. At the same time, the Bureau recognizes that the proposed changes could involve changes to systems or procedures. The Bureau specifically requests that technology vendors, creditors, mortgage brokers, settlement agents, and other entities affected by the proposal provide details on any updates to software and systems and other measures that would be necessary to implement the proposed changes. The Bureau further seeks comment on whether there is a

[17] 12 U.S.C. 2617(a).

[18] *Id.* at 2601(b).

[19] *Id.* at 2601(a). In the past, RESPA section 19(a) has served as a broad source of authority to prescribe disclosures and substantive requirements to carry out the purposes of RESPA.

[20] Public Law 111–203, 124 Stat. 1376, 2006–07 (2010) (codified at 12 U.S.C. 5532(a)).

[21] Public Law 111–203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(c)).

[22] 78 FR 79730, 79743–50 (Dec. 31, 2013).

[23] Public Law 111–203, 124 Stat. 1376, 2142 (2010) (codified at 15 U.S.C. 1601 note).

[24] Public Law 111–203, 124 Stat. 1376, 2138 (2010) (codified at 15 U.S.C. 1602(cc)(5)).

particular day of the week, time of month, or time of year that would most facilitate implementation of the proposed changes.

The Bureau proposes an effective date 30 days after publication in the **Federal Register** of any final rule based on this proposal and seeks comment on the same.

IV. Section-by-Section Analysis

Section 1026.19 Certain Mortgage and Variable-Rate Transactions

19(e) Mortgage Loans Secured By Real Property—Early Disclosures

19(e)(4) Provision and Receipt of Revised Disclosures

The 2013 TILA–RESPA Final Rule combined certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan into two new, integrated forms. The first new form, the Loan Estimate, replaced the RESPA Good Faith Estimate and the early Truth in Lending disclosure. The rule requires creditors to deliver or place in the mail the Loan Estimate no later than three business days after the consumer submits a loan application.[25] The second form, the Closing Disclosure, replaced the HUD–1 Settlement Statement and the final Truth in Lending disclosure. The rule requires creditors to ensure that consumers receive the Closing Disclosure at least three business days before consummation.[26]

Section 1026.19(e)(1)(i) requires creditors to provide consumers with good faith estimates of the disclosures required in § 1026.37, which describes the loan terms and closing costs required to be disclosed on the Loan Estimate. Under § 1026.19(e)(3)(i), an estimated closing cost is disclosed in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed, except as otherwise provided in § 1026.19(e)(3)(ii) through (iv). Section 1026.19(e)(3)(ii) further provides that estimates for certain third-party services and recording fees are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed on the Loan Estimate by more than 10 percent. Section 1026.19(e)(3)(iii) provides that certain other estimates are in good faith so long as they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether and by how much the amount paid by the consumer exceeds the disclosed estimate. The allowed variance between estimated closing costs and the actual amounts paid by or imposed on the consumer are referred to as ''tolerances.''

Section 1026.19(e)(3)(iv) permits creditors, in certain limited circumstances, to use revised estimates of charges, instead of the estimate of charges originally disclosed to the consumer, to compare to the charges actually paid by or imposed on the consumer for purposes of determining whether an estimated closing cost was disclosed in good faith pursuant to § 1026.19(e)(3)(i) and (ii) (*i.e.,* whether the actual charge exceeds the allowed tolerance). This is referred to as resetting tolerances. The circumstances under which creditors may reset tolerances are: (1) A defined set of changed circumstances that cause estimated charges to increase or, in the case of certain estimated charges, cause the aggregate amount of such charges to increase by more than 10 percent,[27] (2) the consumer is ineligible for an estimated charge previously disclosed because of a changed circumstance that affects the consumer's creditworthiness or the value of the property securing the transaction, (3) the consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase, (4) points or lender credits change because the interest rate was not locked when the Loan Estimate was provided, (5) the consumer indicated an intent to proceed with the transaction more than 10 business days after the Loan Estimate was provided to the consumer, and (6) the loan is a construction loan that is not expected to close until more than 60 days after the Loan Estimate has been provided to the consumer and the creditor clearly and conspicuously states that a revised disclosure may be issued.

Section 1026.19(e)(4) contains rules for the provision and receipt of revised estimates used to reset tolerances. Section 1026.19(e)(4)(i) provides the general rule that, subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate to determine good faith (*i.e.,* to reset tolerances), the creditor shall provide a Loan Estimate reflecting the revised estimate within three business days of receiving information sufficient to establish that a permissible reason for revision applies. Section 1026.19(e)(4)(ii) imposes timing restrictions on the provision of revised Loan Estimates. Specifically, § 1026.19(e)(4)(ii) states that the creditor shall not provide a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure. Section 1026.19(e)(4)(ii) also provides that the consumer must receive any revised Loan Estimate not later than four business days prior to consummation.

