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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9398]

RIN 1545–BD70

Partner's Distributive Share

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing rules for testing whether the economic effect of an allocation is substantial within the meaning of section 704(b) where partners are look-through entities or members of a consolidated group. The final regulations clarify the application of section 704(b) to partnerships the interests of which are owned by look-through entities and members of consolidated groups and, through an example, reiterate the effect of other provisions of the Internal Revenue Code (Code) on partnership allocations. The final regulations affect partnerships and their partners.

DATES: *Effective Date:* The final regulations are effective on May 19, 2008.

Applicability Date: The final regulations apply to partnership taxable years beginning on or after May 19, 2008.

FOR FURTHER INFORMATION CONTACT: Jonathan E. Cornwell and Kevin I. Babitz at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 704 of the Internal Revenue Code (Code). On November 18, 2005, proposed regulations (REG–144620–04) regarding the substantiality of allocations to partners that are look-through entities or members of a consolidated group were published in the **Federal Register** (70 FR 69919). Because no requests to speak were submitted by January 25, 2006, no public hearing was held (see 71 FR 7453). The IRS did receive a number of written comments responding to the proposed regulations, and, after consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Section 704(a) provides that a partner's distributive share of partnership income, gain, loss, deduction, or credit shall, except as otherwise provided, be determined by the partnership agreement. Section 704(b) provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances) if the allocation to the partner under the partnership agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

In order for an allocation to have substantial economic effect, it must have economic effect and such economic effect must be substantial. For an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the partners. This means that, in the event there is an economic benefit or burden that corresponds to the allocation, the partner to whom the allocation is made must receive the economic benefit or bear such economic burden. See § 1.704–1(b)(2)(ii).

Allocations to a partner will have economic effect if, and only if, throughout the full term of the partnership, the partnership agreement provides for: (i) The proper maintenance of the partners' capital accounts, (ii) upon liquidation of the partnership (or any partner's interest in the partnership) liquidating distributions are required to be made in accordance with the positive capital account balances of the partners, as determined after taking into account all necessary adjustments for the partnership's taxable year during which the liquidation occurs, by the end of such taxable year, or if later, 90 days after the date of such liquidation, and (iii) if such partner has a deficit balance in the partner's capital account following the liquidation of the interest after taking into account all necessary adjustments for the partnership taxable year during which the liquidation occurs, the partner is unconditionally obligated to restore the deficit balance by the end of such taxable year (or, if later, within 90 days after the date of the liquidation), which amount is paid to the partnership's creditors or distributed to the other partners in accordance with their positive capital account balances. See § 1.704–1(b)(2)(ii)(*b*).

Even if the partnership agreement does not require an unlimited deficit restoration obligation of a partner, the allocation may still have economic effect to the extent such allocation does not cause or increase a deficit balance in the partner's capital account (in excess of any limited dollar amount of such partner's deficit restoration obligation) if requirements (1) and (2) of § 1.704–1(b)(2)(ii)(*b*) are satisfied and the partnership agreement contains a ''qualified income offset.'' Section 1.704–1(b)(2)(ii)(*d*). Finally, allocations that do not otherwise have economic effect under the foregoing rules shall be deemed to have economic effect if at the end of each partnership taxable year a liquidation of the partnership at the end of such year or at the end of any future year would produce the same economic results to the partners if such rules had been satisfied regardless of the economic performance of the partnership. Section 1.704–1(b)(2)(ii)(*i*).

As a general rule, the economic effect of an allocation (or allocations) is substantial if there is a reasonable possibility that the allocation (or allocations) will affect substantially the dollar amounts to be received by the partners from the partnership, independent of tax consequences. See § 1.704–1(b)(2)(iii). Even if the allocation affects substantially the dollar amounts to be received by the partners from the partnership, the economic effect of the allocation (or allocations) is not substantial if, at the time the allocation (or allocations) becomes part of the partnership agreement, (1) the after-tax economic consequences of at least one partner may, in present value terms, be enhanced compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement, and (2) there is

a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be substantially diminished compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement. See § 1.704–1(b)(2)(iii).

This test is commonly referred to as the after-tax test. In determining the after-tax economic benefit or detriment of an allocation to a partner, the tax consequences that result from the interaction of the allocation with such partner's tax attributes that are unrelated to the partnership will be taken into account. Finally, the economic effect of an allocation is not substantial in two situations described in § 1.704–1(b)(2)(iii)(*b*) and (b)(2)(iii)(*c*). The latter two situations are generally described as ''shifting'' and ''transitory'' allocations, respectively.

If the partnership agreement provides for an allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner that does not have substantial economic effect, then the partner's distributive share of the income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with the partner's interest in the partnership. References in section 704(b) or § 1.704–1 to a partner's interest in the partnership, or to the partners' interests in the partnership, signify the manner in which the partners have agreed to share the economic benefit or burden (if any) corresponding to the income, gain, loss, deduction, or credit (or item thereof) that is allocated, taking into account all facts and circumstances relating to the economic arrangement of the partners. See § 1.704–1(b)(3).

Section 1.704–1(b)(1)(iii) provides that an allocation that is respected under section 704(b) nevertheless may be reallocated under other provisions, such as section 482, section 704(e)(2), section 706(d) (and related assignment of income principles), and § 1.751–1(b)(2)(ii).

The proposed regulations clarify several aspects of the regulations under section 704. The proposed regulations generally provide a ''look-through rule'' for purposes of testing the substantiality of an allocation. The proposed regulations provide that in determining the after-tax economic benefit or detriment of a partnership allocation to any partner that is a look-through entity, the look-through rule takes into account the tax consequences that result from the interaction of the allocation with the tax attributes of any owner of the look-through entity. Similarly, in determining the after-tax economic benefit or detriment to any partner that is a member of a consolidated group, the proposed regulations generally provide that the tax consequences that result from the interaction of the allocation with the tax attributes of the consolidated group and with the tax attributes of another member with respect to a separate return year must be taken into account. The proposed regulations provide that a look-through entity means a partnership, subchapter S corporation, trust, an entity disregarded for Federal tax purposes, or certain controlled foreign corporations (CFCs).

The proposed regulations clarify that, for purposes of § 1.704–1(b)(2)(iii)(*a*), the after-tax economic consequences of an allocation contained in the partnership agreement was compared to the after-tax economic consequences of the allocation made in accordance with the partners' interest in the partnership (within the meaning of § 1.704–1(b)(3)). For that purpose, the partners' interest in the partnership was determined as if the allocations tested were not contained in the partnership agreement. Also, the proposed regulations remove the per capita presumption in § 1.704–1(b)(3)(i). Finally, the proposed regulations include an example illustrating one circumstance where a provision other than section 704(b) may be used to reallocate partnership items.

Summary of Comments and Explanation of Provisions

The final regulations adopt the proposed regulations with clarification of certain aspects in response to the comments received.

A. Look-Through Entities and Members of a Consolidated Group

For purposes of applying the after-tax, shifting, and transitory tests to a partner that is a look-through entity, the final regulations provide that the tax consequences that result from the interaction of an allocation with the tax attributes of any person that is an owner, or in the case of a trust or estate, the beneficiary, of an interest in such partner must be taken into account.

The final regulations define a look-through entity as a partnership, subchapter S corporation, trust, estate, an entity disregarded for Federal tax purposes, or certain controlled foreign corporations (CFCs). The final regulations change the look-through rule for CFCs (CFC look-through rule) to provide an ownership threshold that must be met in order to trigger look-through treatment. One comment suggested that, for administrative reasons, the look-through rule should apply only in cases involving partnerships (whether U.S. or foreign) that meet the control test in section 6038. The IRS and the Treasury Department agree that administrative concerns justify limiting the CFC look-through rule but are concerned that limiting the application of the rule as suggested would provide opportunities for abuse. Accordingly, the final regulations limit application of the CFC look-through rule to cases in which United States shareholders (within the meaning of section 951(b)) of the CFC in the aggregate own, directly or indirectly, at least 10 percent of the capital or profits interests of the partnership.

In addition, the final regulations clarify that a CFC is treated as a look-through entity, but only with respect to allocations of items of income, gain, loss, or deduction that enter into the computation of a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, enter into any person's income attributable to a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, or would enter into the computations described in this paragraph if such items were allocated to the controlled foreign corporation. The Treasury Department and the IRS are further considering whether a CFC partner should be treated as a look-through entity in all cases and how any impact on the tax liability of a direct or indirect owner of the CFC partner resulting from actual or anticipated distributions of property by the CFC partner under section 301 should be taken into account in testing the substantiality of an allocation.

Comments were also received on other aspects of the look-through rule. One comment suggested that the definition of look-through entity be expanded to include estates. Because estates generally pass through attributes in the same manner as trusts, this comment is adopted. Another comment questioned the inclusion of disregarded entities in the list of look-through entities. The proposed regulations included disregarded entities because such entities are the actual state law partners in the partnership. The final regulations include disregarded entities in the list of look-through entities for this reason only.

Several comments requested modifications to the look-through rule based upon their contention that the rule was burdensome. One comment suggested the abandonment of the look-through rule entirely, believing the application of § 1.701–2 would protect

the concerns underlying the proposed regulations and would be less burdensome. Another comment suggested that a five year presumption be included with respect to the after-tax test in § 1.704–1(b)(2)(iii)(*a*), such that the economic effect of any allocation occurring five years after the date upon which the allocation became a part of the partnership agreement would be presumed to be substantial. Finally, several comments requested either that the look-through rule apply only to partners owning more than 20 percent of the profits or capital of the partnership or that the look-through rule provide procedures to help partnerships ease the burden of considering the tax attributes of their partners and indirect owners.

One proposal to simplify the application of the look-through rule was to include a presumption that the partnership did not know and would not be required to investigate the tax attributes of any partner unless that partner directly or indirectly owns more than a 25 percent interest in the partnership's capital or profits. Alternatively, it was suggested that the final regulations provide certification procedures pursuant to which a partnership would be entitled to rely on a statement from its direct or indirect owner regarding such person's tax attributes.

The substantiality test in its present form was adopted in 1986. The Treasury Department and the IRS believe that the final regulations merely confirm the proper application of the substantiality test in those instances in which the partnership is owned by one or more look-through entities. In that respect, the look-through rule in the final regulations is not a change to the substantiality test. The Treasury Department and the IRS do not believe that it is necessary at this time to simplify the application of the substantiality test as suggested by the comments. However, to address the concerns expressed regarding the burden of the substantiality test as it applies to partnerships with look-through entity partners, the final regulations include a de minimis rule that provides that, for purposes of determining substantiality, the tax attributes of de minimis partners need not be taken into account. A de minimis partner is any partner, including a look-through entity, that owns less than 10 percent of the capital and profits of a partnership, and who is allocated less than 10 percent of each partnership item. Because of the inclusion of this de minimis rule, the final regulations do not provide for a certification procedure.

Some comments requested that the final regulations clarify what constitutes a ''tax attribute'' and an ''interaction.'' The IRS and the Treasury Department believe that this issue is sufficiently addressed under the current regulations, and, therefore, no further guidance is provided in the final regulations.

Finally, one comment requested that the final regulations provide guidance for situations in which the interaction of an allocation to a look-through entity, such as a trust or estate, and the tax attributes of the beneficiary of the entity are dependent on other factors such as the timing and amount of distributions from the trust or estate to the beneficiary. For example, it may be difficult to evaluate an allocation to a partner that is a trust where it is not known what distributions the trust will make. The IRS and the Treasury Department believe that this issue is addressed by the ''strong likelihood'' language of the substantiality test and, therefore, the final regulations do not provide additional guidance.

B. The Baseline for Comparison in § 1.704–1(b)(2)(iii)

Section 1.704–1(b)(2)(iii)(*a*) provides that the economic effect of an allocation is not substantial if, at the time the allocation becomes part of the partnership agreement, the after-tax economic consequences of at least one partner may, in present value terms, be enhanced compared to such consequences if the allocation were not contained in the partnership agreement, and there is a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be substantially diminished compared to such consequences if the allocation were not contained in the partnership agreement. Because taxpayers have suggested that the baseline comparison required by this provision is unclear, the proposed regulations clarified this rule, consistent with the provisions of § 1.704–1(b)(1)(i), by explaining that the after-tax economic consequences that result from the allocation must be compared to such consequences that would result if the allocations were not contained in the partnership agreement and were determined in accordance with the partners' interests in the partnership.

One comment suggested that an inconsistency existed between identifying the partners' interests in the partnership as the baseline for comparison in § 1.704–1(b)(2)(iii)(*a*)(*1*) and (2) and the conclusions reached by § 1.704–1(b)(5) *Example 5.* According to this comment, paragraph (ii) of § 1.704–1(b)(5) *Example 5* provides that the sharing percentages under the partners' interests in the partnership standard was 36 percent for one partner and 64 percent for the other partner. Comparing the after-tax economic consequences of the allocations contained in the partnership agreement with the 36/64 sharing percentages results in the after-tax economic consequences of one partner being enhanced and those of the other partner being substantially diminished. Thus, according to the comment, the conclusion in paragraph (i) of § 1.704–1(b)(5) *Example 5* cannot be correct. The after-tax test, however, is applied by comparing the allocations contained in the partnership agreement with the consequences determined in accordance with the partners' interests in the partnership had the allocations not been part of the partnership agreement. In *Example 5*, aside from the allocations being tested, the partners shared all other items equally and made equal capital contributions. To apply the substantiality test to the special allocations in that example, the results were compared to what would have occurred if the partners had 50/50 sharing percentages. This comparison revealed that one partner's after-tax economic return was enhanced and no partner's after-tax return was substantially diminished. Thus, the specially allocated items had to be reallocated under the partners' interests in the partnership. Under the facts of *Example 5*, the partners' interests in the partnership were the 36/64 sharing percentages, which were the same percentages in which they actually shared the partnership's total income for the year. The reallocation did not change the percentages in which the partners shared total income, but rather, required that each item of income (that is, tax-exempt income and taxable interest and dividends included in total income) be shared in those same percentages. Thus, in *Example 5* the partners' interests in the partnership for purposes of reallocating the items that lacked substantial economic effect was determined to be different than the partners' interests in the partnership used to test substantiality.

One comment suggested that the comparison to the partners' interests in the partnership is equally applicable when testing shifting and transitory allocations under § 1.704–1(b)(2)(iii)(*b*) and (*c*) as it is to the after-tax test under § 1.704–1(b)(2)(iii)(*a*), and suggested that the final regulations so provide. This comment is adopted and, in order to further clarify that the partners'

interests in the partnership (determined without regard to the allocation or allocations being tested) is the baseline for comparison when testing the substantiality of an allocation, whether under the after-tax test or the shifting or transitory allocation test, the final regulations remove the parenthetical clauses inserted by the proposed regulations and add a sentence to the end of § 1.704–1(b)(2)(iii)(*a*)(*1*) that provides that references in § 1.704–1(b)(2)(iii) to an allocation (or allocations) not contained in the partnership agreement mean that the allocation (or allocations) is determined in accordance with the partners' interests in the partnership (within the meaning of paragraph § 1.704–1(b)(3)), disregarding the allocation (or allocations) being tested under § 1.704–1(b)(2)(iii).

C. Removal of Per Capita Presumption in § 1.704–1(b)(3)

The proposed regulations removed the per capita presumption in § 1.704–1(b)(3). Because this section generally does not contain mechanical rules to determine the partners' interests in the partnership, one comment suggested that the presumption was necessary to reduce complexity, and therefore recommended that the final regulations reinsert the presumption. However, because the per capita presumption failed to consider factors relevant to a determination of the manner in which the partners agreed to share the economic benefits or burdens corresponding to the allocation of partnership items, the correct result was reached in very few cases. Accordingly, the Treasury Department and IRS believe that any benefits of the presumption are outweighed by the potential for incorrect determinations.

D. Example 29

In *Example 29* of the proposed regulations, B, a domestic corporation, and C, a controlled foreign corporation, form BC, a partnership organized under the laws of a foreign jurisdiction, with equal capital contributions. B and C are both wholly owned by A, a domestic corporation. Substantially all of BC's income would not be subpart F income if earned directly by C. For the first fifteen years of the partnership, gross income is allocated 10 percent to B and 90 percent to C, and all deductions and losses will be allocated 90 percent to B and 10 percent to C. After the initial fifteen year period, BC's gross income will be allocated 90 percent to B and 10 percent to C, and all deductions and losses will be allocated 10 percent to B and 90 percent to C. The example concludes that, apart from the application of section 704(b), the Commissioner may reallocate or otherwise not respect the allocations under other Code sections.

One comment questioned why *Example 29* did not contain a substantial economic effect analysis. Another comment inferred from the absence of a citation to § 1.701–2 in *Example 29* that the partnership anti-abuse rule did not apply and would not be asserted by the IRS. *Example 29* was included in the proposed regulations only to reiterate the provisions contained in § 1.704–1(b)(1)(iii) regarding the effect other sections may have on partnership allocations. Accordingly, the Treasury Department and IRS do not believe that any further analysis is necessary. Moreover the list of other sections that can affect the validity of a partnership allocation in § 1.704–1(b)(1)(iii) is not an exhaustive list and, accordingly, the absence of a citation to § 1.701–2 or other potentially applicable sections does not preclude the applicability of those provisions of law in the appropriate circumstances. The Treasury Department and IRS continue to consider issuing additional guidance addressing the proper treatment of special allocations of items of a partnership that is owned primarily by related parties. *Examples 29* and *30* in the proposed regulations have been renumbered as *Examples 28* and *29*, respectively, in these final regulations.

Effective/Applicability Date

The amendments made by these final regulations apply to partnership taxable years beginning on or after May 19, 2008.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of this regulation are Jonathan E. Cornwell and Kevin I. Babitz, Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows: Authority: 26 U.S.C. 7805.
* * *

■ **Par. 2.** Section 1.704–1 is amended as follows:

■ 1. A sentence is added at the end of paragraph (b)(1)(ii)(*a*).
■ 2. A sentence is added at the end of paragraph (b)(2)(iii)(*a*).
■ 3. Paragraphs (b)(2)(iii)(*d*) and (*e*) are added.
■ 4. The last two sentences of paragraph (b)(3)(i) are removed.
■ 5. Paragraph (b)(5) *Examples 28*, *29* and *30* are added.

The additions and revisions read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(1) * * *

(ii) *Effective/applicability dates.* (*a*) * * * Paragraphs (b)(2)(iii)(*a*) (last sentence), (b)(2)(iii)(*d*), (b)(2)(iii)(*e*), and (b)(5) *Example 28*, *Example 29*, and *Example 30* of this section apply to partnership taxable years beginning on or after May 19, 2008.

(2) * * *

(iii) * * * (*a*) * * * References in this paragraph (b)(2)(iii) to a comparison to consequences arising if an allocation (or allocations) were not contained in the partnership agreement mean that the allocation (or allocations) is determined in accordance with the partners' interests in the partnership (within the meaning of paragraph (b)(3) of this section), disregarding the allocation (or allocations) being tested under this paragraph (b)(2)(iii).

* * * * *

(d) *Partners that are look-through entities or members of a consolidated group*— (*1*) *In general.* For purposes of applying paragraphs (b)(2)(iii)(*a*), (*b*),

and (*c*) of this section to a partner that is a look-through entity, the tax consequences that result from the interaction of the allocation with the tax attributes of any person that is an owner, or in the case of a trust or estate, the beneficiary, of an interest in such a partner, whether directly or indirectly through one or more look-through entities, must be taken into account. For purposes of applying paragraphs (b)(2)(iii)(*a*), (*b*), and (*c*) of this section to a partner that is a member of a consolidated group (within the meaning of § 1.1502–1(h)), the tax consequences that result from the interaction of the allocation with the tax attributes of the consolidated group and with the tax attributes of another member with respect to a separate return year must be taken into account. See paragraph (b)(5) *Example 29* of this section.

(*2*) *Look-through entity*. For purposes of this paragraph (b)(2)(iii)(*d*), a *look-through entity* means—

(*i*) A partnership;

(*ii*) A subchapter S corporation;

(*iii*) A trust or an estate;

(*iv*) An entity that is disregarded for Federal tax purposes, such as a qualified subchapter S subsidiary under section 1361(b)(3), an entity that is disregarded as an entity separate from its owner under §§ 301.7701–1 through 301.7701–3 of this chapter, or a qualified REIT subsidiary within the meaning of section 856(i)(2); or

(*v*) A controlled foreign corporation if United States shareholders of the controlled foreign corporation in the aggregate own, directly or indirectly, at least 10 percent of the capital or profits of the partnership on any day during the partnership's taxable year. In such case, the controlled foreign corporation shall be treated as a look-through entity, but only with respect to allocations of income, gain, loss, or deduction (or items thereof) that enter into the computation of a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, enter into any person's income attributable to a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, or would enter into the computations described in this paragraph if such items were allocated to the controlled foreign corporation. See paragraph (b)(2)(iii)(*d*)(*6*) for the definition of indirect ownership.

(*3*) *Controlled foreign corporations*. For purposes of this section, the term *controlled foreign corporation* means a controlled foreign corporation as defined in section 957(a) or section 953(c). In the case of a controlled foreign corporation that is a look-through entity, the tax attributes to be taken into account are those of any person that is a United States shareholder (as defined in paragraph (b)(2)(iii)(*d*)(5) of this section) of the controlled foreign corporation, or, if the United States shareholder is a look-through entity, a United States person that owns an interest in such shareholder directly or indirectly through one or more look-through entities.

(*4*) *United States person*. For purposes of this section, a *United States person* is a person described in section 7701(a)(30).

(*5*) *United States shareholder*. For purposes of this section, a *United States shareholder* is a person described in section 951(b) or section 953(c).

(*6*) *Indirect ownership*. For purposes of this section, indirect ownership of stock or another equity interest (such as an interest in a partnership) shall be determined in accordance with the principles of section 318, substituting the phrase ''10 percent'' for the phrase ''50 percent'' each time it appears.

(*e*) *De minimis rule*. For purposes of applying this paragraph (b)(2)(iii), the tax attributes of *de minimis* partners need not be taken into account. For purposes of this paragraph (b)(2)(iii)(e), a *de minimis* partner is any partner, including a look-through entity that owns, directly or indirectly, less than 10 percent of the capital and profits of a partnership, and who is allocated less than 10 percent of each partnership item of income, gain, loss, deduction, and credit. See paragraph (b)(2)(iii)(*d*)(*6*) of this section for the definition of indirect ownership.

* * * * *

(5) * * *

Example 28. (i) B, a domestic corporation, and C, a controlled foreign corporation, form BC, a partnership organized under the laws of country X. B and C each contribute 50 percent of the capital of BC. B and C are wholly-owned subsidiaries of A, a domestic corporation. Substantially all of BC's income would not be subpart F income if earned directly by C. The BC partnership agreement provides that, for the first fifteen years, BC's gross income will be allocated 10 percent to B and 90 percent to C, and BC's deductions and losses will be allocated 90 percent to B and 10 percent to C. The partnership agreement also provides that, after the initial fifteen year period, BC's gross income will be allocated 90 percent to B and 10 percent to C, and BC's deductions and losses will be allocated 10 percent to B and 90 percent to C.

(ii) Apart from the application of section 704(b), the Commissioner may reallocate or otherwise not respect the allocations under other sections. See paragraph (b)(1)(iii) of this section. For example, BC's allocations of gross income, deductions, and losses may be evaluated and reallocated (or not respected), as appropriate, if it is determined that the allocations result in the evasion of tax or do not clearly reflect income under section 482.

Example 29. PRS is a partnership with three equal partners, A, B, and C. A is a corporation that is a member of a consolidated group within the meaning of § 1.1502–1(h). B is a subchapter S corporation that is wholly owned by D, an individual. C is a partnership with two partners, E, an individual, and F, a corporation that is member of a consolidated group within the meaning of § 1.1502–1(h). For purposes of paragraph (b)(2)(iii) of this section, in determining the after-tax economic benefit or detriment of an allocation to A, the tax consequences that result from the interaction of the allocation to A with the tax attributes of the consolidated group of which A is a member must be taken into account. In determining the after-tax economic benefit or detriment of an allocation to B, the tax consequences that result from the interaction of the allocation with the tax attributes of D must be taken into account. In determining the after-tax economic benefit or detriment of an allocation to C, the tax consequences that result from the interaction of the allocation with the tax attributes of E and the consolidated group of which F is a member must be taken into account.

Example 30. (i) A, a controlled foreign corporation, and B, a foreign corporation that is not a controlled foreign corporation, form AB, a partnership organized under the laws of country X. The partnership agreement contains the provisions necessary to comply with the economic effect safe harbor of paragraph (b)(2)(ii)(*b*) of this section. A is wholly-owned by C, a domestic corporation that is not a member of a consolidated group within the meaning of § 1.1502–1(h). B is wholly owned by an individual who is a citizen and resident of country X and is not related to A. Neither A, B, nor AB, is engaged in a trade or business in the United States. A and B each contribute 50 percent of the capital of AB. There is a strong likelihood that in each of the next several years AB will realize equal amounts of gross income that would constitute subpart F income if allocated to A, and gross income that would not constitute subpart F income if allocated to A (''non-subpart F income''). A and B agree to share bottom-line net income from AB equally; however, rather than share all items of gross income equally, A and B agree that B will be allocated all of AB's subpart F income to the extent of its 50 percent share of bottom-line net income. In year 1, AB earns $60x of income, $30x of which is subpart F income and is allocated to B, and $30x of which is non-subpart F income and is allocated to A.

(ii) Although neither A nor B is subject to U.S. tax with respect to its distributive share of the income of AB, under paragraph (b)(2)(iii)(*d*) of this section, the tax attributes of C must be taken into account with respect to A for purposes of applying the tests described in paragraphs (b)(2)(iii)(*a*), (*b*), and (*c*) of this section. The allocations in year 1

have economic effect. However, the economic effect of the allocations is not substantial under the test described in paragraph (b)(2)(iii)(*b*) of this section because there was a strong likelihood, at the time the allocations became part of the AB partnership agreement, that the net increases and decreases to A's and B's capital accounts in year 1 would not differ substantially when compared to the net increases and decreases to A's and B's capital accounts for year 1 if the allocations were not contained in the partnership agreement, and the total tax liability from the income earned by AB in year 1 (taking into account the tax attributes of the allocations to C) would be reduced as a result of such allocations. Under paragraph (b)(3) of this section, the subpart F income and non-subpart F income earned by AB in year 1 must each be reallocated 50 percent to A and 50 percent to B.

* * * * *

Approved: May 8, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–11176 Filed 5–16–08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0219]

RIN 1625–AA00

Firework Events; Great Lake Annual Firework Events

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety zones for various fireworks events in the Captain of the Port Buffalo zone. This rule consolidates current regulations establishing safety zones for annual fireworks events in the former Captain of the Port Cleveland Zone and the former Captain of the Port Buffalo Zone. In addition, it adds events not previously published in Coast Guard regulations. These safety zones are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays or other events.

DATES: This rule is effective June 18, 2008.

ADDRESSES: Comments and material received from the public as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0219 and are available online at *http://www.regulations.gov.* This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and Coast Guard Sector Buffalo, 1 Fuhrmann Boulevard, Buffalo, NY 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call CDR Joseph Boudrow, Prevention Department, Coast Guard Sector Buffalo, Buffalo, NY at (716) 843–9572. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 3, 2008, we published a notice of rulemaking (NPRM) entitled Annual Events Requiring Safety Zones in the Captain of the Port Buffalo zone in the **Federal Register** (73 FR 18225). We received no letters commenting on the rule. No public meeting was requested, and none was held.

Background and Purpose

On July 22, 2005, the Coast Guard consolidated the Captain of the Port Cleveland zone and the Captain of the Port Buffalo zone into one zone re-defining the Captain of the Port Buffalo zone. This rule will consolidate the regulations found in 33 CFR 165.202, Safety Zones; Annual Fireworks Events in the Captain of the Port Cleveland Zone, the regulations found in 33 CFR 165.914, Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone so that all the annual fireworks events in the current Captain of the Port Buffalo Zone are found in one CFR section. In addition this rule adds events not previously published in the CFR.

These safety zones are necessary to protect vessels and people from the hazards associated with fireworks displays or other events. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Comments and Changes

No comments were received regarding this rule.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard's use of these safety zones will be periodic, of short duration, and designed to minimize the impact on navigable waters. These safety zones will only be enforced immediately before, during, and after the time the events occur. Furthermore, these safety zones have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. The Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in the areas designated as safety zones in subparagraphs (1) through (26) during the dates and times the safety zones are being enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for short periods of time, and only once per year, per zone. The safety zones have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(g) of the Instruction, from further environmental documentation.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.939 to read as follows:

§ 165.939 Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone.

(a) *Safety Zones.* The following areas are designated Safety zones and are listed geographically from New York to Ohio.

(1) *Boldt Castle 4th of July Fireworks, Heart Island, NY.*

(i) *Location.* All waters of the St. Lawrence River within a 500-foot radius of the land position: 44°20′39″ N, 075°55′16″ W; at Heart Island, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9 p.m. to 10 p.m. on July 4 of each year.

(2) *Clayton Chamber of Commerce Fireworks, Calumet Island, NY.*

(i) *Location.* All waters of the St. Lawrence River within a 500-foot radius of land position: 44°15′05″ N, 076°05′35″ W; in Calumet Island Harbor, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9 p.m. to 10 p.m. on July 1 of each year.

(3) *French Festival Fireworks, Cape Vincent, NY.*

(i) *Location.* All waters of the St. Lawrence River within a 500-foot radius of land position: 44°07′53″ N, 076°20′02″ W. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10:30 p.m. on the first or second weekend of July each year.

(4) *Brewerton Fireworks, Brewerton, NY.*

(i) *Location.* All waters of Lake Oneida within a 500-foot radius of barge position: 43°14′15″ N, 076°08′03″ W; in Brewerton, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10:30 p.m. on the first weekend of July each year.

(5) *Celebrate Baldwinsville Fireworks, Baldwinsville, NY.*

(i) *Location.* All waters of the Seneca River within a 500-foot radius of land position: 43°09′21″ N, 076°20′01″ W. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10 p.m. on the third weekend of September each year.

(6) *Island Festival Fireworks Display, Baldwinsville, NY.*

(i) *Location.* All waters of the Seneca River within a 500-foot radius of land position: 43°09′25″ N, 076°20′21″ W; in Baldwinsville, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 10 p.m. to 10:30 p.m. on the first weekend of July each year.

(7) *Seneca River Days, Baldwinsville, NY.*

(i) *Location.* All waters of the Seneca River within a 500-foot radius of land position: 43°09′25″ N, 076°20′21″ W; in Baldwinsville, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10:30 p.m. on the first weekend of July each year.

(8) *Oswego Harborfest, Oswego, NY.*

(i) *Location.* All waters of Lake Ontario within a 1,000-foot radius of barge position 43°28′10″ N, 076°31′04″ W; in Oswego, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9 p.m.to 10 p.m. on the last Saturday in July each year.

(9) *Village Fireworks, Sodus Point, NY.*

(i) *Location.* All waters of Sodus Bay within a 500-foot radius of land position: 43°16′27″ N, 076°58′27″ W; in Sodus Point, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 10 p.m. to 10:30 p.m. on the first Saturday in July each year.

(10) *City of Syracuse Fireworks Celebration, Syracuse, NY.*

(i) *Location.* All waters of Onondaga Lake within a 350-foot radius of land position 43°03′37″ N, 076°09′59″ W; in Syracuse, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10:30 p.m. on the last weekend in June each year.

(11) *Tom Graves Memorial Fireworks, Port Bay, NY.*

(i) *Location.* All waters of Port Bay within a 500-foot radius of barge position: 43°17′46″ N, 076°50′02″ W; in Port Bay, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 10 p.m. to 10:30 p.m. on the first weekend in July each year.

(12) *Rochester Harbor and Carousel Festival, Rochester, NY.*

(i) *Location.* All waters of Lake Ontario within a 500-foot radius of land position: 43°15′21″ N, 077°36′19″ W in Rochester, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 8 p.m. to 10 p.m. on June 24th of each year.

(13) *North Tonawanda Fireworks Display, Tonawanda, NY.*

(i) *Location.* All waters of the East Niagara River within a 500-foot radius of a barge located at position: 43°01′12″ N, 078°53′36″ W; in North Tonawanda, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 10:15 p.m. on July 4th of each year.

(14) *Tonawanda's Canal Fest Fireworks, Tonawanda, NY.*

(i) *Location.* All waters of the East Niagara River within a 500-foot radius of barge position: 43°01′12″ N, 078°53′36″ W; in Tonawanda, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10:30 p.m. on the fourth Sunday in July each year.

(15) *Celebrate Erie Fireworks, Erie, PA.*

(i) *Location.* All waters of Presque Isle Bay within an 800-foot radius of land position: 42°08′19″ N, 080°05′29″ W; at the end of Dobbins Landing Pier, Erie, PA. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 10:30 p.m. on the third weekend in August each year.

(16) *Ashtabula Area Fireworks, Walnut Beach, Ashtabula, OH.*

(i) *Location.* All waters of Lake Erie and Ashtabula Harbor within a 300-yard radius of land position: 41°54.167′ N, 080°48.416′ W; in Ashtabula, OH. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the second weekend in July each year.

(17) *Fairport Harbor Mardi Gras, Fairport Harbor, OH.*

(i) *Location.* All waters of Fairport Harbor and Lake Erie within a 300-yard radius of land position: 41°45.500′ N, 081°16.300′ W; east of the harbor entrance at Fairport Harbor Beach, OH. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first Saturday of July each year.

(18) *Lake County Perchfest Fireworks, Fairport, OH.*

(i) *Location.* All waters of Fairport Harbor and Lake Erie within a 300-yard radius of land position: 41°45.500′ N, 081°16.300′ W; in Fairport, OH. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the second weekend in September each year.

(19) *Mentor Harbor Yacht Club Fireworks, Mentor Harbor, OH.*

(i) *Location.* All waters of Lake Erie and Mentor Harbor within a 200-yard radius of 41°43.200′ N, 081°21.400′ W (west of the harbor entrance); in Mentor Harbor, OH. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first weekend in July each year.

(20) *Browns Football Halftime Fireworks, Cleveland, OH.*

(i) *Location.* All navigable waters of Cleveland Harbor and Lake Erie beginning in approximate land position: 41°30.823′ N, 081°41.620′ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176′ N, 081°41.884′ W; then southwest to 41°30.810′ N, 081°42.515′ W; then southeast to 41°30.450′ N, 081°42.222′ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30.823′ N, 081°41.620′ W. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective on a Sunday during the second or third Cleveland Brown's home game each year.

(21) *City of Cleveland 4th of July Fireworks, Cleveland, OH.*

(i) *Location.* All navigable waters of Cleveland Harbor and Lake Erie within a 400-yard radius of Main Entrance Light 5 (LLNR 4180) at position: 41°30.23′ N, 081°42.7′ W; in Cleveland, OH (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first weekend in July each year.

(22) *Dollar Bank Jamboree Fireworks Display, Cleveland, OH.*

(i) *Location.* All navigable waters of Cleveland Harbor and Lake Erie beginning at land position: 41°30.823′ N, 081°41.620′ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176′ N, 081°41.884′ W; then southwest to 41°30.810′ N, 081°42.515′ W; then southeast to 41°30.450′ N, 081°42.222′ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30.823′ N, 081°41.620′ W. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first weekend in July each year.

(23) *Lakewood City Fireworks Display, Lakewood, OH.*

(i) *Location.* All waters of Lake Erie within a 200-yard radius of land position: 41°29.755′ N, 081°47.780′ W (off of Lakewood Park); in Lakewood, OH. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first weekend in July each year.

(24) *Cleveland Yachting Club Fireworks Display, Rocky River, OH.*

(i) *Location.* All waters of the Rocky River and Lake Erie within a 200-yard radius of land position 41°29.428′ N, 081°50.309′ W (DATUM: NAD 83) at Sunset Point on the western side of the mouth of the Rocky River in Cleveland, OH.

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the third weekend in July each year.

(25) *Lorain 4th of July Celebration Fireworks Display, Lorain, OH.*

(i) *Location.* All waters of Lorain Harbor within a 300-yard radius of land position 41°28.591′ N, 082°10.855′ W (DATUM: NAD 83), east of the harbor entrance on the end of the break wall near Spitzer's Marina.

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first weekend in July each year.

(26) *Lorain Port Fest Fireworks Display, Lorain, OH.*

(i) *Location.* All waters of Lorain Harbor within a 250-yard radius of land position: 41°28.040′ N, 082°10.365′ W; in Lorain, OH (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the third weekend in July each year.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Buffalo to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo, or his designated representative.

(2)(i) These safety zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated representative.

(ii) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(iii) Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3)(i)All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced.

(ii) Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative.

(iii) While within a safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(d) *Exemption.* Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(e) *Waiver.* For any vessel, the Captain of the Port Buffalo or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(f) *Notification.* The Captain of the Port Buffalo will notify the public that that the zones in this proposal are or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

§ 165.202 [Removed]

■ 3. Remove and reserve § 165.202.

§ 165.914 [Removed]

■ 4. Remove and reserve § 165.914.

Dated: May 9, 2008.