Regulation Z therefore limits creditors' ability to provide revised Loan Estimates relative to the provision of the Closing Disclosure and to consummation. In issuing the 2013 TILA–RESPA Final Rule, the Bureau explained that it was aware of cases where creditors provided revised RESPA Good Faith Estimates at the real estate closing, along with the HUD–1 settlement statement.[28] The Bureau was concerned that the practice of providing both good faith estimates of closing costs and an actual statement of closing costs at the same time could be confusing for consumers and diminish their awareness and understanding of the transaction. The Bureau was also concerned about consumers receiving seemingly duplicative disclosures that could contribute to information overload. For this reason, the Bureau adopted the provision of § 1026.19(e)(4)(ii) that prohibits creditors from providing revised Loan Estimates on or after the date the creditor provides the Closing Disclosure. The Bureau adopted the provision of § 1026.19(e)(4)(ii) that requires that consumers receive the revised Loan Estimate not later than four business days prior to consummation to ensure that consumers did not receive a revised Loan Estimate on the same date as the Closing Disclosure in cases where the Loan Estimate is not provided to the consumer in person.

Comment 19(e)(4)(ii)–1 clarifies when creditors may reset tolerances with a Closing Disclosure instead of with a revised Loan Estimate. Specifically, the comment explains that if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) (*i.e.,* within three business days of receiving information sufficient to establish a reason for revision) and consummation, creditors can reflect revised disclosures

[25] 12 CFR 1026.19(e)(1)(iii).

[26] *Id.* at § 1026.19(f)(1)(ii).

[27] ''Changed circumstance'' is defined to mean: (1) An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction; (2) information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided; or (3) new information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate. 12 CFR 1026.19(e)(3)(iv)(A).

[28] 78 FR at 79836.

to reset tolerances on the Closing Disclosure.

The Bureau originally proposed commentary in 2012 that would have stated that creditors may reflect the revised disclosures on the Closing Disclosure, without regard to the timing of consummation.[29] However, the 2013 TILA–RESPA Final Rule contained the four-business day limit. The Bureau understands from outreach through its implementation process, and through comments received in response to the 2016 Proposal, that there is significant confusion in the market about the timing requirements related to issuing revised disclosures for purposes of resetting tolerances and, in particular, the use of Closing Disclosures for this purpose.

The 2016 Proposal

In the 2016 Proposal, the Bureau proposed comment 19(e)(4)(ii)–2 to clarify one implementation issue related to the use of Closing Disclosures to reset tolerances. Specifically, the proposed comment was intended to clarify that creditors may use corrected Closing Disclosures provided under § 1026.19(f)(2)(i) or (ii) (in addition to the initial Closing Disclosure) to reflect changes in costs that will be used to reset tolerances.[30] As noted above, existing comment 19(e)(4)(ii)-1 clarifies that creditors may reflect revised estimates on the Closing Disclosure to reset tolerances if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Although comment 19(e)(4)(ii)–1 expressly references only the Closing Disclosure required by § 1026.19(f)(1)(i), the Bureau has provided informal guidance that the provision also applies to corrected Closing Disclosures provided pursuant to § 1026.19(f)(2)(i) or (ii). The Bureau proposed comment 19(e)(4)(ii)–2 to clarify this point.

A summary of the comments received on proposed comment 19(e)(4)(ii)–2 can be found in the final rule associated with the 2016 Proposal issued concurrently with this proposal. As explained in that comment summary, many commenters interpreted proposed comment 19(e)(4)(ii)–2 as allowing creditors to use corrected Closing Disclosures to reset tolerances regardless of when consummation is expected to occur, as long as the creditor provides the corrected Closing Disclosure within three business days of receiving information sufficient to establish a reason for revision applies pursuant to § 1029.19(e)(4)(i). Specifically, under this interpretation, creditors could provide initial Closing Disclosures to reset tolerances only if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. But this interpretation would remove the four-business day limit for corrected Closing Disclosures provided pursuant to § 1026.19(f)(2) and therefore allow creditors to provide corrected Closing Disclosures to reset tolerances regardless of when consummation is expected to occur. Commenters were not uniform in their interpretation of the proposal.

Commenters who interpreted the proposal as removing the four-business day limit as it applies to corrected Closing Disclosures were generally supportive, citing uncertainty about the proper interpretation of current rules and stating that current timing rules regarding resetting tolerances with a Closing Disclosure are unworkable. In particular, some of these commenters described a situation that could occur if the creditor has already provided the Closing Disclosure and an event occurs or a consumer requests a change that causes an increase in closing costs that would be a reason for revision under § 1026.19(e)(3)(iv). In some circumstances, the creditor may be unable to provide a corrected Closing Disclosure to reset tolerances because there are four or more days between the time the revised disclosures would be required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Commenters seemed to identify this as most likely to occur where there was also a delay in the scheduled consummation date after the initial Closing Disclosure is provided to the consumer.