S.J. Ferguson,

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

[FR Doc. E8–11139 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0203]

RIN 1625–AA87

Security Zone; Escorted Vessels in Captain of the Port Zone Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a security zone around any vessel being escorted by one or more Coast Guard, State, or local law enforcement assets within the Captain of the Port Zone Jacksonville, FL. This action is necessary to ensure the safe transit of escorted vessels as well as the safety and security of personnel and port facilities. No vessel or person is allowed inside the security zone unless authorized by the Captain of the Port Jacksonville, FL or a designated representative.

DATES: This interim rule is effective May 19, 2008. Comments and related material must reach the Docket Management Facility on or before June 18, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0203 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LCDR Austin Ives at Sector Jacksonville (904) 564–7563. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0203), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. For example, we may ask you to resubmit your comment if we are not able to read your original submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0203) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays or the Coast Guard Sector Jacksonville Prevention Department, 4200 Ocean Street, Atlantic Beach, Florida 32233, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM and delaying the effective date would be contrary to public interest since the security zones around escorted vessels are necessary to ensure the safe transit of the escorted vessels as well as the public. Certain vessel movements are more vulnerable to terrorist acts and it would be contrary to the public interest to publish an NPRM that would delay the effective date of this rule. The Coast Guard coordinates escorts for vessels in this waterway for the port's safety and security. Recently, recreational boaters have endangered themselves and others by not following the verbal guidance of on scene law enforcement officials. To ensure safe boating, it is imperative that a standard exclusionary zone be broadcast and safe speeds be followed for all escorted vessels.

For the same reasons above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The terrorist attacks of September 2001 heightened the need for development of various security measures throughout the seaports of the United States, particularly around vessels and facilities whose presence or movement creates a heightened vulnerability to terrorist acts; or those for which the consequences of terrorist acts represent a threat to national security. The President of the United States has found that the security of the United States is and continues to be endangered following the attacks of September 11 (E.O. 13,273, 67 FR 56215, Sep. 3, 2002 and 72 FR 54205, Sep. 21, 2007). Additionally, national security and intelligence officials continue to warn that future terrorist attacks are likely.

King's Bay, GA, and the Ports of Jacksonville, FL, and Canaveral, FL frequently receive vessels that require additional security, including, but not limited to, vessels that carry sensitive Department of Defense cargoes, vessels that carry dangerous cargoes, and foreign naval vessels. The Captain of the Port (COTP) Jacksonville has determined that these vessels have a significant vulnerability to subversive activity by vessels or persons or, in some cases, themselves pose a risk to a port and the public, within the Jacksonville Captain of the Port Zone, as described in 33 CFR 3.35–20. This rule enables the COTP Jacksonville to provide effective port security, while minimizing the public's confusion and ease the administrative burden of implementing separate temporary security zones for each escorted vessel.

Discussion of Rule

This rule establishes a security zone that prohibits persons and vessels from coming within 500 yards of all escorted vessels within the navigable waters of the Captain of the Port Zone Jacksonville, FL, as described in 33 CFR 3.35–20. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed and must comply with all orders issued by the COTP or a designated representative. No vessel or person may enter within a 100-yard radius of an escorted vessel.

An *escorted vessel* is defined as a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia as listed below:

Coast Guard surface or air asset displaying the Coast Guard insignia.

State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.

When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used. In all cases, broadcast notice to mariners will be issued to advise mariners of these restrictions.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The limited geographic area impacted by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Ports within the Captain of the Port Zone Jacksonville.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in the vicinity of escorted vessels. This rule would not have a significant impact on a substantial number of small entities because the zones are limited in size, in most cases leaving ample space for vessels to navigate around them. The zones will not significantly impact commercial and passenger vessel traffic patterns, and mariners will be notified of the zones via Broadcast Notice to Mariners. Where such space is not available and security conditions permit, the Captain of the Port will attempt to provide flexibility for individual vessels to transit through the zones as needed.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an

explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.773 to read as follows:

§ 165.773 Security Zone; Escorted Vessels in Captain of the Port Zone Jacksonville, Florida.

(a) *Definitions*. The following definitions apply to this section:

COTP means Captain of the Port Jacksonville, FL.

Designated representatives means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels or aircraft, and federal, state, and local officers designated by or assisting the COTP, in the enforcement of the security zone.

Escorted vessel means a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State, or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia as follows:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.

(3) When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used. In all cases, broadcast notice to mariners will be issued to advise mariners of these restrictions.

Minimum safe speed means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake.

(b) *Regulated Area*. All navigable waters, as defined within Captain of the Port Zone, Jacksonville, Florida as defined in 33 CFR 3.35–20.

(c) *Security Zone*. A 500-yard security zone is established around each escorted vessel within the regulated area described in paragraph (b) of this section. This is a moving security zone when the escorted vessel is in transit and becomes a fixed zone when the escorted vessel is anchored or moored. A security zone will not extend beyond the boundary of the regulated area in this section.

(d) *Regulations*. (1) The general regulations for security zones contained in § 165.33 of this part applies to this section.

(2) A vessel may request the permission of the COTP or a designated representative to enter the security zone described in paragraph (c) of this section. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must comply with the orders of the COTP or a designated representative. No vessel or person may enter the inner 100-yard portion of the security zone closest to the vessel.

(e) *Notice of Security Zone*. The COTP will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by Broadcast Notice to Mariners. Coast Guard assets or other Federal, State or local law enforcement agency assets will be clearly identified by lights, vessel markings, or with agency insignia. When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used.

(f) *Contact Information*. The COTP Jacksonville may be reached via phone at (904) 564–7513. Any on scene Coast Guard or designated representative assets may be reached via VHF–FM channel 16.

Dated: May 6, 2008.

P.F. Thomas,

Captain, U.S. Coast Guard, Captain of the Port Zone Jacksonville, Florida.

[FR Doc. E8–11141 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

41 CFR Part 61–300

RIN 1293–AA12

Annual Report From Federal Contractors

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Final rule.

SUMMARY: The Veterans' Employment and Training Service is publishing a new set of regulations, and adopting a new Federal Contractor Veterans' Employment Report VETS–100A (''VETS–100A Report'') form, to implement the requirement under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (''VEVRAA'') that Government contractors track and annually report the number of employees in their workforces who are veterans covered under the law. The final regulations published today implement amendments to the reporting requirements under VEVRAA that were made by the Jobs for Veterans Act (''JVA'') in 2002. The JVA amendments: Raised the dollar amount of the Government contracts that trigger a contractor's obligation to report on veterans' employment; and changed the

categories of veterans that contractors are to track and report. The final regulations published today apply only to covered Government contracts entered into or modified on or after December 1, 2003. The existing regulations in 41 CFR part 61–250, which require contractors to use the Federal Contractor Veterans' Employment Report VETS–100 (''VETS–100 Report'') form to provide the information on the covered veterans in their workforces, will continue to apply to Government contracts entered into before December 1, 2003.

DATES: *Effective Date:* These regulations are effective June 18, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Wilson, Chief, Investigations and Compliance Division, Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1312, Washington, DC 20210, *RMWilson@dol.gov,* (202) 693–4719 (this is not a toll-free number).

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SUPPLEMENTARY INFORMATION:

Background

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (''VEVRAA''), 38 U.S.C. 4212(d), requires that Federal contractors report annually to the Secretary of Labor about their employment of certain categories of veterans. The Department of Labor has promulgated regulations found at 41 CFR part 61–250, which require contractors to use the Federal Contractor Veterans' Employment Report VETS–100 (''VETS–100 Report'') form for reporting information on the number of covered veterans in their workforces.

On November 7, 2002, the President signed the Jobs for Veterans Act (JVA) (Pub. L. 107–288, 116 Stat. 2033). Section 2(d)(1)(A) of JVA amended the Federal contractor reporting requirements contained in 38 U.S.C. 4212(d). Section (2)(b)(3) of JVA made the amendments applicable to Government contracts entered into on or after December 1, 2003.

Prior to amendment by JVA, VEVRAA required contractors with a Government contract of $25,000 or more to report at least annually to the Secretary on the number of employees in their workforces, by job category and hiring location, who are ''special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.'' In addition, prior to amendment by JVA, VEVRAA required contractors to report on the number of employees hired during the period covered by the report who belong to the specified categories of covered veterans.

The JVA amendments to VEVRAA made two changes to the reporting requirements applicable to contracts entered into on or after December 1, 2003. First, the JVA amendments increased from $25,000 to $100,000, the dollar amount of the contract that subjects a Government contractor to the requirement to report the number of employees in their workforces who are covered veterans.

Second, the JVA amendments changed the categories of covered veterans under VEVRAA and thus the categories of veterans that contractors are required to track and report on annually. JVA eliminated the coverage category of Vietnam era veterans. However, many Vietnam era veterans may remain covered in other categories. JVA added a new category of covered veterans—those ''veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985.'' In addition, the JVA amendments expanded the coverage of recently separated veterans from one year after discharge or release from active duty, to three years. Finally, JVA expanded the coverage of veterans with disabilities. Prior to amendment by JVA, VEVRAA covered veterans rated as having 10% to 20% serious employment handicap or a disability rated 30% or more by the Department of Veterans Affairs. As a result of the JVA amendments, all veterans who were discharged or released from active duty because of a service-connected disability are covered under VEVRAA.

On August 8, 2006, VETS published a Notice of Proposed Rulemaking (NPRM), (71 FR 44945), to implement the changes made by JVA to the reporting requirements under VEVRAA. The NPRM proposed to adopt a new set of regulations that would be codified in a new 41 CFR part 61–300. The NPRM also proposed to adopt a new form for reporting the information on veterans' employment required by the JVA amendments to VEVRAA and name it the ''VETS–100A Report.''

VETS received a total of six comments: Two from employer associations whose members include Federal contractors, one from a management consulting firm that specializes in human resources, one from a government agency, one from a human resources professional, and one from an attorney. Generally, the comments discussed the confusion that might result from VETS maintaining two sets of VEVRAA regulations and requested clarification of certain provisions. VETS reviewed and carefully considered the comments in the development of this final rule.

VETS recognized that contractors will need time to update their recordkeeping systems to collect the data required by the VETS–100A Report, and stated in the NPRM that the reporting requirements in the new part 61–300 would become effective for the calendar year 2007, and would be reported in the VETS–100A Report to be filed by September 30, 2008. We received two comments on the proposed effective date of the final rule. One commenter asked that VETS extend the effective date of the new reporting requirements to 2008, and the date for filing the VETS–100A Report for the first time to September 30, 2009, in order to allow contractors sufficient time to adjust their computer systems. Another commenter requested that VETS clarify in the final rule that contractors do not have to begin collecting and maintaining data required for the 2008 VETS–100A Report until the first day of the 12-month period for which new hire data will be reported on the 2008 report.

When the effective dates stated in the NPRM were proposed, VETS anticipated that today's final rule and its information collection requirements would be effective by a date that would allow contractors sufficient time to collect the data needed to complete and file a VETS–100A Report for the 2008 reporting cycle. The VETS–100A Report calls for contractors to provide data on veterans' employment for a 12-month period ending on a date in the report year between July 1 and August 31 that represents the end of a payroll period. However, today's final rule will not take effect in time for contractors to collect data for the entire 12-month period ending on a date between July 1 and August 31, 2008. Accordingly, VETS has decided to extend the effective date for the reporting requirements in the new part 61–300 regulations. Contractors are to collect and maintain the data prescribed by the new part 61–300 regulations beginning in the calendar year 2008, and report the data in the VETS–100A Report to be filed by September 30, 2009.

Overview of the Final Rule

The final regulations implementing the JVA changes to the reporting requirements under VEVRAA will be codified in a new 41 CFR part 61–300. As was explained in the NPRM, the provisions in part 61–300 are modeled after the existing regulations in part 61–250 implementing the reporting requirements under VEVRAA prior to amendment by JVA. The part 61–300 regulations differ from the regulations in part 61–250 in two ways: The part 61–300 regulations reflect the changes to the requirements under VEVRAA made by JVA, and certain provisions in the part 61–300 have been revised to improve the readability of the rule. The Section-by-Section Analysis of the NPRM highlighted the differences between the provisions in the proposed rule and existing part 61–250. Throughout the regulation, changes have been made to clarify the wording in accordance with plain language principles. Unless specified below, the minor language differences are not intended to create a difference in substantive meaning between the final rule and parallel provisions in part 61–250.

The final rule, for the most part, adopts the provisions that were proposed in the NPRM. However, a few provisions have been modified in response to the public comments. The discussion that follows identifies the significant issues raised in the comments received in response to the NPRM, provides VETS responses to those comments, and explains any resulting changes to the proposed rule.

Section-by-Section Analysis of Comments and Revisions

Section 61–300.1 What are the purpose and scope of this part?

This section outlines the purpose and scope of the regulations. Proposed paragraph (a) states that each contractor or subcontractor who enters into a contract on or after December 1, 2003, in the amount of $100,000 or more with any department or agency of the United States, and who is subject to 38 U.S.C. 4212(a) (the affirmative action provisions of VEVRAA), must submit a report according to the requirements of part 61–300. In addition, proposed paragraph (a) states that any contractor or subcontractor whose only contract was entered into before December 1, 2003, must follow the regulations in part 61–250. Further, proposed paragraph (a) provides that any contractor that has a contract of $25,000 or more entered into before December 1, 2003, and has a contract of $100,000 or more entered into on or after December 1, 2003, is required to file both the VETS–100 Report and the VETS–100A Report as instructed in parts 61–250 and 61–300.

Three commenters—two employer associations and a consulting firm—were critical of the requirement in paragraph (a) that contractors holding a covered contract entered into before December 1, 2003, as well as a covered contract entered into on or after December 1, 2003, comply with both the regulations in existing part 61–250 and new part 61–300. They maintained that it would be confusing and burdensome for contractors to collect and report data about the same workforce on both the VETS–100 Report required under part 61–250 and the VETS–100A Report prescribed by new part 61–300 for the same reporting period, where each form calls for data on the number of employees in four different categories of covered veterans, and only one of those categories is found on both forms. All of the commenters offered a recommendation for minimizing the recordkeeping and reporting burden.

One commenter asserted that VETS has flexibility, and as a matter of enforcement policy the agency could adopt a rule that requires contractors to comply with only one set of VEVRAA regulations. The commenter argued that VETS could state in the final rule that contractors with a contract of at least $100,000 entered into on or after December 1, 2003, are required to file only the VETS–100A Report, even if the contractors also have covered contracts that were entered into before December 1, 2003. Further, the commenter stated that the final rule could provide that, if a contractor with contracts subject to the regulations in part 61–250 enters into a contract that is subject to new part 61–300 regulations after the start of the Affirmative Action Program (AAP) year, the contractor has the option of continuing to comply only with the reporting requirements under the part 61–250 regulations until the end of the AAP year.

VETS disagrees with the assertion that the final rule could provide that contractors need comply with the reporting requirements of only one set of VEVRAA regulations. Some employees may be counted in more than one of the covered veteran categories. For example, an employee may be both a Vietnam era veteran and an other protected veteran. Thus, some veterans in the pre-JVA categories will be included in one or more of the categories covered under the JVA as well. However, a small number of Vietnam era veterans do not belong to any other covered veteran category and would not be tracked and reported if VETS were to adopt a rule requiring contractors with contracts entered into both before and on or after December 1, 2003, to comply only with the new part 61–300 regulations. Conversely, some categories of veterans that are covered under the JVA were not previously covered under VEVRAA, and therefore, would not be tracked and reported if VETS were to allow contractors to comply only with the existing part 61–250 regulations.

The rulemaking authority of VETS can only be exercised in a manner that carries out the provisions of the statute. Here, Congress expressly made the JVA reporting requirements applicable to contracts entered into on or after December 1, 2003, and thereby provided that contracts entered before December 1, 2003, would continue to be subject to the pre-JVA reporting requirements. Consequently, VETS has no authority to allow contractors with contracts entered into both before and on or after December 1, 2003, to track and report only the categories of covered veterans covered under the JVA. Likewise, VETS cannot adopt a rule that allows contractors with contracts entered into both before and on or after December 1, 2003, to track and report only the pre-JVA categories. Accordingly, the final rule provides that a contractor with covered contracts entered into both before and on or after December 1, 2003, must comply with the regulations in existing part 61–250 and new part 61–300 and file both the VETS–100 Report and the VETS–100A Report. However, a contractor that is covered under existing part 61–250 that enters into a contract of $100,000 or more after the start of the AAP year does not have to file a VETS–100A Report during that year. The instructions for completing the VETS–100A Report state ''[e]ntering into a covered federal contract or subcontract during a given calendar year establishes the requirement to file a VETS–100A Report during the following calendar year.''

Another commenter recommended that VETS adopt a rule allowing contractors to comply with only one set of VEVRAA regulations. This commenter suggested that VETS permit those contractors that are subject to both sets of regulations ''to use the regulations covering the majority of their employees.'' The commenter stated that this approach would allow contractors to submit a report for all employees based on whether a majority of their employees are covered under contracts dated prior to December 1, 2003, or after that date. The date of the

Government contract determines the categories of veterans contractors must track and report. However, the date of the Government contract does not affect whether the particular employees are covered by the reporting requirement. Once a business or organization is awarded a covered Government contract, all of the establishments or facilities of the business or organization are subject to the same regulatory requirements, regardless of where the Government contract is to be performed. Consequently, if a contractor is subject to the reporting requirements under VEVRAA, the contractor is required to report the number of employees in its entire workforce, by job category, and by hiring location, who belong to the specified categories of covered veterans. Thus, the commenter's suggestion that contractors be permitted to comply with the regulations that cover the ''majority of their employees'' misconstrues the scope of coverage under VEVRAA, and does not address the concern about the burdens of dual reporting.

The remaining commenter recommended that to minimize duplicative reporting for those with covered contracts entered into both before December 1, 2003, and on or after that date, VETS should clarify that modification of a pre-December 1, 2003, contract for at least $100,000 will incorporate the VETS–100A reporting requirements in today's final rule. We agree that modification of an otherwise covered contract on or after December 1, 2003, will substitute the VETS–100A requirements of 41 CFR 61–300 for the VETS–100 requirements of 41 CFR 61–250 in the modified contract.

Two Department of Labor agencies have promulgated regulations implementing 38 U.S.C. 4212. VETS has published regulations at 41 CFR part 61–250 (and now 41 CFR part 61–300) implementing the reporting requirements, and OFCCP has published regulations at 41 CFR parts 60–250 and 60–300 implementing the affirmative action provisions. Because the requirements of Section 4212 apply to the same Federal contractors and apply to the same categories of veterans, VETS and OFCCP use the same definitions for common terms found in both rules. Section 61–300.2(a) of the final rule states that, unless otherwise indicated, the terms set forth in part 61–300 have the same meaning as those set forth in part 60–300. Accordingly, the definitions pertinent to contract coverage under part 61–300 are contained in 41 CFR 60–300.2.

The term ''Government contract'' is defined at 41 CFR 60–300.2(i) as ''any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or nonpersonal services (including construction).'' A ''modification'' is ''any alteration in the terms and conditions of a contract, including supplemental agreements, amendments and extensions.'' 41 CFR 60–300.2(i)(1) JVA applies to Government contracts entered on or after December 1, 2003. Because a contract modification is a ''Government contract'' JVA applies to modifications of otherwise covered contracts made on or after December 1, 2003. Consequently, modification of a contract that would otherwise be covered by 41 CFR 61–300 on or after December 1, 2003, but for the date the contract was entered into would have the effect of modifying the VEVRAA reporting clause; the new VETS–100A requirements of 41 CFR 61–300 would be applicable to the modified contract, rather than the old VETS–100 requirements of 41 CFR 61–250.

The effect of contract modification is addressed in § 61–300.10, which provides that the VETS–100A reporting clause must be included in each covered Government contract or subcontract ''and modifications, renewals, or extensions thereof if not included in the original contract.'' To further clarify the effect of modifying a contract on the reporting requirements applicable after modification, language has been added to § 61–300.1(a) addressing the issue. In the final rule, § 61–300.1(a) has been revised to state ''[e]ach contractor or subcontractor who enters into or modifies a contract or subcontract on or after December 1, 2003, in the amount of $100,000 or more with any department or agency of the United States * * * must submit a report according to the requirements of part 61–300.'' In addition, § 61–300.1(a) of the final rule states ''[a]ny contractor or subcontractor whose only contract with any department or agency * * * was entered into before December 1, 2003 (and not modified as described above), must follow part 61–250.''

Paragraph (c) of this section states that reporting requirements of part 61–300 will be deemed waived in those instances where the Deputy Assistant Secretary for Federal Contract Compliance has granted a waiver under 41 CFR 60–300.4(b)(1) (waiver granted in the ''national interest'') or under 41 CFR 60–300.4(b)(3) (separate facility waiver). Paragraphs (b) and (d) refer to the obligations of contractors to comply with the regulations implementing the affirmative action provisions of VEVRAA found in 41 CFR part 60–300 that are administered by OFCCP.

Except for the clarification set forth in paragraph (a) regarding the reporting requirements that apply to contract modifications entered into on or after December 1, 2003, § 61–300.2 is adopted in the final rule as proposed.

Section 61–300.2 What definitions apply to this part?

In the NPRM, VETS proposed to incorporate many of the definitions in existing § 61–250.2 without any changes. The proposal called for some definitions to be incorporated in § 61–300.2 with modifications necessary to implement the JVA. Likewise, some definitions in existing § 61–250.2 were not carried over to § 61–300.2.

Paragraph (b)(4) defines ''disabled veteran,'' paragraph (b)(5) defines ''other protected veteran,'' paragraph (b)(6) defines ''Armed Forces service medal veteran,'' paragraph (b)(7) defines ''recently separated veteran,'' paragraph (b)(8) defines ''covered veteran,'' and paragraph (b)(9) defines the term ''qualified,'' as required by the JVA.

The definition of ''eligibility period'' has not been carried over from the part 61–250 regulations because it is not used in this regulation. Lastly, a definition for the phrase ''covered incumbent veteran,'' has been added to paragraph (b)(14) to provide a shorthand phrase that can be used for collectively referring to all categories of protected veterans.

Two comments addressed the proposed definition of the term ''job category'' in paragraph (b)(3), which referenced the job categories that are used in the EEO–1 Standard Employer Information Report EEO–1 Report (''EEO–1 Report''). The commenters pointed out that the job categories described in proposed paragraph (b)(3) were used for the final time in the EEO–1 Report filed for the 2006 reporting period, which ended on September 30, 2006. On November 28, 2005, EEOC published a notice setting forth the final revisions to the EEO–1 Report (70 FR 71294), which were approved by OMB following a 30-day period for public comment. Employers, including Government contractors with 50 or more employees and a contract of $50,000 or more, must use the revised EEO–1 Report form beginning with the report that must be filed by September 30, 2007. The approved revisions to the EEO–1 Report include an increase in the number of job categories as a result of dividing the Officials and Managers category into two subgroups—Executives/Senior Level Officials and Managers and First/Mid Level Officials and Managers, as well as changes in the definitions of the job categories. The

revisions to the EEO–1 job categories and other changes are discussed in the **Federal Register** notice published on November 28, 2005 (70 FR 71294); available on EEOC's Web site at *http://www.eeoc.gov/eeo1/index.html*.

The commenters urged VETS to change the definition of job category in the final rule to reflect the revised EEO–1 job categories. In response to these comments, VETS has revised the definition of ''job category'' in paragraph (b)(3) of the final rule. In addition, during the course of reviewing the revisions made to EEO–1 job categories we noted that the definition of ''employee'' in proposed paragraph (b)(2) was consistent with the definition of ''employee'' used in the 2006 EEO–1 Report, but did not track the definition of that term found in the EEO–1 Report for 2007. Accordingly, in the final rule, the definition of ''employee'' in paragraph (b)(2) has been revised to conform to the definition of ''employee'' adopted in the revised EEO–1 Report. Finally, VETS added clarifying language to the definitions for the terms ''disabled veteran'' in paragraph (b)(4) and ''recently separated veteran'' in paragraph (b)(7) to indicate that the reporting requirements under VEVRAA apply to veterans of the United States armed forces, as opposed to veterans of the armed forces of other nations. The definitions for the terms ''other protected veteran'' in paragraph (b)(5) and ''Armed Forces service medal veteran'' in paragraph (b)(8) already contain this clarification.

The remaining definitions in § 61–300.2 have been adopted in the final rule as proposed.

Section 61–300.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?

This section is identical to existing § 61–250.10 except for updates necessary to implement the JVA. Section 61–300.10 sets forth the reporting requirements clause that is to be included in each covered Government contract or subcontract (and modifications, renewals, or extensions thereof if not included in the original contract). Paragraph (a)(1) states that covered contractors and subcontractors agree to report at least annually the total number of employees who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans. Paragraph (a)(1) differs from the parallel provision of part 61–250 in that the word ''total'' has been added to clarify that the report must reflect the total number of employees in the workforce of the contractor.

Paragraph (b) provides that the required information on veterans' employment is to be reported by completing the VETS–100A Report form. Paragraph (c), which prescribes the date for filing a VETS–100A Report, is the same as the parallel provision in § 61–250.10 except for editing to improve readability and designating the name of the report as ''VETS–100A Report.''

Paragraphs (d) and (e) are identical to the parallel provisions in § 61.250.10, except that this section references the ''VETS–100A Report.'' Paragraph (d) addresses the dates of the reporting period, and paragraph (e) discusses the methods contractors may use to acquire information about the veterans status of their employees.

No comments were received on this section. Accordingly, the final rule adopts § 61–300.10 as proposed.

Section 61–300.11 On what form must the data required by this part be submitted?

This section states that the data on veterans employment specified in the reporting requirements clause set forth in § 61–250.10 must be reported on the VETS–100A Report. A major difference between this section and existing § 61–250.11 involves the instructions for completing the report. Some instructions for completing the VETS–100 Report are located in the regulations (§ 61–250.11) and additional instructions are located in the VETS–100 Report form (Appendix A.) The instructions for completing the VETS–100A Report are provided only in Appendix A (discussed below), and not in the regulations. Paragraph (a) provides that a copy of the VETS–100A Report and instructions may be found in Appendix A.

Another difference between this section and existing § 61–250.11 is that paragraph (a) states that the report is ''provided'' annually to contractors who are included in the VETS–100 database, while existing § 61–250.11(a) states that the VETS–100 Report is ''mailed'' annually to contractors who are included in the VETS–100 database. The use of the term ''provided'' will allow VETS greater flexibility in distribution format of the VETS–100A Report. Paragraph (a) also states that VETS' failure to provide a contractor with a VETS–100A Report does not excuse a contractor from the requirement of submitting a VETS–100A Report.

Paragraph (b) is identical to paragraph (b) in existing § 61–250.11.

Paragraph (c) contains the same information found in existing paragraph (c) of existing § 61–250.11(c), however, the text has been simplified in accordance with plain language principles. Paragraphs (d) and (e) are also identical to the parallel provisions in § 61–250.11, except that an updated Internet address has been provided for requesting copies of the VETS–100A Report form.

Section 61–300.11 is adopted in the final rule without change.

Section 61–300.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?

This section is identical to existing § 61–250.20. No comments were received on this section. Accordingly, it is adopted in the final rule as proposed.

Section 61–300.99 What is the OMB control number for this part?

This section has been revised in the final rule to indicate that OMB has assigned Control Number 1293–0005 to the information collection requirements of this part.

Appendix A to Part 61–300—Federal Contractor Veterans' Employment Report VETS–100A

Appendix A contains the VETS–100A Report form as well as the instructions for completing the report form. Appendix A to the final rule differs substantially from Appendix A to the existing part 61–250 regulations. A section-by-section description of those differences was provided in the NPRM's preamble discussion of Appendix A. As was previously mentioned, a major difference between the two Appendices is that all the instructions for completing the VETS–100A Report form are set forth in Appendix A to part 61–300, while the instructions for completing the VETS–100 Report are found in both § 61–250.11 and Appendix A to part 61–250. Other differences between Appendix A to the final rule and Appendix A to the existing part 61–250 regulations reflect the changes made by JVA to the contract coverage threshold and the categories of covered veterans.

VETS received a few comments on Appendix A. One commenter noted that the VETS–100A Report contained the category ''newly separated veterans'' while the term used in the statute and the part 61–300 regulations is ''recently separated veterans.'' VETS has corrected this error in the final rule. Other comments recommended several minor

technical corrections to the VETS–100A Report form, which have been incorporated in the final rule.

In addition, VETS revised proposed Appendix A to reflect the changes made to § 61–300.1(a) and § 61–300.2 in response to the public comments. Thus, in the instructions regarding ''Who must file'' and ''How to prepare forms'' VETS clarified that modification of an otherwise covered contract on or after December 1, 2003, will mean that the contractor must comply with the VETS–100A Report requirements of 41 CFR part 61–300, and not the VETS–100 Report requirements of 41 CFR part 61–250. Further, the definition of ''job categories'' set forth in the instructions has been changed to reflect the job categories adopted in the revised EEO–1 Report, and the revised EEO–1 job categories have been added to the VETS–100A Report form set forth in Appendix A.

Regulatory Procedures

Paperwork Reduction Act

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). This final rule adopts a new set of regulations to implement the JVA amendments to the reporting requirements under VEVRAA, and is applicable to covered Government contracts entered into or modified on or after December 1, 2003. The information collection in this final rule relates to the requirement under the JVA amendments that contractors track and report annually the number of new hires and incumbent employees, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans (within three years from the date of discharge or release from active duty). This final rule adopts a new form titled the ''Federal Contractor Veterans'' Employment Report VETS–100A Report'' (''VETS–100A Report'') for reporting the information on veterans' employment required by the JVA amendments.

This final rule impacts the information collection request for the Federal Contractor Veterans' Employment Report VETS–100 (''VETS–100 Report'') that is currently approved under OMB No. 1293–0005. The existing regulations in 41 CFR part 61–250, which apply to covered contracts of $25,000 or more entered into before December 1, 2003, require contractors to use the VETS–100 Report for reporting information on the number of new hires and incumbent employees who are special disabled veterans, veterans of the Vietnam era, other protected veterans, and recently separated veterans (within one year from the date of discharge or release from active duty). Some contractors with Government contracts that were entered into before December 1, 2003, are still subject to the VETS–100 reporting requirement in 41 CFR part 61–250. Therefore, VETS has determined that it will be necessary to maintain two sets of regulations to implement the reporting requirements under VEVRAA, and use two different forms for providing the required information on the employment of covered veterans.

On October 2, 2007, VETS issued a **Federal Register** notice (72 FR 56103) providing a 60-day public comment period under the Paperwork Reduction Act (PRA) on its proposal to revise the currently approved information collection request for the VETS–100 Report to include the VETS–100A Report. In the **Federal Register** notice, VETS invited the public to comment on: (1) Whether the proposed collection of information is necessary to the proper performance of the agency, including whether the information will have practical utility; (2) the accuracy of agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

One comment was received in response to the 60-day notice from the management consulting firm specializing in human resources that also submitted comments in response to the NPRM. The consulting firm again asserted that the proposed regulations ''would place an enormous burden on contractors'' by requiring those contractors that have contracts dated prior to December 1, 2003, and contracts dated after that date, to file both the VETS–100 Report and the VETS–100A Report. The consulting firm maintained that the lack of correlation between the two reports places great burden on contractors to collect and maintain two sets of data.

VETS appreciates the burdens imposed on those contractors that are required to file both the VETS–100 and the VETS–100A Reports, but the agency is constrained to carry out the provisions of the statute. However, as previously explained in the preamble, VETS estimates that only a small percentage of contractors will be required to file both reports. Because a contract modification is a ''Government contract,'' modification of a contract that otherwise would be covered under the JVA amendments but for the date the contract was entered into renders the contract subject to the VETS–100A reporting requirements, rather than the VETS–100 reporting requirements. Consequently, VETS estimates that the vast majority of contractors (80%) will file either the VETS–100 Report or the VETS–100A Report, but not both.

The consulting firm also argued that it is burdensome for contractors to report on the VETS–100A Report the total number of employees in the workforce, when there is no such requirement under the VETS–100 Report. The JVA amendments to VEVRAA require that contractors report on the total number of employees in their workforces by job category and hiring location, and the VETS–100A merely implements the statutory requirement. The VETS–100 Report implements the reporting requirements prior to amendment by the JVA, which did not call for contractors to report on their total employment. Further, the consulting firm asserted that the proposed regulations do not provide clear guidance on what contractors are obligated to do to comply with the proposed new regulations. However, VETS maintains that the final regulations and the instructions for completing the VETS–100A Report adequately explain what is required for reporting on veterans' employment. VETS will provide additional technical support through the *http://www.VETS100.com* Web site to further assist contractors in understanding the reporting requirements.

Finally, the consulting firm maintained that the Department ''substantially underestimated'' the time and costs for contractors required to comply with reporting requirements of two sets of regulations. We disagree. The consulting firm seemed to believe that most contractors will have to file both the VETS–100 and VETS–100A Reports, but as explained above, VETS estimates that fewer contractors will be subject to filing both the VETS–100 and the VETS–100A Reports than the consulting firm's comment suggests. Further, that number will decrease as the contracts entered into before December 1, 2003, are either completed or modified.

On February 15, 2008, VETS submitted the information collection

request for the VETS–100 and the VETS–100A Reports to the Office of Management and Budget (OMB) for review and clearance in accordance with the PRA. VETS also published a notice in the **Federal Register** (73 FR 8905, February 15, 2008) advising the public the information collection request for the VETS–100 and VETS–100A Reports had been submitted to OMB, and inviting the public to submit comments within 30 days. In its final submission to OMB, VETS estimated that a total of 264,000 reports will be filed annually and that the total annual filing burden will be 156,000 hours. On April 23, 2008, OMB approved the information collection request for the VETS–100 Report and the VETS–100A Report under OMB Control Number 1293–0005.

Executive Order 12866

The Department is issuing this final rule in conformance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, but is not economically significant as defined in section 3(f)(1). Therefore, the information enumerated in section 6(a)(3)(C) of the order is not required. Pursuant to Executive Order 12866, this rule has been reviewed by the Office of Management and Budget.

Unfunded Mandates

Executive Order 12875—This rule will not create an unfunded Federal Mandate upon any State, local, or tribal government.

Unfunded Mandate Reform Act of 1995—This rule does not include any Federal mandate that may result in increased expenditures by State, local and tribal governments in the aggregate of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Executive Order 13132, Federalism

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Regulatory Flexibility Act

This rule does not substantively change existing reporting requirements for Federal contractors. Therefore, the Department concludes that this rule will not have a significant economic impact on a substantial number of small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

List of Subjects in 41 CFR Part 61–300

Government contracts, Reporting and recordkeeping requirements, Veterans.

Signed at Washington, DC, this 12th day of May, 2008.

John M. McWilliam,

Deputy Assistant Secretary of Labor for Veterans' Employment and Training Service.

■ Accordingly, for the reasons stated in the preamble, Chapter 61 of Title 41 of the Code of Federal Regulations is amended by adding part 61–300 to read as follows:

PART 61–300—ANNUAL REPORT FROM FEDERAL CONTRACTORS

Sec.

61–300.1 What are the purpose and scope of this part?
61–300.2 What definitions apply to this part?
61–300.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?
61–300.11 On what form must the data required by this part be submitted?
61–300.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?
61–300.99 What is the OMB control number for this part?
Appendix A to Part 61–300—Federal Contractor Veterans' Employment Report VETS–100A

Authority: 38 U.S.C. 4211 and 4212.

§ 61–300.1 What are the purpose and scope of this part?

(a) This part 61–300 implements 38 U.S.C. 4212(d) as amended by the Jobs for Veterans Act. Each contractor or subcontractor who enters into or modifies a contract or subcontract on or after December 1, 2003, in the amount of $100,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction), and who is subject to 38 U.S.C. 4212(a), must submit a report according to the requirements of part 61–300. Any contractor or subcontractor whose only contract with any department or agency of the United States for the procurement of personal property and non-personal services (including construction) was entered into before December 1, 2003 (and not modified as described above) must follow part 61–250 implementing 38 U.S.C. 4212(d). Any contractor or subcontractor who has both a contract subject to part 61–250 and a contract subject to part 61–300 is required to file both the VETS–100 Report and the VETS–100A Report.

(b) Notwithstanding the regulations in this part, the regulations at 41 CFR part 60–300, administered by OFCCP continue to apply to contractors' and subcontractors' affirmative action obligations regarding veterans.

(c) Reporting requirements of this part regarding veterans will be deemed waived in those instances in which the Deputy Assistant Secretary, OFCCP, has granted a waiver under 41 CFR 60–300.4(b)(1), or has concurred in the granting of a waiver under 41 CFR 60–300.4(b)(3), from compliance with all the terms of the equal opportunity clause for those establishments not involved in Government contract work. Where OFCCP grants only a partial waiver, compliance with these reporting requirements regarding veterans will be required.

(d) 41 CFR 60–300.42 and Appendix B to part 60–300 provide guidance concerning the affirmative action obligations of Federal contractors and subcontractors toward applicants for employment who are qualified covered veterans.

§ 61–300.2 What definitions apply to this part?