The Bureau understands that this situation can occur because of the intersection of current timing rules regarding the provision of revised estimates to reset tolerances. Section 1026.19(e)(4)(ii) prohibits creditors from providing Loan Estimates on or after the date on which the creditor provides the Closing Disclosure. In many cases, this limitation would not create issues for creditors because current comment 19(e)(4)(ii)–1 explains that creditors may reflect revised estimates on a Closing Disclosure to reset tolerances if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. But there is no similar provision that explicitly provides that creditors may use a Closing Disclosure to reflect the revised disclosures if there are four or more days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Commenters stated that this can lead to circumstances where creditors are unable to provide either a revised Loan Estimate (because the Closing Disclosure has been provided) or a corrected Closing Disclosure (because there are four or more days prior to consummation) to reset tolerances. Commenters referred to this situation as a ''gap'' or ''black hole'' in the rules.

Many commenters perceived the proposal as resolving this issue because they interpreted it as allowing creditors to use corrected Closing Disclosures to reset tolerances even if there are four or more business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Some commenters who interpreted the proposal in this way supported that perceived change, but also cautioned about unintended consequences. For example, some commenters stated that eliminating the four-business day limit for corrected Closing Disclosures might remove a disincentive that currently exists under the rule from providing the initial Closing Disclosure extremely early in the mortgage origination process, which these commenters stated would not be consistent with the Bureau's intent that the Closing Disclosure be a statement of actual costs.

The Current Proposal

The Bureau understands from comments received in response to the 2016 Proposal and from outreach that current timing rules regarding resetting tolerances with Closing Disclosures have led to uncertainty in the market and created implementation challenges that could have unintended consequences for both consumers and creditors. For this reason, the Bureau is issuing this proposal to amend § 1026.19(e)(4) and associated commentary to remove the four-business day limit for providing Closing Disclosures for purposes of resetting tolerances and determining if an estimated closing cost was disclosed in good faith. Consistent with current comment 19(e)(4)(ii)–1, the proposal would allow creditors to reset tolerances by providing a Closing Disclosure

[29] *See* proposed comment 19(e)(4)–2 at 77 FR 51116, 51426 (Aug. 23, 2012) (''Creditors comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the disclosures required by § 1026.19(f)(1)(i).'').

[30] *See* 81 FR 54317, 54334 (Aug. 15, 2016).

(including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) within three business days of receiving information sufficient to establish that a reason for revision applies. Unlike current comment 19(e)(4)(ii)–1, however, the proposal would not restrict the creditor's ability to reset tolerances with a Closing Disclosure (either with the initial Closing Disclosure or any corrected Closing Disclosures provided pursuant to § 1026.19(f)(2)(i) or (ii)) to the period of less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation.

The Bureau believes that in most cases in which a creditor learns about cost increases that are a permissible reason to reset tolerances the creditor will not have already provided a Closing Disclosure to the consumer. To the extent any increases in closing costs occur, the Bureau expects that creditors will typically provide a revised Loan Estimate (and not a Closing Disclosure) for the purpose of resetting tolerances and that these Loan Estimates will be used in determining good faith under § 1026.19(e)(3)(i) and (ii). At the same time, the Bureau understands that events that can affect closing costs may occur close to the time of consummation, even after the initial Closing Disclosure has been provided to the consumer. The Bureau also understands that events may result in consummation being delayed past the time that was expected when the creditor provided the Closing Disclosure to the consumer. Some events can both affect closing costs and lead to a delay in consummation. These events may be outside the control of the creditor or, in some cases, requested by the consumer. Possible examples include weather related events that delay closing and lead to additional appraisal or inspection costs or illness by a buyer or seller that could delay closing and lead to the imposition of additional costs, such as a rate lock extension fee. The Bureau understands that if creditors cannot pass these increased costs to consumers in the specific transactions where they arise, creditors may spread the costs across all consumers by pricing their loan products with a margin. The Bureau also understands from outreach and from comments received in response to the 2016 Proposal that creditors may seek other ways of avoiding absorbing these unexpected costs, such as rejecting applications from consumers, even after providing the consumer a Closing Disclosure.

The Bureau is therefore proposing to allow creditors to reset tolerances using a Closing Disclosure, without regard to the current four-business day limit. Under the proposal, there would be no four-business day limit for resetting tolerances with initial Closing Disclosures nor for any corrected Closing Disclosures provided pursuant to § 1026.19(f)(2)(i) or (ii). Under the proposal, as under the current rule, to reset tolerances with a Closing Disclosure, creditors would be required to provide the Closing Disclosure to the consumer within three business days of receiving information sufficient to establish a reason for revision. Further, as under the current rule, creditors would be allowed to reset tolerances only under the limited circumstances described in § 1026.19(e)(3)(iv).

The Bureau believes it may be appropriate to remove the four-business day limit for resetting tolerances with both initial and corrected Closing Disclosures. First, the Bureau is concerned that applying the four-business day limit to initial Closing Disclosures but not corrected Closing Disclosures could incentivize creditors to provide consumers with initial Closing Disclosures very early in the lending process, which in some circumstances might be inconsistent with the description of the Closing Disclosure as a ''statement of the final loan terms and closing costs,'' [31] and the requirement under § 1026.19(f)(1)(i) that the disclosures on the Closing Disclosure are to be a statement of ''the actual terms of the transaction.'' Second, the Bureau believes that applying the four-business day limit to initial Closing Disclosures but not corrected Closing Disclosures could create operational challenges and burden for creditors.

Accordingly, the Bureau is proposing to amend § 1026.19(e)(4)(i) to provide that, subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) or the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision applies.

At the same time, the Bureau proposes to amend current comment 19(e)(4)(ii)–1 to remove the reference to the current four-business day limit, for consistency with the proposed amendments to § 1026.19(e)(4)(i). The comment would also be amended to provide two additional examples, to further clarify how creditors may provide revised estimates on Closing Disclosures in lieu of Loan Estimates for purposes of determining good faith. Like the current comment, proposed comment 19(e)(4)(ii)–1 would explain that § 1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the disclosures required under § 1026.19(e)(1)(i) on or after the date on which the creditor provides the disclosures required under § 1026.19(f)(1)(i). And, like the current comment, proposed comment 19(e)(4)(ii)–1 would further explain that § 1026.19(e)(4)(ii) also requires that the consumer must receive any revised version of the disclosures required under § 1026.19(e)(1)(i) no later than four business days prior to consummation, and provides that if the revised version of the disclosures are not provided to the consumer in person, the consumer is considered to have received them three business days after the creditor delivers or places them in the mail. Unlike the current comment, proposed comment 19(e)(4)(ii)–1 would then provide that § 1026.19(e)(4)(i) permits the creditor to provide the revised estimate in the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)). The proposed comment would also add the following illustrative examples:

- The proposed example in comment 19(e)(4)(ii)–1.iii would assume that consummation is scheduled for Thursday. The proposed example would provide that the creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on Monday and, on Tuesday, the consumer requests a change to the loan that would result in a revised disclosure pursuant to § 1026.19(e)(3)(iv)(C) but would not require a new waiting period pursuant to § 1026.19(f)(2)(ii). The proposed example would clarify that the creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(i) reflecting the consumer-requested changes on Thursday.
- The proposed example in comment 19(e)(4)(ii)–1.iv would assume that consummation is originally scheduled for Wednesday. The proposed example would provide that the creditor hand delivers the disclosures required by

[31] *See* 12 CFR 1026.38(a)(2).

§ 1026.19(f)(1)(i) on the Friday before the scheduled consummation date and the APR becomes inaccurate on the Monday before the scheduled consummation date, such that the creditor is required to delay consummation and provide corrected disclosures, including any other changed terms, so that the consumer receives them at least three business days before consummation under § 1026.19(f)(2)(ii). Consummation is rescheduled for Friday. The proposed comment would clarify that the creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(ii) reflecting the revised APR and any other changed terms to the consumer on Tuesday. The proposed comment would refer to § 1026.19(f)(2)(ii) and associated commentary regarding changes before consummation requiring a new waiting period and to comment 19(e)(4)(i)–1 for further guidance on when sufficient information has been received to establish an event has occurred.

The proposal would also make conforming amendments to the heading of § 1026.19(e)(4)(ii) and to comments 19(e)(1)(ii)–1 and 19(e)(4)(i)–1 in light of these proposed amendments.

Finally, the proposal would make several changes to § 1026.19(e)(4) and its commentary to reflect amendments to the rule made by the January 2015 Amendments regarding interest rate dependent charges. Section 1026.19(e)(3)(iv)(D), as adopted by the 2013 TILA–RESPA Final Rule, previously required creditors to provide the consumer with a revised disclosure with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms on the date the interest rate is locked. The January 2015 Amendments changed § 1026.19(e)(3)(iv)(D) to provide creditors with more time (three business days) to provide the revised disclosure. This amendment harmonized the timing requirement in § 1026.19(e)(3)(iv)(D) with other timing requirements for redisclosure adopted in the 2013 TILA–RESPA Final Rule and addressed operational challenges associated with the prior requirement that gave creditors less time to provide revised disclosures regarding interest rate dependent charges. To implement this change, the Bureau revised § 1026.19(e)(3)(iv)(D) to state that, no later than three business days after the date the interest rate is locked, the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. In the January 2015 Amendments, the Bureau also adopted modified versions of proposed comments 19(e)(3)(iv)(D)–1 and 19(e)(4)(i)–2 to reflect that change. To further reflect the changes made by the January 2015 Amendments to § 1026.19(e)(3)(iv)(D), the Bureau is proposing to amend § 1026.19(e)(4)(i) and comment 19(e)(4)(i)–1. The Bureau also proposes to remove existing comment 19(e)(4)(i)–2, regarding the relationship to § 1026.19(e)(3)(iv)(D), which the Bureau believes may no longer be necessary.