(a) For the purposes of this part, and unless otherwise indicated in paragraph (b) of this section, the terms set forth in this part have the same meaning as those set forth in 41 CFR part 60–300.

(b) For purposes of this part:

(1) *Hiring location* (this definition is identical to *establishment* as defined by the instructions for completing Employer Information Report EEO–1, Standard Form 100 (EEO–1 Report)) means an economic unit which produces goods or services, such as a factory, office, store, or mine. In most instances the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity. Units at different locations, even though engaged in the same kind of business operation, should be reported as separate establishments. For locations involving construction, transportation, communications, electric, gas, and sanitary services, oil and gas fields, and similar types of physically dispersed industrial activities, however, it is not necessary to list separately each individual site,

project, field, line, etc., unless it is treated by the contractor as a separate legal entity. For these physically dispersed activities, list as establishments only those relatively permanent main or branch offices, terminals, stations, etc., which are either:

(i) Directly responsible for supervising such dispersed activities; or

(ii) The base from which personnel and equipment operate to carry out these activities. (Where these dispersed activities cross State lines, at least one such establishment should be listed for each State involved.)

(2) *Employee* means any individual on the payroll of an employer who is an employee for purposes of the employer's withholding of Social Security taxes except insurance sales agents who are considered to be employees for such purposes solely because of the provisions of 26 U.S.C. 3121(d)(3)(B) (the Internal Revenue Code). Leased employees are included in this definition. Leased employee means a permanent employee provided by an employment agency for a fee to an outside company for which the employment agency handles all personnel tasks including payroll, staffing, benefit payments and compliance reporting. The employment agency shall, therefore, include leased employees in its VETS–100A Report. The term employee shall not include persons who are hired on a casual basis for a specified time, or for the duration of a specified job (for example, persons at a construction site whose employment relationship is expected to terminate with the end of the employee's work at the site); persons temporarily employed in any industry other than construction, such as temporary office workers, mariners, stevedores, lumber yard workers, etc., who are hired through a hiring hall or other referral arrangement, through an employee contractor or agent, or by some individual hiring arrangement, or persons (except leased employees) on the payroll of an employment agency who are referred by such agency for work to be performed on the premises of another employer under that employer's direction and control.

(3) *Job category* means any of the following: Officials and managers (Executive/Senior Level Officials and Managers and First/Mid Level Officials and Managers), professionals, technicians, sales workers, administrative support workers, craft workers, operatives, laborers and helpers, and service workers, as required by the Employer Information Report EEO–1, Standard Form 100 (EEO–1 Report), as follows:

(i) *Officials and managers* as a whole is to be divided into the following two subcategories: Executive/Senior Level Officials and Managers and First/Mid Level Officials and Managers.

(A) *Executive/Senior Level Officials and Managers* means individuals who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products and services, within the parameters approved by boards of directors of other governing bodies. Residing in the highest levels of organizations, these executives plan, direct, or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals within two reporting levels of the CEO, whose responsibilities require frequent interaction with the CEO. Examples of these kinds of managers are: Chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

(B) *First/Mid Level Officials and Managers* means individuals who serve as managers, other than those who serve as Executive/Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations. These managers receive directions from Executive/Senior Level management and typically lead major business units. They implement policies, programs and directives of Executive/Senior Level management through subordinate managers and within the parameters set by Executives/Senior Level management. Examples of these kinds of managers are: Vice presidents and directors; group, regional or divisional controllers; treasurers; and human resources, information systems, marketing, and operations managers. The First/Mid Level Officials and Managers subcategory also includes those who report directly to middle managers. These individuals serve at functional, line of business segment or branch levels and are responsible for directing and executing the day-to-day operational objectives of enterprises/organizations, conveying the directions of higher level officials and managers to subordinate personnel and, in some instances, directly supervising the activities of exempt and non-exempt personnel. Examples of these kinds of managers are: First-line managers; team managers; unit managers; operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers.

(ii) *Professionals* means individuals in positions that require bachelor and graduate degrees, and/or professional certification. In some instances, comparable experience may establish a person's qualifications. Examples of these kinds of positions include: Accountants and auditors; airplane pilots and flight engineers; architects; artists; chemists; computer programmers; designers; dieticians; editors; engineers; lawyers; librarians; mathematical scientists; natural scientists; registered nurses; physical scientists; physicians and surgeons; social scientists; teachers; and surveyors.

(iii) *Technicians* means individuals in positions that include activities requiring applied scientific skills, usually obtained by post secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required. Examples of these types of positions include: Drafters; emergency medical technicians; chemical technicians; and broadcast and sound engineering technicians.

(iv) *Sales workers* means individuals in positions including non-managerial activities that wholly and primarily involve direct sales. Examples of these types of positions include: Advertising sales agents; insurance sales agents; real estate brokers and sales agents; wholesale sales representatives; securities, commodities, and financial services sales agents; telemarketers; demonstrators; retail salespersons; counter and rental clerks; and cashiers.

(v) *Administrative support workers* means individuals in positions involving non-managerial tasks providing administrative and support assistance, primarily in office settings. Examples of these types of positions include: Office and administrative support workers; bookkeeping; accounting and auditing clerks; cargo and freight agents; dispatchers; couriers; data entry keyers; computer operators; shipping, receiving and traffic clerks; word processors and typists;

proofreaders; desktop publishers; and general office clerks.

(vi) *Craft Workers* means individuals in positions that include higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers. Examples of these types of positions include: Boilermakers; brick and stone masons; carpenters; electricians; painters (both construction and maintenance); glaziers; pipelayers, plumbers, pipefitters and steamfitters; plasterers; roofers; elevator installers; earth drillers; derrick operators; oil and gas rotary drill operators; and blasters and explosive workers. This category also includes occupations related to the installation, maintenance and part replacement of equipment, machines and tools, such as: Automotive mechanics; aircraft mechanics; and electric and electronic equipment repairers. This category also includes some production occupations that are distinguished by the high degree of skill and precision required to perform them, based on clearly defined task specifications, such as: Millwrights; etchers and engravers; tool and die makers; and pattern makers.

(vii) *Operatives* means individuals in intermediate skilled occupations and includes workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: Textile machine workers; laundry and dry cleaning workers; photographic process workers; weaving machine operators; electrical and electronic equipment assemblers; semiconductor processors; testers, graders and sorters; bakers; and butchers and other meat, poultry and fish processing workers. This category also includes occupations of generally intermediate skill levels that are concerned with operating and controlling equipment to facilitate the movement of people or materials, such as: Bridge and lock tenders; truck, bus or taxi drivers; industrial truck and tractor (forklift) operators; parking lot attendants; sailors; conveyor operators; and hand packers and packagers.

(viii) *Laborers and Helpers* means individuals with more limited skills who require only brief training to perform tasks that require little or no independent judgment. Examples include: Production and construction worker helpers; vehicle and equipment cleaners; laborers; freight, stock and material movers; service station attendants; construction laborers; refuse and recyclable materials collectors; septic tank servicers; and sewer pipe cleaners.

(ix) *Service Workers* means individuals in positions that include food service, cleaning service, personal service, and protective service activities. Skill may be acquired through formal training, job-related training or direct experience. Examples of food service positions include: Cooks; bartenders; and other food service workers. Examples of personal service positions include: Medical assistants and other healthcare support positions; hairdressers; ushers; and transportation attendants. Examples of cleaning service positions include: Cleaners; janitors; and porters. Examples of protective service positions include: Transit and railroad police and fire fighters; guards; private detectives and investigators.

(4) *Disabled veteran* means:

(i) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs, or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(5) *Other protected veteran* means a veteran who served on active duty in the U.S. military, ground, naval, or air service during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

(6) *Armed forces service medal veteran* means a veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209, 3 CFR, 1996 Comp., p. 159).

(7) *Recently separated veteran* means a veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(8) *Covered veteran* means a veteran as defined in paragraphs (b)(4) through (b)(7) of this section.

(9) *Qualified* means, with respect to an employment position, having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.

(10) *OFCCP* means the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor.

(11) *VETS* means the Office of the Assistant Secretary for Veterans' Employment and Training Service, U.S. Department of Labor.

(12) *States* means each of the several States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

(13) *NAICS* means the North American Industrial Classification System.

(14) *Covered incumbent veteran* means a veteran as defined in paragraphs (b)(4) through (b)(7) of this section who is employed by a covered contractor.

§ 61–300.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?

Each contractor or subcontractor described in § 61–300.1 must submit reports in accordance with the following reporting clause, which must be included in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract). Such clause is considered as an addition to the equal opportunity action clause required by 41 CFR 60–300.5. The reporting requirements clause is as follows:

Employment Reports on Disabled Veterans, Other Protected Veterans, Armed Forces Service Medal Veterans, and Recently Separated Veterans

(a) The contractor or subcontractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The total number of employees in the workforce of such contractor or subcontractor, by job category and hiring location, and the number of such employees by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans;

(2) The total number of new employees hired by the contractor or subcontractor during the period covered by the report, and of such employees, the number who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of such contractor or subcontractor at each hiring location during the period covered by the report.

(b) The above items must be reported by completing the form entitled ''Federal Contractor Veterans'' Employment Report VETS–100A.''

(c) VETS–100A Reports must be submitted no later than September 30 of each year following a calendar year in which a contractor or subcontractor held a covered contract or subcontract.

(d) The employment activity report required by paragraphs (a)(2) and (a)(3) of this clause must reflect total new hires and maximum and minimum number of employees during the 12-month period preceding the ending date that the contractor selects for the current employment report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period July 1 through August 31 of the year the report is due; or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1, Standard Form 100 (EEO–1 Report).

(e) The number of veterans reported according to paragraph (a) above must be based on data known to contractors and subcontractors when completing their VETS–100A Reports. Contractors' and subcontractors' knowledge of veterans status may be obtained in a variety of ways, including, in response to an invitation to applicants to self-identify in accordance with 41 CFR 60–300.42, voluntary self-disclosures by covered incumbent veterans, or actual knowledge of an employee's veteran status by a contractor or subcontractor. Nothing in this paragraph (e) relieves a contractor from liability for discrimination under 38 U.S.C. 4212.

§ 61–300.11 On what form must the data required by this part be submitted?

(a) Data items required in paragraph (a) of the contract clause set forth in § 61–300.10 must be reported for each hiring location on the VETS–100A Report. This form is provided annually to those contractors who are included in the VETS–100 database. VETS failure to provide a contractor with a VETS–100A Report does not excuse the contractor from the requirement to submit a VETS–100A Report. The form, and instructions for preparing it, are set forth in Appendix A to 41 CFR part 61–300—Federal Contractor Veterans' Employment Report VETS–100A and Instructions.

(b) Contractors and subcontractors that submit computer-generated output for more than 10 hiring locations to satisfy their VETS–100A reporting obligations must submit the output in the form of an electronic file. This file must comply with current Department of Labor specifications for the layout of these records, along with any other specifications established by the Department for the applicable reporting year. Contractors and subcontractors that submit VETS–100A Reports for 10 locations or less are exempt from this requirement, but are strongly encouraged to submit an electronic file. In these cases, state consolidated reports count as one location each.

(c) VETS–100A Reports must be submitted no later than September 30 of each year following a calendar year in which a contractor or subcontractor held a covered contract or subcontract.

(d) VETS or its designee will use all available information to distribute the required forms to contractors identified as subject to the requirements of this part.

(e) It is the responsibility of each contractor or subcontractor to obtain necessary supplies of the VETS–100A Report before the annual September 30 filing deadline. Contractors and subcontractors who do not receive forms should request them in time to meet the deadline. VETS–100A Report forms may be obtained by mailing a request to: Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attn: VETS–100A Report Form Request; or on the Internet at the Internet address *http://vets.dol.gov/vets100/vets100login.htm.*

§ 61–300.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?

During the course of a compliance evaluation, OFCCP may determine whether a contractor or subcontractor has submitted its report as required by this part.

§ 61–300.99 What is the OMB control number for this part?

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and its implementing regulations at 5 CFR part 1320, the Office of Management and Budget has assigned Control No. 1293–0005 to the information collection requirements of this part.

Appendix A to Part 61–300—Federal Contractor Veterans' Employment Report Vets–100A

BILLING CODE 4510–79–P

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100A

(For covered contracts entered into or modified on or after December 1, 2003.)

OMB NO: 1293-0005
Expires:

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
4200 Forbes Blvd., Suite 202
Lanham, Maryland 20706

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☐ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarte ☐ Multiple Establishment-Hiring Locat ☐ Multiple Establishment-State Consc (specify number of locations) ____

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No:	*TWELVE MONTH PERIOD ENDING* M M D D 2 Y		
NAME OF PARENT COMPANY:	*ADDRESS (NUMBER AND STREET):*		
CITY:	*COUNTY:*	*STATE:*	*ZIP COD*
NAME OF COMPANY CONTACT:	*TELEPHONE FOR CONTACT:*	*EMAIL:*	

NAME OF HIRING LOCATION:	*ADDRESS (NUMBER AND STREET):*		
CITY:	*COUNTY:*	*STATE:*	*ZIP COD*

NAICS:	**DUNS:** – –	*EMPLOYER ID (IRS TAX No.)* –	

INFORMATION ON EMPLOYEES

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER C EMPLOYEES IS TO BE ENTERED IN COLUMNS L, M, N, O, AND P, LINES 1-10. DATA ON NEW HIRES IS TO BE ENTERED IN COLUMNS Q, R, S, T, AND U. ENTE THE MAXIMUM AND MINIMUM NUMBER OF EMPLOYEES. INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES					NEW HIRES (PREVIOUS 12 MONTHS)				
	DISABLED VETERANS (L)	OTHER PROTECTED VETERANS (M)	ARMED FORCES SERVICE MEDAL VETERANS (N)	RECENTLY SEPARATED VETERANS (O)	TOTAL EMPLOYEES, BOTH VETERANS AND NON-VETERANS (P)	DISABLED VETERANS (Q)	OTHER PROTECED VETERANS (R)	ARMED FORCES SERVICE MEDAL VETERANS (S)	RECENTLY SEPARATED VETERANS (T)	TOTAL I BOTH VE NON-\
EXECUTIVE/SENIOR LEVEL OFFICIALS AND MANAGERS 1										
FIRST/MID LEVEL OFFICIALS AND MANAGERS 2										
PROFESSIONALS 3										
TECHNICIANS 4										
SALES WORKERS 5										
ADMINISTRATIVE SUPPORT WORKERS 6										
CRAFT WORKERS 7										
OPERATIVES 8										
LABORERS/HELPERS 9										
SERVICE WORKERS 10										
TOTAL 11										

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

WHO MUST FILE

This VETS-100A Report is to be completed by each federal contractor or subcontractor with a contract or subcontract entered into or modified on or after December 1, 2003, in the amount of $100,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction). Entering into a covered federal contract or subcontract during a given calendar year establishes the requirement to file a VETS-100A Report during the following calendar year. A VETS-100 Report is to be completed by each federal contractor or subcontractor with a contract or subcontract of $25,000 or more entered into before December 1, 2003 with any department or agency of the United States for the procurement of personal property and non-personal services (including construction) and which did not become subject to 41 CFR part 61-300 through contract modification.

WHEN/WHERE TO FILE

This annual report must be filed no later than September 30. Mail to the address pre-printed on the front of the form.

LEGAL BASIS FOR REQUIREMENTS

Title 38, United States Code, Section 4212(d), as amended by the Jobs for Veterans Act (PL 107-288) enacted in 2002, requires federal contractors covered under the Act's affirmative action provisions in Section 4212(a) to report at least annually the numbers of employees in the workforce by job category and hiring location, and the number of such employees, by job category and hiring location, who are qualified covered veterans. Federal contractors must report the total number of new hires during the period covered by the report and the number of such employees who are qualified covered veterans. Additionally, federal contractors must report on the maximum and minimum number of employees during the period covered by the report. The Department of Labor has promulgated regulations to implement the requirements of 38 U.S.C. 4212, as amended by the Jobs for Veterans Act. The regulations at 41 CFR Part 61-300 require the submission of this VETS-100A Report to comply with the requirements of 38 U.S.C. 4212(d), as amended.

HOW TO SUBMIT THE VETS-100A REPORT

Single-establishment employers must file one completed VETS-100A Report. All multi-establishment employers, i.e., those doing business at more than one hiring location, must file (A) one VETS-100A Report covering the principal or headquarters office: (B) a separate VETS-100A Report for each hiring location employing 50 or more persons: and (C) EITHER, (i) a separate VETS-100A Report for each hiring location employing fewer than 50 persons, OR (ii) consolidated reports that cover hiring locations within one State that have fewer than 50 employees. Each state consolidated report must also list the name and address of the hiring locations covered by the report. Company consolidated reports such as those required by EEO-1 reporting procedures are NOT required

for the VETS-100A Report. Completed reports for the headquarters location and all other hiring locations for each company should be mailed in one package to the address indicated on the front of the form. Employers may submit their reports via the Internet at http://vets.dol.gov/vets100/ . A company number is required in order to use this method of submission. This number is provided to employers on the VETS-100A Report mailed annually to those employers listed in the VETS-100 Report database. Other employers may obtain a company number by e-mailing their request to http://vets.dol.gov/vets100/vets100login.htm .

Employers that submit computer-generated output for more than 10 hiring locations to satisfy their VETS-100A reporting obligations must submit the output in the form of an electronic file. This file must comply with current DOL specifications for the layout of these records, along with any other specifications established by the Department for the applicable reporting year. Employers that submit VETS-100A Reports for ten locations or less are exempt from this requirement, but are strongly encouraged to submit an electronic file. In these cases, state consolidated reports count as one location each.

RECORD KEEPING

Employers must keep copies of the completed annual VETS-100A Report submitted to DOL for a period of one year.

HOW TO PREPARE THE FORMS

Multi-establishment employers submitting hard copy reports should produce facsimile copies of the headquarters form for reporting data on each location.

Type of Reporting Organization Indicate the type of contractual relationship (prime contractor or subcontractor) that the organization has with the Federal Government. If the organization serves as both a prime contractor and a subcontractor on various federal contracts, check both boxes.

Type of Form If a reporting organization only has a covered contract that was entered into or modified on or after December 1, 2003, it then must use a VETS-100A Report. If a reporting organization only has a covered contract that was entered before December 1, 2003, (and did not become subject to 41 CFR part 61-300 through contract modification) it must use a VETS-100 Report. If a reporting organization has a covered contract entered both before and on or after December 1, 2003, it then must use both a VETS-100 and a VETS-100A Report.

If a reporting organization submits only one VETS-100A Report for a single location, check the Single Establishment box. If the reporting organization submits more than one form, only one form should be checked as Multiple Establishment-Headquarters. The remaining forms should be checked as either Multiple Establishment-Hiring Location or Multiple Establishment-State Consolidated. For state consolidated forms, the number of hiring locations included in that report should be entered in the space provided. For each form, only one box should be checked within this block.

COMPANY IDENTIFICATION INFORMATION:

Company Number Do not change the Company Number that is printed on the form. If there are any questions regarding your Company Number, please call the VETS-100 staff at (703) 461-2460 or e-mail HELPDESK@VETS100.COM.

Twelve Month Period Ending Enter the end date for the twelve month reporting period used as the basis for filing the VETS-100A Report. To determine this period, select a date in the current year between July 1 and August 31 that represents the end of a payroll period. The selected date will be the basis for reporting Number of Employees, as described below. The twelve-month period preceding that date will be your twelve-month period covered. This period is the basis for reporting New Hires, as described below. Any federal contractor or subcontractor who has written approval from the Equal Employment Opportunity Commission to use December 31 as the ending date for the EEO-1 Report may also use that date as the ending date for the payroll period selected for the VETS-100A Report.

Name and Address for Single Establishment Employers COMPLETE the identifying information under the Parent Company name and address section. LEAVE BLANK all of the identifying information for the Hiring Location.

Name and Address for Multi Establishment Employers **For parent company headquarters location,** COMPLETE the name and address for the parent company headquarters, LEAVE BLANK the name and address of the Hiring Location. **For hiring locations of a parent company,** COMPLETE the name and address for the Parent Company location, COMPLETE the name and address for the Hiring Location.

NAICS Code, DUNS Number, and Employer ID Number Single Establishment and Multi Establishment Employers must COMPLETE the Employer ID Number, NAICS Code, DUNS Number, if available, as described below.

NAICS Code Enter the six (6) digit NAICS Code applicable to the hiring location for which the report is filed. If there is not a separate NAICS Code for the hiring location, enter the NAICS Code for the parent company.

Dun and Bradstreet I.D. Number (DUNS) If the company or any of its establishments has a Dun and Bradstreet Identification Number, please enter the nine (9) digit number in the space provided. If there is a specific DUNS Number applicable to the hiring location for which the report is filed, enter that DUNS Number. Otherwise, enter the DUNS number for the parent company.

Employer I.D. Number (EIN) Enter the nine (9) digit number assigned by the I.R.S. to the contractor. If there is a specific EIN applicable to the hiring location for which the report is filed, enter that EIN. Otherwise, enter the EIN for the parent company.

INFORMATION ON EMPLOYEES

Counting Veterans. Some veterans will fall into more than one of the qualified covered veteran categories. For example, a veteran may be both a disabled veteran and an other protected veteran. In such cases the veteran must be counted in each category.

Number of Employees. Provide all data for regular full-time and part-time employees who were disabled veterans, other protected veterans, Armed Forces service medal veterans, or recently separated veterans employed as of the ending date of the selected payroll period. Do not include employees specifically excluded as indicated in 41 CFR 61-300.2(b)(2). Employees must be counted by qualified covered veteran status for each of the 10 occupational categories (Lines 1-10) in columns L, M, N, and O. Column P must count all employees, including qualified covered veterans, in each of the 10 occupational categories (Lines 1-10). Blank spaces will be considered zeros.

New Hires. Report the number of regular full-time and part-time employees who were hired, both veterans and non-veterans, as well as those who were hired by veteran category, and who were included in the payroll for the first time during the 12-month period preceding the ending date of the selected payroll period. The total line in columns Q, R, S, T, and U (Line 11) is required. Enter all applicable numbers, including zeros.

Maximum/Minimum Employees. Report the maximum and minimum number of regular employees on board during the twelve-month period covered by this report, as indicated by 41 CFR 61-300.10(a)(3).

DEFINITIONS:

'Hiring location' means an establishment as defined at 41 CFR 61-300.2(b)(1).

'Job Categories' means any of the following: Officials and Managers (Executive/Senior Level Officials and Managers and First/Mid Level Officials and Managers), Professionals, Technicians, Sales Workers, Administrative Support Workers, Craft Workers, Operatives, Laborers and Helpers, and Service Workers and are defined in 41 CFR 61-300.2(b)(3).

'Disabled Veteran' means (i) a veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs, or (ii) a person who was discharged or released from active duty because of a service-connected disability.

'Other Protected Veteran' means a veteran who served on active duty in the U.S. military, ground, naval, or air service during a war or in a campaign or expedition for which a campaign badge has been authorized. For those with Internet access, the information required to make this determination is available at http://www.opm.gov/veterans/html/vgmedal2.htm. A replica of that list is enclosed with the annual VETS-100A mailing. A copy of the list also may be obtained by sending an e-mail to OtherVets@vets100.com or by calling (703) 461-2460 and requesting that a copy be mailed to you.

'Armed Forces Service Medal Veteran' means a veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 Fed. Reg. 1209) at http://www.opm.gov/veterans/html/vgmedal2.asp

'Recently Separated Veteran' means a veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service,

'Covered Veteran' means a veteran as defined in the four veteran categories above.

A copy of 41 CFR part 61-300 can be found at http://www.dol.gov/dol/allcfr/vets/Title_41/Chapter_61.htm.

Public reporting burden for this collection is estimated to average 60 minutes per paper response, and 30 minutes per electronic response, including the time for reviewing instructions, searching existing data source, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Department of Labor, Office of Information Management, Room N-1301, 200 Constitution Avenue, NW, Washington D.C. 20210 or electronically transmitted to www.vets100.cudenver.edu. All completed VETS-100A Reports should be sent to the address indicated on the front of the form.

[FR Doc. E8–10916 Filed 5–16–08; 8:45 am]
BILLING CODE 4510–79–C

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–17

[FTR Amendment 2008–03; FTR Case 2008–302; Docket 2008–002, Sequence 1]

RIN 3090–AI48

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables—2008 Update; Correction

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Correcting amendments.

SUMMARY: The General Services Administration published a document in the **Federal Register** on May 7, 2008 (73 FR 25539), that updated Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance. This document corrects that final rule.

DATES: *Effective Date:* This final rule is effective May 19, 2008.

Applicability date: January 1, 2008.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (VPR), Room 4035, GSA Building, Washington, DC 20405, telephone (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ed Davis, Office of Governmentwide Policy, Travel Management Policy (MTT), Washington, DC 20405, telephone (202) 208–7638. Please cite the correction to FTR Amendment 2008–03, FTR case 2008–302.

SUPPLEMENTARY INFORMATION:

A. Background

A final rule was published in the **Federal Register** on May 7, 2008 (73 FR 25539). This document makes corrections to that final rule.

List of Subjects in 41 CFR Part 302–17

Government employees, Income taxes, Relocation allowances and entitlements, Transfers, Travel and transportation expenses.

Dated: May 12, 2008.

Henry Maury,

Director, Relocation Management Policy.

■ Accordingly, 41 CFR part 302–17 is corrected by making the following correcting amendments:

PART 302–17—RELOCATION INCOME TAX (RIT) ALLOWANCE

■ 1. The authority citation for 41 CFR part 302–17 is amended to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

■ 2. Revise Appendix A to part 302–17 to read as follows:

Appendix A to Part 302–17—Federal Tax Tables for RIT Allowance

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 2007

[Use the following table to compute the RIT allowance for Federal taxes, as prescribed in 302–17.8(e)(1), on Year 1 taxable reimbursements received during calendar year 2007]

Marginal tax rate	Single taxpayer		Head of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
10	$9,287	$17,545	$18,060	$29,399	$26,173	$41,393	$14,049	$21,441
15	17,545	43,394	29,399	62,576	41,393	91,201	21,441	45,388
25	43,394	93,101	62,576	138,856	91,201	162,117	45,388	81,616
28	93,101	183,867	138,856	216,022	162,117	233,656	81,616	119,660
33	183,867	376,616	216,022	389,045	233,656	387,765	119,660	197,483

■ 3. Revise Appendix C to part 302–17 to read as follows:

Appendix C to Part 302–17—Federal Tax Tables for RIT Allowance—Year 2

ESTIMATED RANGES OF WAGE AND SALARY INCOME CORRESPONDING TO FEDERAL STATUTORY MARGINAL INCOME TAX RATES BY FILING STATUS IN 2008

[The following table is used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in 301–17.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 or 2007]

Marginal tax rate	Single taxpayer		Head of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
10	$9,597	$18,107	$18,364	$30,153	$27,463	$42,942	$14,203	$21,913
15	18,107	44,461	30,153	64,200	42,942	94,016	21,913	46,764
25	44,461	95,997	64,200	142,780	94,016	167,442	46,764	84,076
28	95,997	191,453	142,780	225,385	167,442	243,961	84,076	124,354
33	191,453	390,566	225,385	405,567	243,961	404,547	124,354	205,412
35	390,566	.....	405,567	.....	404,547	.....	205,412	.....

[FR Doc. E8–11084 Filed 5–16–08; 8:45 am]
BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15 and 54

[MB Docket No. 07–148; FCC 08–119]

DTV Consumer Education Initiative

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reconsider in part, *sua sponte*, our March 3, 2008, decision in this proceeding, in which we adopted digital television (DTV) transition consumer education and outreach requirements for a number of industry participants, and clarify some of those requirements. In this Order, the Commission modifies our requirements regarding the timing, scope, and content of manufacturer notices and the method of delivery of ETC notices, and clarifies other manufacturer requirements.

DATES: Effective May 30, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For more information on this proceeding, please contact Lyle Elder, *Lyle.Elder@fcc.gov*, or Eloise Gore, *Eloise.Gore@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams on (202) 418–2918, or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order of Reconsideration (Order) in MB Docket No. 07–148, FCC 08–119, adopted April 23, 2008 and released April 23, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Order of Reconsideration

I. Introduction

1. In this Order on Reconsideration, we reconsider in part, *sua sponte*, our March 3, 2008, decision in this proceeding, in which we adopted digital television (DTV) transition consumer education and outreach requirements for a number of industry participants, and clarify some of those requirements. In the *DTV Consumer Education Order* we required, among other things, that consumer electronics manufacturers include information about the DTV transition with certain products and eligible telecommunications carriers (ETC) include information about the DTV transition in customer bills. 73 FR 15431 March 24, 2008. In this Order, we modify our requirements regarding the timing, scope, and content of manufacturer notices and the method of delivery of ETC notices, and clarify other manufacturer requirements.

II. Background

2. In the *DTV Consumer Education Order* the Commission sought to ensure widespread consumer understanding of the benefits and mechanics of the transition by promoting a coordinated, national DTV consumer education campaign. One facet of this campaign was the establishment of a requirement that manufacturers of television receivers and related devices include information with those devices explaining the DTV transition and what effect, if any, it would have on the use of the device, and providing contact information for consumers to find out more. In particular, we required that such information had to be included with receivers and ''related devices'' (a term defined only by a non-exclusive list) that were ''shipped'' between the effective date of the rules and March 31, 2009, by any party that manufactured, imported, or shipped the device. The rules as adopted also required ETCs that receive federal universal service funds to provide DTV transition information to low-income subscribers and potential subscribers. In particular, we required that ETCs provide notice to their Lifeline and Link-Up customers, by notices in their monthly bills or billing notices. The rules also required education by a number of industry groups not at issue in the instant Order. For example, full-power broadcasters are required to engage in extensive on-air education via public service announcements and other efforts, and must file quarterly reports with the Commission on their voluntary and mandatory efforts and make those reports available to the public. *Id.* at Appendix A.

3. Following release of the *DTV Consumer Education Order*, we received a number of ex parte filings and pleadings raising concerns about the manufacturer requirements and the manner of notification required by ETCs. Specifically, the Consumer Electronics Retailers Coalition (CERC), along with the Consumer Electronics Association (CEA) and several individual retailers and manufacturers, ask the Commission to clarify the parties responsible for inclusion of the notices, and the point in the manufacturing process that is relevant for application of the rules. CEA and CERC also seek delayed implementation of the rules with respect to manufacturers, the removal of manufacturers from the list of contacts from which consumers can seek further information, and a narrowing of the list of devices covered. On the separate issue of ETC education, Rural Cellular Corporation (RCC), followed by a number of other ETCs, filed petitions for reconsideration, or in the alternative, limited waiver, seeking authorization for using alternative methods (*i.e.,* not bill notices) to notify Lifeline and Link-Up customers of the transition.

III. Order on Reconsideration

4. In this Order on Reconsideration, we provide manufacturers and those acting on their behalf with greater certainty regarding the devices that are covered by these rules, additional time to prepare to include the required notices, and a modified list of contact points to list in those notices. We also clarify the parties responsible for inclusion of the notices, and the relevant point in the manufacturing process at which the requirement begins, and take this opportunity to revise the rules to better capture the devices and parties to which they apply. Finally, we revise our rules to permit ETCs to educate their low-income customers via targeted monthly mailings, as an alternative to inclusion of notices in or on billing statements.

A. Manufacturer Notice Requirements

1. Devices Covered

5. Every consumer electronics commenter supported changes to the ''related devices'' standard in § 15.124

paragraph (a) of the Commission's rules. CEA, in its initial *ex parte* filing, argues for excluding ''related devices'' from the rule entirely, and requiring notices only with television receivers. The consumer electronics commenters initially supported this proposal, but offered a number of variations over the course of their presentations to the Commission. *See generally, e.g.*, Pioneer March 12 *ex parte* and Pioneer April 2 *ex parte*. We note that CERC's March 17 *ex parte* contained three distinct proposals, each of which, if adopted, would cover slightly different groups of devices. Our decision, *sua sponte*, is largely consistent with these proposals but eliminates the inconsistency and ambiguity. We agree with the essential thrust of these *ex partes*, that the group of ''related devices'' to which the notice requirement applies should be certain and clear. They support: (1) A discrete list of devices rather than the open ended category of ''related devices,'' and (2) limiting that list to devices that work closely with television receivers.

6. Upon reconsideration, we will limit the ''related devices'' covered by this rule to the following categories, which are derived in large part from existing rule requirements, with specific adjustments that are appropriate to these consumer education requirements. The ''related devices'' included within this rule by no means constitute a full list of devices related to televisions. When used in the context of this Order, the term refers to the devices covered by the rule. Its use in this manner, however, reflects neither the limits of the term's meaning or the limits of the Commission's authority. The categories are: Television broadcast receivers as defined in § 15.3 paragraph (w) of the rules; TV interface devices as defined in § 15.3 paragraph (y) of the rules; devices that record and/or display signals received from television broadcast receivers (This category includes only those devices designed for use with television receivers, such as DVD and Blu-ray recorders. It also includes only those monitors with at least one baseband NTSC input, thus excluding monitors intended solely for use with computer equipment.); and set-top boxes available for sale at retail that receive video programming provided by multi-channel video programming distributors (MVPDs). This definition creates a discrete and definable universe of ''related devices,'' most of which interact directly with a television receiver either by receiving information from it or relying on its presence to convey information to a viewer. The rule also requires manufacturers to provide information with MVPD set-top boxes even if they do not contain or rely on a television receiver. This information is needed to counter consumer confusion about the functioning of such boxes in light of the over-the-air digital transition. In this instance, for example, the information provided could explain that the transition does not affect the use or functioning of these boxes or clarify that such boxes are not eligible for NTIA coupons.

7. We make these modest changes because we believe that some of the concerns of the consumer electronics commenters regarding scope are well taken. The devices related to televisions and television use are many and varied, and, upon reconsideration, we are convinced that requiring that notices be included with every such device will create a greater burden on consumer electronics manufacturers and importers than is justified by the incremental gains in consumer awareness. Because we find that this revised rule more clearly reflects the best approach to educating consumers, the Commission will exercise its enforcement discretion and decline to penalize entities for not adhering to the requirements of the original rule while waiting for the modified rule to go into effect.

2. Parties Responsible

8. The *DTV Consumer Education Order* imposed responsibility for compliance with the manufacturer rules on parties that ''manufacture, import, or ship interstate television receivers and related devices.'' CERC, the first consumer electronic manufacturer to file an *ex parte* raising concern about this language, argued that the language was ''potentially highly misleading,'' and, at best, ''entirely redundant'' because ''law and regulation already define the parties responsible for part 15 compliance.'' Over the course of its filings, CERC argued that the language as written could impose responsibility and liability on parties far beyond ''the party responsible as the 'manufacturer,' '' and that this would expand the rule beyond that contemplated in the Notice of Proposed Rulemaking. Furthermore, as noted, CERC argued that the parties responsible for compliance were already clear under the rules, and that to go beyond that existing understanding would add burden by making it unclear which party was responsible for the notices without reaching any additional consumers. Subsequent filers agreed, and Pioneer in its April 4 filing proposed to revise § 15.124 paragraph (c) of the rules to explicitly cite to § 2.909 of the Commission's rules.

9. Upon reconsideration, we revise § 15.124 paragraph (c) of the Commission's rules to clarify that the party responsible for inclusion of the notice is the ''manufacturer,'' or the party acting as the manufacturer under our rules. We are revising the rule in accordance with the suggestion of Pioneer (speaking with the concurrence of all the consumer electronics commenters), to simply direct parties to § 2.909 of the rules in order to determine the ''responsible party'' for the purposes of enforcement of this rule. Because we find that this revised rule more clearly reflects the best approach to educating consumers, the Commission will exercise its enforcement discretion and decline to penalize entities for not adhering to the requirements of the original rule while waiting for the modified rule to go into effect.

3. Point of ''Manufacture''

10. The consumer electronics commenters, including LG, Hitachi, and Samsung, argue that the current language of the rules, under which devices ''shipped'' during the effective period of the rules are covered by the rules, is neither clear as to its intent nor, on its face, limited to manufacturers and those acting in their stead. Instead, they argue that the word ''manufactured'' should be used to clarify that our rules do not ''require notices to be applied at secondary logistics centers, which would require opening or repackaging, or to products staged in containers for delivery to dealers after such products had already been imported or shipped from the point of manufacture.'' Indeed, CERC argues that ''a rule that would apply to all interstate shipments, whether or not from the factory, would be unworkable because identical products could be in various stages of preparation, shipment, and storage when the regulation becomes effective,'' and indeed under such a regime that it would be ''impossible'' to determine whether compliance was required for any given product. The industry commenters on this question ask the Commission to clarify that we are applying the rules to devices ''packed and sealed'' for eventual retail purchase, not simply devices shipped by any party during the effective period of the rules.

11. Upon reconsideration, we find that it is in the public interest to revise the language of our rules, replacing ''shipped'' with ''manufactured'' to more accurately and clearly reflect the intent of the rule. The requirement to ensure that each covered device

include, on or in the packaging, the required consumer education information, rests with the responsible party. Therefore, as under the existing rule, we will require notices to be included with any television receiver or related device if the date of manufacture of the final product occurs during the effective period of the rules. Because we find that this revised rule more clearly reflects the best approach to educating consumers, the Commission will exercise its enforcement discretion and decline to penalize entities for not adhering to the requirements of the original rule while waiting for the modified rule to go into effect.