The Bureau solicits comment on the proposed changes. In particular, the Bureau requests information on the extent to which the current four-business day limit has caused situations where creditors cannot provide either a revised Loan Estimate or Closing Disclosure to reset tolerances even if a reason for revision under § 1026.19(e)(3)(iv) would otherwise permit the creditor to reset tolerances. The Bureau requests information on the frequency and the cause of such occurrences, specifically including whether the event that would have otherwise permitted the creditor to reset tolerances occurred after the Closing Disclosure had been provided to the consumer and whether there was a delay to the expected consummation date after the creditor provided the Closing Disclosure. The Bureau also requests comment on the average costs and the nature of such costs (*i.e.,* rate lock extension fees, additional appraisal or inspections fees, or other fees) associated with such occurrences.

The Bureau also requests additional information that would assist the Bureau in evaluating potential consequences of the proposal. For example, some commenters in response to the 2016 Proposal expressed concern that removal of the four-business day limit could result in some creditors providing Closing Disclosures very early in the lending process. These commenters suggested that, to the extent that occurs, it could have negative effects on some consumers. Although the Closing Disclosure is a statement of final loan terms and closing costs, the Bureau understands from comments received in response to the 2016 Proposal and from outreach that some creditors currently provide the Closing Disclosure to consumers so early in the process that the terms and costs are nearly certain to be revised. To the extent that is currently true for some creditors, commenters noted that eliminating the current four-business day limit for resetting tolerances with a Closing Disclosure could remove a disincentive that currently exists to provide Closing Disclosures before final terms and costs are reliably available (*i.e.,* under the current rule, waiting to provide the Closing Disclosure until close to the time of consummation decreases, to some extent, the likelihood of a timing issue arising with respect to resetting tolerances with corrected Closing Disclosures).

Accordingly, the Bureau requests comment on the extent to which creditors are currently providing Closing Disclosures to consumers so that they are received substantially before the required three business days prior to consummation with terms and costs that are nearly certain to be revised. To the extent this is occurring, the Bureau requests comment on the number of business days before consummation consumers are receiving the Closing Disclosure. The Bureau also requests comment on whether creditors, in those instances, are issuing revised Closing Disclosures pursuant to § 1026.19(f)(2). In addition, the Bureau requests comment on the extent to which creditors might change their current practices regarding provision of the Closing Disclosure if the proposal to remove the four-business day limit is adopted. The Bureau also requests comment on potential harms to consumers where creditors provide Closing Disclosures to consumers so that they are received more than the required three business days prior to consummation with terms and costs that are nearly certain to be revised. The Bureau additionally requests comment on whether it should consider adopting measures to prevent such harms in a future rulemaking.

The Bureau is also concerned about other potential consequences that might result from removing the four-business day limit that currently applies to resetting tolerances with a Closing Disclosure. For example, compared to current rules, the proposed changes could allow creditors to pass more costs on to consumers. The Bureau solicits comment on whether the circumstances for resetting tolerances in § 1026.19(e)(3)(iv) provide sufficient protection against potential consumer harm or whether additional limitations are appropriate for resetting tolerances after the issuance of a Closing Disclosure. For example, the Bureau requests comment on whether it would be appropriate to allow creditors to reset tolerances with a corrected Closing Disclosure in circumstances that are more limited than those described in

§ 1026.19(e)(3)(iv) (for example, only when the increased costs result from a consumer request or unforeseeable event, such as a natural disaster). Similarly, the Bureau requests comment on whether the rule should be more restrictive with respect to resetting tolerances with a corrected Closing Disclosure for certain third-party costs (such as appraisal fees) and creditor fees (such as interest rate lock extension fees) and the types of costs and fees that might be subject to any more restrictive rules. The Bureau also requests comment on whether removing the four-business day limit might result in confusion or information overload to the consumer as a result of receiving more corrected Closing Disclosures. The Bureau requests comment on additional consumer protections that might be appropriate to promote the purposes of the disclosures or prevent circumvention or evasion and additional potential consumer harms the Bureau has not identified.

V. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts.[32] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. The Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

This proposal would make a substantive change to the current TILA–RESPA Rule, by allowing creditors to reset tolerances with a Closing Disclosure (both initial and corrected), irrespective of the date of consumption. This new provision is restricted to circumstances where the rule currently allows creditors to reset tolerances, such as: Change in costs; new information regarding eligibility of the borrower; and borrower-requested change (for instance, rate lock extension). The potential benefits and costs of the provisions contained in the proposed rule are evaluated relative to the baseline where the current provisions of the TILA–RESPA Rule remain in place. Under the current rule, there is no specific provision that allows creditors to use a Closing Disclosure to reset tolerances if there are four or more days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. This can lead to circumstances where a creditor is not allowed to reset tolerances if it has already provided the Closing Disclosure to the consumer when it learns about the increase in cost. In such cases, some creditors, faced with the prospect of absorbing cost increases, may choose to reject the application.

The Bureau seeks comment on data that would help to quantify costs and benefits and any associated burden with the proposed changes. Specifically, the Bureau is seeking information on the frequency and timing of unexpected changes that occur after the Closing Disclosure was issued.

B. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau believes the proposed change will benefit creditors by providing them with an option of resetting tolerances in situations where they currently do not have that option. The Bureau does not believe there would be any increased costs to creditors from the proposed change compared to the baseline where the current provisions of the TILA–RESPA Rule remain in place, as the proposed change is less restrictive for creditors than the current provisions.

The Bureau believes consumers will generally benefit from the proposed change, although several concerns remain; the Bureau is requesting comment on the merits of these concerns. It is helpful to consider benefits and costs to consumers separately in the following scenarios.

First, there may be cases where an initial Closing Disclosure has been provided to the consumer well in advance of consummation where the creditor subsequently learns about a change in cost that would be a cause to reset tolerances. The creditor may be unable to reset tolerances currently due to the four-business day limit, and may choose to absorb extra costs rather than reject the application. In these cases the proposed change will create costs for consumers because now any changes in costs due to unexpected events would be passed on to consumers. However, in some situations, such as cost increases due to a borrower-requested change, these extra costs might be avoidable. To the extent that creditors are currently pricing in the risk of having to absorb unexpected cost increases, the proposed change would remove this extra layer of risk adjustment and create a benefit to consumers in the form of lower cost of credit. The Bureau is requesting comment on the incidence of cases where creditors have to absorb the extra cost increases, and the extent to which such possibility is currently priced into loan costs.

Second, there may be cases where an initial Closing Disclosure has been provided to the consumer well in advance of consummation, where the creditor subsequently learns about a change in cost that would be a cause to reset tolerances. The creditor may be unable to reset tolerances currently due to the four-business day limit and may choose to reject the application for this reason. In such cases the proposed change would benefit borrowers by giving them an option of paying extra costs instead of having their applications rejected; the Bureau believes that some borrowers may prefer to pay extra costs rather than have their applications rejected. The Bureau is requesting comment on the incidence of cases where an application is rejected for the inability of a creditor to pass on the unexpected cost increases.

Third, there are hypothetically situations where a creditor would prefer to provide the initial Closing Disclosure well in advance of consummation, but is deterred from doing so by the risk of not being able to reset tolerances in case an unexpected change occurs. In such cases, the proposed change may result in more situations where the initial Closing Disclosure is provided well in advance of consummation; this may affect the accuracy of the disclosure if unexpected cost changes occur between the issuance and the consummation. The Bureau believes creditors themselves may generally prefer to provide the initial Closing Disclosure not too far before the consummation date, to preserve the Closing Disclosure's role as the statement of actual costs and because it is a good customer service. However, the Bureau has received feedback from industry participants indicating that some creditors may prefer to provide the initial Closing Disclosure earlier than is their current practice; for these

[32] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a 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.

creditors, the proposed change will provide a benefit in the form of additional flexibility as to the issuance of the Closing Disclosure. As noted previously, the Bureau is requesting comment on the extent to which creditors currently are providing Closing Disclosures substantially before the required three business days before consummation and, to the extent this is occurring, on the number of business days before consummation consumers are receiving the Closing Disclosure. The Bureau also is requesting comment on the extent to which creditors might change their current practices regarding of the timing of provision of the Closing Disclosures, if the proposal to remove the four-business day limit is adopted.

C. Impact on Covered Persons With No More Than $10 Billion in Assets

As discussed previously, the Bureau believes the proposed change would not create costs for creditors, including those with no more than $10 billion in assets.

D. Impact on Access to Credit

The Bureau does not believe the proposed change will have a negative effect on access to credit. On the contrary, the Bureau believes the proposed change may have a beneficial effect on access to credit. This may occur to the extent that the current restrictions on resetting tolerances using a Closing Disclosure are reflected in credit pricing, and to the extent that removing such restrictions would result in creditors reducing prices accordingly.