4. Start Date

12. The *DTV Consumer Education Order* created consumer notice requirements requiring printed notices for three groups: MVPDs, ETCs, and manufacturers. In the Order as adopted, both MVPDs and ETCs were given 30 days from the effective date of the rules to begin complying, but manufacturers were required to begin compliance immediately (*i.e.*, on March 31, 2008). Shortly after the release of the *DTV Consumer Education Order*, CERC, CEA, Sony Electronics, Inc. (Sony), Pioneer North America, Inc. (Pioneer), and Panasonic Corporation of North America (Panasonic) (collectively, ''the consumer electronics commenters'') made *ex parte* presentations requesting that manufacturers be granted the same time period for implementation of the DTV notice requirements as MVPDs and ETCs. The parties argued that a certain ''lead time'' is necessary to ensure compliance with the Commission requirements, due to the time necessary for reconfiguring packaging equipment and printing notices. CEA in particular expressed concern that the rules as drafted would put manufacturers out of compliance immediately upon becoming effective. Thus, they request that the Commission delay their effective date, as the Commission had done for the other groups who were required by the Order to provide written notice to consumers.

13. We find upon reconsideration that it is in the public interest to revise the start date for our manufacturer notice requirements. Due to the urgent need for consumer education, we found good cause to make the original rules effective immediately upon publication in the **Federal Register**. As a result, manufacturers did not get the more common 30 day lead time after notice of publication before the rules became effective. We are persuaded that they need additional time to come into compliance, and the approval and publication process associated with implementation of the amended rules will give manufacturers sufficient time to fully comply. As noted above, CEA, later joined by CERC and other consumer electronics commenters, sought a delay of enforcement of the manufacturer notice rules, requesting ''the same time period for implementation of the notice requirement that is required of MVPDs'' and ETCs. CEA March 6 *ex parte* at 1. MVPDs and ETCs will be required to be compliant with the rules governing them on April 30, 2008. Because of the approval and publication process through which these revised manufacturer rules must go, they will be effective no earlier than May 30, 2008. Thus, consumer electronics commenters will have sufficient time to comply. To further assist the manufacturers in ensuring their readiness for compliance, we are establishing a date certain, May 30, 2008, as the effective date for these rules. The rule revisions adopted in this *Order on Reconsideration* modify information collections and will be effective May 30, 2008. We will be seeking emergency review by OMB, and will note in our request that the amended rules give manufacturers additional flexibility beyond that granted in the rules already in place, which were granted emergency review. Furthermore, as discussed above, the Commission will refrain from enforcement of any manufacturer rules until the new rules go into effect. Consequently, manufacturers will have ample time after adoption and release of this Order to come into compliance before the rules take effect.

5. Manufacturer Contact Information in Notices

14. The *DTV Consumer Education Order* required that the notices included with television receivers and related devices contain a number of contact points in order for consumers to be able to find more information about the transition. The rules required that one of these contact points be the ''manufacturer at [telephone number].'' CERC and CEA point out that ''in many cases a manufacturer does not maintain an appropriate telephone number, so this requirement could result in consumer confusion.'' The notices also must contain Web site addresses and contact information to allow consumers to find additional information about the DTV transition.

15. Upon reconsideration, we recognize and share the consumer electronics commenters' concerns. We also recognize the importance of providing consumers with a variety of effective resources. Therefore, in order to ensure that consumers have straightforward access to the best sources of information about the transition, we will eliminate the requirement that manufacturers include their phone number on the notices shipped with televisions and certain related devices, but will require that manufacturers include the FCC Call Center's number on these notices.

B. Eligible Telecommunications Carrier Notice Requirements

16. As discussed above, the ETC education rules require that ETCs include transition notices in the monthly bills or bill notices of their low-income (Lifeline/Link-Up) customers. The Commission has received two independent Petitions for Reconsideration, on behalf of several ETCs in the Midwest, which seek expedited reconsideration of the *DTV Consumer Education Order*, or, in the alternative, limited waivers, to allow ETCs to provide notice via monthly postcards, rather than in the bills themselves. The ETCs argue that a monthly postcard would be significantly less expensive than a bill notice. They also argue that it would be, at a minimum, impractical to include notices in the bills of only Lifeline and Link-Up customers, and that a portion of the cost savings will come from targeting Lifeline/Link-up subscribers, as our Order required, instead of distributing the notices to all customers. The ETCs also argue that a postcard will be a better vehicle for customer education than a bill notice, because it is more noticeable than information included with a bill.

17. We find, upon reconsideration, that it is in the public interest to revise our rules to permit alternative methods of monthly outreach by ETCs to Lifeline and Link-Up customers. We adopt the proposal of RCC, to permit use of a monthly stand-alone mailer to these customers in lieu of inclusion of transition information in bills or billing notices. This change has no impact on the information which must be conveyed in the notice, it simply expands the permissible forms in which the notice may be provided. We also remind ETCs of their obligation to include DTV transition information in all Lifeline and Link-Up publicity and advertising, and that this obligation is not affected by these revisions. We note that the revised rules will not be effective until May 30, 2008, but that, pursuant to the existing effective rules, beginning April 30, 2008, ETCs must provide monthly DTV transition notices to their low-income customers. We

intend to enforce these existing rules, beginning on April 30. However, we will apply our prosecutorial discretion, and will not enforce the existing rules against ETCs that use a monthly stand-alone mailer (*e.g.*, postcard, brochure), rather than a billing insert, prior to May 30, so long as they otherwise comply with the customer notice rules.

IV. Procedural Matters

A. Supplemental Final Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking (NPRM)*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Supplemental Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Order on Reconsideration

19. Following release of the *DTV Consumer Education Order*, we received a number of *ex parte* filings and pleadings raising concerns about the manufacturer requirements and the manner of notification required by eligible telecommunications carriers (ETCs). Specifically, the Consumer Electronics Retailers Coalition (CERC), along with the Consumer Electronics Association (CEA) and several individual retailers and manufacturers, ask the Commission to clarify the parties responsible for inclusion of the notices, and the point in the manufacturing process that is relevant for application of the rules. CEA and CERC also seek delayed implementation of the rules with respect to manufacturers, and a narrowing of the list of devices covered. On the separate issue of ETC education, Rural Cellular Corporation (RCC), followed by a number of other ETCs, filed petitions for reconsideration, or in the alternative, limited waiver, seeking authorization for using alternative methods (i.e., not bill notices) to notify Lifeline and Link-Up customers of the transition. This *Order on Reconsideration* provides manufacturers and those acting on their behalf with greater certainty regarding the devices that are covered by the consumer education rules, and additional time to prepare to include the required notices. We also clarify the parties responsible for inclusion of the notices, and the relevant point in the manufacturing process at which the requirement begins, and take this opportunity to revise the rules to better capture the devices and parties to which they apply. Finally, we revise our rules to permit ETCs to educate their low-income customers via targeted monthly mailings, as an alternative to inclusion of notices in or on billing statements. We make these modest changes because we believe that some of the concerns of the consumer electronics and ETC commenters are appropriate, and find that these revised rules more clearly reflect the best approach to educating consumers.

2. Summary of Issues Raised by Post-Order Filings

20. We received no filings directly in response to the previous FRFA.

3. Description and Estimate of the Number of Small Entities to Which the Report and Order Will Apply

21. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The rules adopted herein will directly affect small consumer electronics (CE) manufacturers and those acting in that capacity (frequently CE retailers) and small eligible telecommunications carriers (ETCs). A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

22. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

23. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

24. *Audio and Video Equipment Manufacturing.* These establishments manufacture ''electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data, there were 571 establishments in this category that operated with payroll during 2002. Of these, 560 had employment of under 500, and ten establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

25. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).'' The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: All such firms

having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (released May 26, 2005); *http://factfinder.census.gov.* The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 471. Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999. *Id.* An additional 3 establishments had employment of 1,000 or more. Thus, under this size standard, the majority of firms can be considered small.

26. *Retailers.* The rules adopted herein will apply only to retailers that are subject to the Commission's rules governing manufacturers because they qualify as the ''responsible party'' under § 2.909 of the Commission's rules. The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: all such firms having $8 million or less in annual receipts. This standard is described below.

27. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: ''This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.'' The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: all such firms having $8 million or less in annual receipts. According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year. Of this total, 10,080 firms had annual sales of under $5 million, and 177 firms had sales of $5 million or more but less than $10 million. *Id.* An additional 123 firms had annual sales of $10 million or more. As a measure of small business prevalence, the data on annual sales are roughly equivalent to what one would expect from data on annual receipts. Thus, the majority of firms in this category can be considered small.

28. *Electronic Shopping.* According to the Census Bureau, this economic census category ''comprises establishments engaged in retailing all types of merchandise using the Internet.'' The SBA has developed a small business size standard for Electronic Shopping, which is: all such entities having $23 million or less in annual receipts. According to Census Bureau data for 2002, there were 4,959 firms in this category that operated for the entire year. Of this total, 4,742 firms had annual sales of under $10 million, and an additional 133 had sales of $10 million to $24,999,999. *Id.* An additional 84 firms had annual sales of $25 million or more. Thus, the majority of firms in this category can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

29. The rules adopted by this *Order on Reconsideration* impose reporting and other compliance requirements on small entities. These burdens are less than those imposed by prior rules. Manufacturers or those acting in their stead must include DTV transition notices with certain devices manufactured between June 16, 2008, and March 31, 2009. ETCs must provide DTV transition notices to their low-income customers on a monthly basis, either via targeted mailings or by inclusion with or on bills or bill notices.

5. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

30. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

31. The rules adopted by this *Report and Order* limit the existing requirements on consumer electronics (CE) manufacturers and those acting in their stead, and provide greater flexibility to ETCs in their required consumer notifications. The rules clarify that only one party is the ''responsible party'' for purposes of enforcement of the manufacturer rules, and provide those responsible parties with additional time to come into compliance. They also more clearly delineate the devices to which the rules apply, and reduce the number of such devices. Finally, we revise our rules to permit the use of an alternative method by which ETCs may educate their low-income customers, as requested by several small ETCs. These reductions in burden apply to both small and non-small entities, while retaining the requirements for consumer education that are necessary to ensure the success of the transition. Thus, no alternative rules would be appropriate.

B. Report to Congress

32. The Commission will send a copy of the *Order on Reconsideration,* including this supplemental FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order on Reconsideration,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order on Reconsideration* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

1. Paperwork Reduction Act Analysis

33. This *Order on Reconsideration* was analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and contains modified information collection requirements, relating to the following approved collections: (1) Manufacturers of television receivers and related devices must provide notice to consumers buying their devices of the transition's impact on that equipment; and (2) ETCs that receive federal universal service funds must provide notice of the transition to their low income customers and potential customers. The Commission will publish a separate **Federal Register** document seeking comments from OMB, the general public, and other Federal agencies on the final information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,

we will also seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees'' in the **Federal Register** document seeking comment on the information collections.

2. Congressional Review Act

34. The Commission will send a copy of this *Order on Reconsideration* in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

C. Additional Information

35. For more information on this *Order on Reconsideration and Further Notice of Proposed Rulemaking,* please contact Lyle Elder, *Lyle.Elder@fcc.gov,* or Eloise Gore, *Eloise.Gore@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

V. Ordering Clauses

36. *It is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 7, 254, 303, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 254, 303, and 309, this Order on Reconsideration is adopted and parts 15 and 54 of the Commission's rules are amended as set forth in Appendix A. These amended rules will be effective beginning May 30, 2008. We anticipate that the summary of the Order will be published in the **Federal Register** at least 30 days before the effective date of May 30, 2008. In the event that publication is delayed, however, we find good cause for these rules to be effective on May 30, 2008, to ensure that consumers are informed about the digital television transition on February 17, 2009, the statutory deadline for all full power television broadcasters to transition to all digital service.

37. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Order on Reconsideration and Further Notice of Proposed Rulemaking*, including the Supplemental Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 15 and 54

Communications common carriers, Communications equipment, Digital television, Digital television equipment, Labeling, Radio, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 15 and 54 to read as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

■ 2. Section 15.124 is revised to read as follows:

§ 15.124 DTV Transition Notices by Manufacturers of Televisions and Related Devices.

(a) Television receivers and related devices manufactured between May 30, 2008, and March 31, 2009, must include notices about the digital television (DTV) transition. Related devices covered by this requirement: All television broadcast receivers as defined in § 15.3(w); TV interface devices as defined in § 15.3(y); devices that record and/or display signals received from television broadcast receivers; and set-top boxes available for sale at retail that receive video programming provided by multi-channel video programming distributors.

(b) The notices required under paragraph (a) of this section must:

(1) Be in clear and conspicuous print;

(2) Convey at least the following information about the DTV transition:

(i) After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from *http://www.DTV.gov* or 1–888–CALL–FCC, and from *http://www.dtv2009.gov* or 1–888–DTV–2009 for information about subsidized coupons for digital-to-analog converter boxes; and

(3) Explain clearly what effect, if any, the DTV transition will have on the use of the receiver or related device, including any limitations or requirements associated with connecting a related device to a DTV receiver.

(c) This notice requirement applies to all responsible parties, as defined in § 2.909 of this chapter.

PART 54—UNIVERSAL SERVICE

■ 3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

■ 4. Section 54.418 is revised to read as follows:

§ 54.418 Digital Television Transition Notices by Eligible Telecommunications Carriers.

(a) Eligible telecommunications carriers (ETCs) that receive federal universal service funds shall provide their Lifeline or Link-Up customers with notices about the transition for over-the-air full power broadcasting from analog to digital service (the ''DTV Transition'') in the monthly bills or bill notices received by such customers, or as a monthly stand-alone mailer (*e.g.*, postcard, brochure), beginning April 30, 2008, and concluding in March 2009.

(b) The notice must be provided as part of an information section on the bill or bill notice itself or on a secondary document mailed with the bill or bill notice, or as part of a monthly stand-alone mailer (*e.g.*, postcard, brochure) in the same language or languages as the customer's bill or bill notice. These notices must:

(1) Be in clear and conspicuous print;

(2) Convey at least the following information about the DTV transition:

(i) After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from *http://www.DTV.gov,* and from *http://www.dtv2009.gov* or 1–888–DTV–2009 for information about subsidized coupons for digital-to-analog converter boxes;

(c) If an ETC's Lifeline or Link-Up customer does not receive paper versions of either a bill or a notice of billing, then that customer must be provided with equivalent monthly notices in whatever medium they

receive information about their monthly bill or as a monthly stand-alone mailer (*e.g.*, postcard, brochure).

(d) ETCs that receive federal universal service funds shall provide information on the DTV Transition that is equivalent to the information provided pursuant to paragraph (b)(2) of this section as part of any Lifeline or Link-Up publicity campaigns conducted by the ETC between March 27, 2008, and March 31, 2009.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070717351–8507–02]

RIN 0648–AV64

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Development Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to modify the Individual Fishing Quota (IFQ) Program and the Community Development Quota (CDQ) Program for the fixed-gear commercial Pacific halibut and sablefish fisheries. This action amends current regulations to allow the use of longline pot fishing gear in the Bering Sea sablefish IFQ and sablefish CDQ fisheries in the month of June. This action also adds regulatory provisions to allow members of the National Guard and military reserves who are mobilized to active duty to temporarily transfer their annual halibut and sablefish IFQ to other eligible IFQ recipients. This final rule is necessary to increase the efficiency of fishermen operating longline pot vessels in the Bering Sea sablefish fishery and to allow guardsmen and reservists to accrue some economic benefit from their annual IFQ if unable to harvest it due to military service. This action is intended to promote the conservation and management provisions in the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and the Northern Pacific Halibut Act of 1982 (Halibut Act).

DATES: Effective June 18, 2008, except the amendment to § 679.24(c)(4), which is effective May 19, 2008.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available by mail from NMFS, Alaska Region, P. O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or via the NMFS, Alaska Region website at *http://www.fakr.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS at the above address and by e-mail to *David_Rostker@omb.eop.gov* or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228 or *obren.davis@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) in the Exclusive Economic Zone (EEZ) under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act) and is implemented by regulations at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. NMFS manages fishing for sablefish (*Anoplopoma fimbria*) through regulations established under the authority of the Magnuson-Stevens Act. Sablefish is managed as a groundfish species under the FMP, as well as under the IFQ Program that allocates sablefish and Pacific halibut (Hippoglossus stenolepis) harvesting privileges among U.S. fishermen.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Halibut Act. The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by these two officials, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62 (73 FR 12280; March 7, 2008). Federal regulations governing the halibut fisheries in the BSAI management area appear at 50 CFR parts 300 and 679.

Background and Need for Action

The background and need for this action were described in detail in the preamble to the proposed rule published in the **Federal Register** on March 5, 2008 (73 FR 11851). The proposed rule's comment period ended April 4, 2008. NMFS received two responses that contained four unique comments. These comments are summarized under ''Response to Comments.''

In summary, this final rule removes a regulation that prohibits using longline pot gear in the Bering Sea during the month of June and amends regulations to allow military reservists and National Guard members to temporarily transfer their IFQ if mobilized to active duty. This action also makes several administrative changes to amend certain modifiers that describe IFQ and CDQ permits in paragraphs (d) and (e) of § 679.4. This includes revising terms such as ''original,'' ''copy,'' and ''valid'' to read ''legible copy.'' These changes are intended to make the descriptors used in association with such permits consistent throughout these paragraphs.

Description of Regulatory Amendments

The following sections explain in detail the regulatory amendments contained in this final rule.

Allow Longline Pot Gear to be Used in the Bering Sea Sablefish Fishery in June

This rule will amend regulations in 50 CFR part 679 to remove a prohibition against the use of longline pot gear in the Bering Sea sablefish fishery during the month of June. Existing regulations prohibit deployment of longline pot gear during this month, due to past concerns about conflicts between vessel operators that use different types of fishing gear. Specifically, § 679.24(c)(4) is revised to remove a June closure for longline pot gear in the Bering Sea sablefish fishery.

The use of longline pot gear in the Bering Sea sablefish fishery became an issue in 1991. The nature of longline pot gear and strategies used in fishing with longline pot gear were once thought to deter fishermen from deploying hook-and-line gear on fishing grounds where longline pot gear is set. The groundline (to which baited pots are attached) used with longline pot gear is heavier and stronger than that used for longline hook-and-line gear. If longline pot gear is set over previously deployed longline hook-and-line gear, the weaker hook-and-line gear could be damaged or lost

while being retrieved. The Council recommended a prohibition against longline pot gear in the Bering Sea subarea to avoid potential conflicts between vessel operators using different gear types on common fishing grounds. Final regulations prohibiting the use of longline pot gear and the rationale for implementing this gear restriction were published on August 21, 1992 (57 FR 37906).