E. Impact on Rural Areas

The Bureau does not believe that the proposed changes will have an adverse impact on consumers in rural areas.

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (the 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 nonprofit organizations. The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

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. 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.

The Bureau believes that the proposed change will not create a significant economic impact on a substantial number of small entities. As described above, the proposed rule would reduce burden in a specific set of circumstances that an individual small entity would not frequently encounter. Therefore, an IRFA is not required for this proposal.

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on the analysis above and requests any relevant data.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to Regulations Z and X have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170–0015 (Regulation Z) and 3170–0016 (Regulation X). Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule does not contain any information collection requirements as defined by the PRA. The Bureau welcomes comments on this determination, which may be submitted to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by email to *CFPB_PRA@cfpb.gov.*

List of Subjects in 12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

* * * * *

Subpart C—Closed-End Credit

■ 2. Section 1026.19 is amended by revising paragraphs (e)(4)(i) and (ii) to read as follows:

§ 1026.19 Certain mortgage and variable-rate transactions.

* * * * *

(e) * * *

(4) * * *

(i) *General rule.* Subject to the requirements of paragraph (e)(4)(ii) of this section, if a creditor uses a revised estimate pursuant to paragraph (e)(3)(iv) of this section for the purpose of determining good faith under paragraphs (e)(3)(i) and (ii) of this section, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section or the disclosures required under paragraph (f)(1)(i) of this section (including any corrected disclosures provided under paragraph (f)(2)(i) or (ii) of this section) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through (F) of this section applies.

(ii) *Relationship between revised Loan Estimates and Closing Disclosures.* The creditor shall not provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section on or after the date on which the creditor provides the disclosures required under paragraph (f)(1)(i) of this section. The consumer must receive any revised version of the disclosures required under paragraph (e)(1)(i) of this section not later than four business days prior to consummation. If the revised version of the disclosures required under paragraph (e)(1)(i) of this section is not provided to the consumer in person, the consumer is considered to have received such version three business days after the creditor delivers or places such version in the mail.

* * * * *

■ 3. In *Supplement I to Part 1026—Official Interpretations,* under *Section 1026.19—Certain Mortgage and Variable-Rate Transactions,* under 19(e) Mortgage loans secured by real property—Early disclosures:

■ a. Under *19(e)(1)(ii) Mortgage broker,* paragraph 1 is revised.
■ b. *19(e)(4)(i) General rule* is revised.
■ c. *19(e)(4)(ii) Relationship to disclosures required under § 1026.19(f)(1)(i)* is revised.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.19—Certain Mortgage and Variable-Rate Transactions

* * * * *

19(e) Mortgage loans secured by real property—Early disclosures.

* * * * *

19(e)(1) Provision of disclosures.

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19(e)(1)(ii) Mortgage broker.

1. *Mortgage broker responsibilities.* Section 1026.19(e)(1)(ii)(A) provides that if a mortgage broker receives a consumer's application, either the creditor or the mortgage broker must provide the consumer with the disclosures required under § 1026.19(e)(1)(i) in accordance with § 1026.19(e)(1)(iii). Section 1026.19(e)(1)(ii)(A) also provides that if the mortgage broker provides the required disclosures, it must comply with all relevant requirements of § 1026.19(e). This means that ''mortgage broker'' should be read in the place of ''creditor'' for all provisions of § 1026.19(e), except to the extent that such a reading would create responsibility for mortgage brokers under § 1026.19(f). To illustrate, § 1026.19(e)(4)(ii) states that if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) or the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) reflecting the revised estimate. ''Mortgage broker'' could not be read in place of ''creditor'' in reference to the disclosures required under § 1026.19(f)(1)(i), (f)(2)(i), or (f)(2)(ii) because mortgage brokers are not responsible for the disclosures required under § 1026.19(f)(1)(i), (f)(2)(i), or (f)(2)(ii). In addition, § 1026.19(e)(1)(ii)(A) provides that the creditor must ensure that disclosures provided by mortgage brokers comply with all requirements of § 1026.19(e), and that disclosures provided by mortgage brokers that do comply with all such requirements satisfy the creditor's obligation under § 1026.19(e). The term ''mortgage broker,'' as used in § 1026.19(e)(1)(ii), has the same meaning as in § 1026.36(a)(2). See also comment 36(a)–2. Section 1026.19(e)(1)(ii)(B) provides that if a mortgage broker provides any disclosure required under § 1026.19(e), the mortgage broker must also comply with the requirements of § 1026.25(c). For example, if a mortgage broker provides the disclosures required under § 1026.19(e)(1)(i), it must maintain records for three years, in compliance with § 1026.25(c)(1)(i).

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19(e)(4) Provision and receipt of revised disclosures.

19(e)(4)(i) General rule.

1. *Three-business-day requirement.* Section 1026.19(e)(4)(i) provides that, subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) or the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under § 1026.19(e)(3)(iv)(A) through (F) has occurred. The following examples illustrate these requirements:

i. Assume a creditor requires a pest inspection. The unaffiliated pest inspection company informs the creditor on Monday that the subject property contains evidence of termite damage, requiring a further inspection, the cost of which will cause an increase in estimated settlement charges subject to § 1026.19(e)(3)(ii) by more than 10 percent. The creditor must provide revised disclosures by Thursday to comply with § 1026.19(e)(4)(i).

ii. Assume a creditor receives information on Monday that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the title fees will increase by an amount totaling six percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). The creditor had received information three weeks before that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the pest inspection fees increased by an amount totaling five percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). Thus, on Monday, the creditor has received sufficient information to establish a valid reason for revision and must provide revised disclosures reflecting the 11 percent increase by Thursday to comply with § 1026.19(e)(4)(i).

iii. Assume a creditor requires an appraisal. The creditor receives the appraisal report, which indicates that the value of the home is significantly lower than expected. However, the creditor has reason to doubt the validity of the appraisal report. A reason for revision has not been established because the creditor reasonably believes that the appraisal report is incorrect. The creditor then chooses to send a different appraiser for a second opinion, but the second appraiser returns a similar report. At this point, the creditor has received information sufficient to establish that a reason for revision has, in fact, occurred, and must provide corrected disclosures within three business days of receiving the second appraisal report. In this example, in order to comply with §§ 1026.19(e)(3)(iv) and 1026.25, the creditor must maintain records documenting the creditor's doubts regarding the validity of the appraisal to demonstrate that the reason for revision did not occur upon receipt of the first appraisal report.

19(e)(4)(ii) Relationship between revised Loan Estimates and Closing Disclosures.

1. *Revised Loan Estimate may not be delivered at the same time as the Closing Disclosure.* Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the disclosures required under § 1026.19(e)(1)(i) on or after the date on which the creditor provides the disclosures required under § 1026.19(f)(1)(i). Section 1026.19(e)(4)(ii) also requires that the consumer must receive any revised version of the disclosures required under § 1026.19(e)(1)(i) no later than four business days prior to consummation, and provides that if the revised version of the disclosures are not provided to the consumer in person, the consumer is considered to have received the revised version of the disclosures three business days after the creditor delivers or places in the mail the revised version of the disclosures. See also comments 19(e)(1)(iv)–1 and –2. However, § 1026.19(e)(4)(i) permits the creditor to provide the revised estimate in the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)). See below for illustrative examples:

i. If the creditor is scheduled to meet with the consumer and provide the disclosures required by § 1026.19(f)(1)(i) on Wednesday, and the APR becomes inaccurate on Tuesday, the creditor complies with the requirements of § 1026.19(e)(4) by providing the disclosures required under § 1026.19(f)(1)(i) reflecting the revised APR on Wednesday. However, the creditor does not comply with the requirements of § 1026.19(e)(4) if it provided both a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised APR on Wednesday, and also provides the disclosures required under § 1026.19(f)(1)(i) on Wednesday.

ii. If the creditor is scheduled to email the disclosures required under § 1026.19(f)(1)(i) to the consumer on Wednesday, and the consumer requests a change to the loan that would result in revised disclosures pursuant to § 1026.19(e)(3)(iv)(C) on Tuesday, the creditor complies with the requirements of § 1026.19(e)(4) by providing the disclosures required under § 1026.19(f)(1)(i) reflecting the consumer-requested changes on Wednesday. However, the creditor does not comply if it provides both the revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting consumer requested changes, and also the disclosures required under § 1026.19(f)(1)(i) on Wednesday.

iii. Consummation is scheduled for Thursday. The creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on Monday, and, on Tuesday, the consumer requests a change to the loan that would result in a revised disclosure pursuant to § 1026.19(e)(3)(iv)(C) but would not require a new waiting period pursuant to § 1026.19(f)(2)(ii). The creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(i) reflecting the consumer-requested changes on Thursday.

iv. Consummation is originally scheduled for Wednesday. The creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on the Friday before the scheduled consummation date and the APR becomes inaccurate on the Monday before the scheduled consummation date, such that the creditor is required to delay consummation and provide corrected disclosures, including any other changed terms, so that the consumer receives them at least three business days before consummation under § 1026.19(f)(2)(ii). Consummation is rescheduled for Friday. The creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(ii) reflecting the revised APR and any other changed terms to the consumer on Tuesday. See § 1026.19(f)(2)(ii) and associated commentary regarding changes before consummation requiring a new waiting period. See comment 19(e)(4)(i)–1 for further guidance on when sufficient information has been received to establish an event has occurred.

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Dated: July 6, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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