In 1995, the IFQ Program extended the fishing season for halibut and sablefish in Federal waters off Alaska to approximately eight months. Prior seasons typically consisted of one or two day openings of concentrated effort. By allowing the sablefish fleet to spread its operations over time, the IFQ Program reduced the likelihood of congestion and preemption of common fishing grounds.

During the first IFQ season, fishing industry representatives reported to the Council that the annual Bering Sea sablefish quota had been under-harvested due, in part, to fishery interactions with orcas and sperm whales. Whales are able strip hooked fish from fishing gear, reducing the amount of sablefish landed by fishermen using hook-and-line gear. Attempts to deter whales from preying on fish caught on hook-and-line gear by various non-lethal means have proven unsuccessful. One viable method for reducing whale predation is to harvest sablefish with longline pot gear instead of hook-and-line gear. This realization led to a reconsideration of the ban on longline pot gear in the sablefish fishery. On September 18, 1996, a Bering Sea closure to longline pot gear from June 1 through June 30 replaced the year-round longline pot gear prohibition (61 FR 49076).

The reintroduction of longline pot gear into the Bering Sea fisheries posed less of a concern for fishing grounds preemption in 1996 than in 1992, when longline pot gear originally was prohibited. Authorizing the use of longline pot gear, with limitations, in the Bering Sea directed sablefish fishery allowed fishermen to use this gear and reduce interactions with whales. When recommending the removal of the ban on longline pots, the Council expressed concern that, despite the decreased likelihood of grounds preemption, fishermen using traditional hook-and-line gear in relatively small boats may be preempted from grounds by fishermen in larger boats using longline pot gear. Thus, a June closure was retained for the benefit of small vessels using hook-and-line gear to fish for sablefish. June was chosen for the closure because it generally has fair weather, a safety advantage for small vessels.

In October 2004, a representative for longline pot fishermen proposed that gear competition between the sablefish longline pot fleet and other fisheries had not occurred in June, and asserted that such potential conflicts were no longer a valid concern (as described below) and that the regulatory prohibition was unnecessary and burdensome. No public testimony was received in opposition to this proposal. As a result, the Council initiated an analysis of allowing longline pot gear during June in both the fixed gear Bering Sea IFQ and CDQ sablefish fisheries.

This action will implement the Council's June 2006 recommendation to remove the June longline pot gear closure. Doing so may provide an opportunity for longline pot fishermen to harvest additional amounts of the annual sablefish IFQ and sablefish CDQ allocations. These allocations historically have not been fully harvested. In 2007, 67 percent of the Bering Sea sablefish IFQ allocation was harvested, compared with 94 to 100 percent in the four different Gulf of Alaska sablefish regulatory areas. The fixed gear sablefish CDQ fishery caught 79 percent of the Bering Sea sablefish fixed gear CDQ allocation that year. On average, 56 percent of the annual Bering Sea sablefish IFQ allocation was harvested during the years 2003 through 2007. The existing June longline pot gear prohibition in the Bering Sea sablefish fisheries creates operational inefficiencies because of the constraints that are placed on vessel operators using longline pot gear during the middle of the sablefish season. Allowing this gear type to be used in June may provide additional harvesting opportunities for participants in the sablefish fishery.

This action will not change the catch monitoring and accounting practices in place for the sablefish IFQ and sablefish CDQ fisheries. Removing the June closure will mean that enforcement personnel would no longer have to monitor whether vessels fishing with longline pot gear in June are targeting sablefish, which was a prohibited activity. Neither the NOAA Office for Law Enforcement nor the U.S. Coast Guard have indicated any concerns or objections to the removal of this prohibition.

Allow Military Reservists and National Guardsmen to Temporarily Transfer Annual IFQ

This action will amend IFQ Program regulations to allow military reservists and members of the National Guard to temporarily transfer their halibut or sablefish IFQ to other eligible IFQ recipients, should they be mobilized to active duty. This change is intended to allow reservists and guardsmen the potential to gain some economic benefit from their quota share (QS), should they be unavailable to fish their IFQ during a given year due to active military duty or deployment. Specifically, this rule will add a new paragraph to § 679.41 to establish the conditions and criteria for allowing the temporary transfer of annual IFQ issued to reservists and National Guardsmen to other eligible IFQ recipients.

Existing QS and IFQ transfer regulations generally do not allow temporary transfers (leasing) of catcher vessel IFQ. Such restrictions are intended to ensure that QS holders also fish the IFQ associated with their QS, rather than leasing or otherwise assigning their IFQ to other parties to fish on their behalf. Thus, mobilized reservists and guardsmen (who are not otherwise authorized to hire a master to harvest their IFQ) may not temporarily transfer their annual IFQ so that it may be fished by another party. The inability to temporarily transfer IFQs during a military mobilization could constitute an economic hardship to affected service members and their dependents.

This action will implement the Council's recommendation to allow halibut and sablefish QS holders to request temporary IFQ transfers, if the applicant meets specified requirements related to eligibility and evidence of military mobilization or activation. This regulatory change does not jeopardize the Council's policy of having an owner-operator IFQ fleet. This alternative may further promote stable, owner-operated businesses in the halibut and sablefish IFQ fisheries. The Council modeled the policy elements associated with temporary military transfers (TMT) on those associated with emergency medical IFQ transfers.

This type of transfer will be limited to guardsmen and reservists that are deemed eligible to make such transfers, based on eligibility criteria established by this final rule. Such criteria includes evidence of active duty military service that precludes the QS holder from fishing his or her IFQ during a given time period. A transfer would be temporary and restricted to a given fishing year. Qualified applicants would be required to request a TMT annually, even if the length of their deployment or mobilization exceeded one year.

The application process for a TMT will be similar to existing transfer applications under the IFQ Program. The application, provided by NMFS, will describe the requirements

necessary to receive a TMT. Information collected on these applications will include basic identifying information about the proposed transferor and transferee, documentation of the transferor's active duty military service, as well as identifying characteristics of the IFQ being transferred. If NMFS denies an application for a TMT, the applicant may appeal the decision by following the existing appeal procedures at § 679.43.

Administrative Changes

This action amends certain terms (such as ''original,'' ''copy,'' and ''valid'') that are used to describe some of the different IFQ and CDQ permits that are required in regulations at § 679.4(d) and (e). These paragraphs are associated with halibut IFQ and sablefish IFQ permits, and halibut CDQ permits, respectively. Each of these paragraphs describes the different types of permits required to participate in the IFQ and CDQ fisheries, the activities authorized by different permit types, and other conditions of use, inspection, and validity. These two paragraphs were amended on August 9, 2007 (72 FR 44795), to replace the obsolete terms ''IFQ card'' and ''CDQ card'' with ''IFQ hired master permit'' and ''CDQ hired master permit,'' respectively.

This rule removes the word ''original'' from the description of IFQ hired master permits in paragraphs § 679.4(d)(2)(ii) and § 679.4(d)(6)(i)(B). This word will be replaced by the term ''legible copy.'' Regulations at § 679.4(d)(1)(ii) previously required that an ''original IFQ hired master permit'' must be onboard a vessel used to harvest halibut IFQ or sablefish IFQ. NMFS intended to change ''original'' to ''legible copy'' when it revised this paragraph to replace the term ''IFQ card'' with ''IFQ hired master permit,'' as described previously. However, the deletion of the word ''original'' was inadvertently omitted. The requirement to have the original permit onboard is a holdover from a requirement for IFQ fishermen to have their original, plastic IFQ landing card (similar to a credit or debit card) onboard the harvesting vessel. This requirement has since been revised.

Requiring fishermen to possess an original IFQ hired master permit currently is unnecessary for administrative or enforcement purposes. No ready means exist to distinguish an original hired master permit from a high quality copy. Additionally, NMFS notes that the time necessary to mail or otherwise convey an original IFQ hired master permit to a recipient is often lengthy, given the remote location of many of the Alaska communities to which such permits are sent. Allowing a copy of an IFQ hired master permit to be onboard a vessel will enhance the speed and efficiency of transmitting such permits to IFQ hired masters via facsimile or other electronic formats.

Furthermore, this action makes several other changes to the descriptive language associated with IFQ permits and CDQ hired master permits. The word ''copy'' associated with IFQ permits is replaced with the term ''legible copy'' in paragraphs § 679.4(d)(6)(i)(A) and (B), as well as § 679.4(e)(2). The word ''valid'' associated with CDQ hired master permits in § 679.4(e)(3) is replaced with the term ''legible copy.'' This clarifies and makes consistent how IFQ permits and CDQ permits are described in § 679.4(d) and (e) with respect to the need for copies of permits to be legible.

Finally, this action replaces the term ''without a CDQ card'' with ''without a CDQ hired master permit'' in a prohibition at § 679.7(f)(6)(iii). Recent regulatory revisions to 50 CFR part 679 replaced the term ''CDQ card'' with the term ''CDQ hired master permit.'' However, due to an inadvertent error, this change was not made to § 679.7(f)(6)(iii); this final rule corrects that error.

Response to Comments

Comment 1: The use of longline pot gear should be prohibited in the Bering Sea at all times, not just during June.

Response: This final rule implements a revision to a seasonal gear restriction applicable to the Bering Sea sablefish IFQ and CDQ fisheries. Longline pot gear is one of several types of fixed gear that are legally permissible to use to harvest various groundfish species in the Bering Sea. This action will remove a one month closure specifically applicable to the Bering Sea sablefish fisheries. Prohibiting the use of longline pot gear at all times in the Bering Sea is outside of the scope of this action.

Comment 2: Members of the National Guard or military personnel should not be allowed to give away their IFQ to anyone else. IFQ holders who do not use their IFQ should lose it.

Response: NMFS disagrees. This final rule implements regulations to allow military reservists and National Guard members to temporarily transfer their IFQ to other eligible IFQ fishermen. This is intended to allow such QS holders to avoid the economic hardship associated with being unable to catch their IFQ. QS holders already may permanently transfer their QS and associated IFQ to other parties. Such transfers are an integral part of the halibut and sablefish IFQ program, and allow fishing privileges to move between fishermen based on market forces.

Comment 3: The ability to purchase and process Bering Sea sablefish IFQ and CDQ during June is operationally important to small seafood processors in the Aleutian Islands.

Response: Support is noted.

Comment 4: Given their service and sacrifice to the Nation, it is more than appropriate to allow military reservists and members of the National Guard the flexibility to either use or transfer their IFQ.

Response: Support is noted.

Changes from the Proposed Rule

This final rule revises § 679.41(m)(3)(iii) to clarify that the range of serial numbers that must be included with a TMT application are the serial numbers associated with the QS from which the IFQ being transferred are derived. QS represents the percentage of an annual catch limit that a QS holder may catch. It is used to calculate the annual amount of halibut or sablefish IFQ that is allocated to a QS holder. There are no serial numbers associated with IFQ.

Classification

The Administrator, Alaska Region, NMFS determined that this final rule is necessary for the conservation and management of the groundfish fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Because this rule relieves a restriction on using longline pot gear to fish for sablefish IFQ and CDQ during June, the revision to § 679.24(c)(4) is not subject to the 30–day delayed effectiveness provision of the Administrative Procedures Act pursuant to 5 U.S.C. 553(d)(1). Existing regulations prohibit the use of longline pot gear in the Bering Sea sablefish fishery during June. This restriction originally was intended to protect vessel operators using hook-and-line gear from potential conflicts on the fishing grounds with operators using longline pot gear. Changes in the operational characteristics of the Bering Sea sablefish fishery have rendered this protection measure obsolete. The sablefish IFQ season lasts approximately eight months, opening in mid-March and closing in mid-November. Requiring vessel operators using longline pot gear to stand down from

fishing for sablefish with this gear type for one month during the middle of the fishing season is operationally inefficient and economically disadvantageous. The remainder of the changes in this rule will be effective 30 days after publication of the rule in the **Federal Register**.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A description of the action, why it is being considered, and the legal basis for this action are presented in the preamble to this rule.

NMFS received four public comments about the proposed rule prepared for this action. This includes one comment apiece in support, and one comment apiece in opposition, of the two primary actions that will be implemented by this rule. Both of the comments expressing opposition are outside of the scope of this action; none of the comments contained specific comments about the economic effects of this action. A summary of the remainder of the FRFA follows.

Allow Longline Pot Gear to be Used in the Bering Sea Sablefish Fishery in June

Two different classes of small entities were identified in the FRFA to remove the longline pot gear restriction in the Bering Sea during June. The first includes holders of Bering Sea sablefish QS. This action may directly affect approximately 115 sablefish QS holders (as of 2006) in the Bering Sea regulatory area. The 2006 ex-vessel value of the sablefish IFQ harvested in the Bering Sea was approximately $4 million. Based on available data, and more general information concerning the probable economic activity of vessels in these IFQ fisheries, no vessel operation subject to the June gear closure restrictions could have been used to land more than $4 million in combined gross receipts in 2006 (the maximum gross revenue threshold for a small catcher vessel). Therefore, all sablefish QS holders who would be directly regulated by this action are assumed to be small entities for purposes of the Regulatory Flexibility Act (RFA). At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ Program, the subset of Bering Sea sablefish QS holders, or the number of such small entities that could benefit from the removal of a regulatory restriction.

The second class of small entities that would be directly regulated by this action includes the six CDQ groups that receive allocations of Bering Sea sablefish CDQ. CDQ groups are non-profit corporations that manage the fisheries allocations and other business matters for communities participating in the CDQ Program. Each of these groups is organized as a not-for-profit entity and none is dominant in its field; consequently, each is a small entity under the RFA.

Testimony from participants in this fishery suggests that approximately six vessels may choose to use longline pot gear to fish for sablefish in June if the longline pot gear prohibition is removed from regulation. Such vessels may participate in either the IFQ or CDQ sablefish fisheries during the sablefish fishing season. These vessels also may concurrently harvest IFQ and CDQ allocations on the same fishing trip.

The FRFA prepared for this action examined two alternatives. Alternative 1, status quo, would maintain the June closure for longline pot gear for the fixed gear sablefish fishery in the Bering Sea. As such, it would continue to impose adverse economic impacts on the small entities currently participating in this fishery, without offsetting benefits. Alternative 2, the preferred alternative, would amend regulations to remove the June closure, per the request of participants in the Bering Sea sablefish fishery. This alternative would result in a regulatory change that would reduce economic and operational burdens on those small entities that use longline pot gear in the Bering Sea sablefish fisheries. The sablefish IFQ and CDQ season begins in March and ends in November. Entities that begin harvesting sablefish IFQ or CDQ prior to June, but that do not catch all of their annual sablefish allocation during this time must cease fishing for sablefish with longline pot gear during June, prior to resuming fishing. A June stand-down presumably requires additional costs to entities, such as removing longline pot gear from the fishing grounds, switching to another fishery or to another gear type to continue fishing for sablefish, as well as transit costs to and from fishing grounds. NMFS does not have sufficient cost information to approximate the actual costs associated with the effects of the June closure on entities involved in the longline pot gear fishery for sablefish.

No adverse economic impacts on other user groups, including operators of hook-and-line vessels that also are small entities, were identified. Such entities fish concurrently with longline pot gear vessels during the remainder of the IFQ season without reported gear or fishing grounds conflicts. NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the adverse economic impact of this action on small entities. The objective for this action was to relieve an operational restriction, and associated adverse economic effects, by eliminating a one month fishery closure that is specific to longline pot gear vessels. The original impetus for the June longline pot gear closure has been superseded by ongoing changes in the characteristics of the sablefish IFQ and CDQ fisheries; specifically, the increased use of longline pot gear to prosecute this fishery and the decreased use of hook-and-line gear.

Allow Military Reservists and National Guard Members to Temporarily Transfer Annual IFQ

This action would amend regulations in 50 CFR part 679 that govern quota transfers conducted under the Pacific Halibut and Sablefish IFQ Program. Existing regulations allow permanent QS and IFQ transfers, but preclude temporary transfers of IFQ except under limited circumstances.

At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ program that could be affected by this action. The number of military reservists or guardsmen that hold the category of QS that may not be legally fished by a hired master under current rules cannot be determined with available information. The number of these ''citizen soldiers'' who hold such restricted QS and who may be mobilized to active duty status during their fishing career cannot be estimated. Given these uncertainties, it is not possible to know how many QS holders could be expected to request a temporary military transfer of IFQs, if the final rule were adopted. Thus, the FRFA prepared for this action assumes that all halibut and sablefish QS holders are small entities, for RFA purposes. Based on this assumption, this action has the potential to directly regulate any of the 3,467 small entities (as of 2006) that hold halibut QS and sablefish QS.

The FRFA prepared for this action examined two alternatives. Under Alternative 1, mobilized military reservists or guardsmen would not be able to temporarily transfer their IFQ.

This could impose a financial burden on such QS holders because they would have to forego the economic benefit that could accrue from leasing their IFQ to other fishermen. It is not possible to quantify what such foregone benefits could be, absent information about how many reservists and guardsmen hold QS, whether and when such persons could be mobilized, and the amount of annual IFQ that could be left unharvested due to a QS holder's inability to catch their IFQ. Based on the standard prices used to assess IFQ fees (for all ports with IFQ landings, as of November 30, 2007), halibut was worth $4.37 per pound and sablefish was worth $2.95 per pound. This approximates the value of each pound of halibut and sablefish IFQ to those QS holders whose harvesting operations could be affected by being mobilized or ordered to active duty.

Alternative 2, the preferred alternative, would amend regulations to allow temporary IFQ transfers for mobilized guardsmen and reservists, decreasing the likelihood that such QS holders would suffer economic hardship from being unable to catch his or her halibut or sablefish IFQ. Furthermore, Alternative 2 would minimize adverse impacts that may be attributable to idled IFQ that could accrue to processors, fishery dependent communities, and other fishing support businesses. However, absent information about the number of QS holders that could be affected by this change, as well as the amount of QS and corresponding IFQ that could be left unharvested, NMFS is unable to provide the total estimate of the impacts of this rule. NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of the Halibut Act and the Magnuson-Stevens Act and other applicable statutes that would minimize the economic impact of this action on small entities. The objective of this action is to relax the policy of requiring halibut and sablefish QS holders to be onboard a vessel when associated IFQ is caught and landed for a specific class of QS holders.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

The preamble to this final rule serves as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.fakr.noaa.gov*.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number OMB Control No. 0648–0569. Public reporting burden for Application for Temporary Military Transfer of IFQ is estimated to average two hours per response and four hours per response for appeal of a denied application per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 13, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 2. In § 679.4, revise paragraphs (d)(2)(ii), (d)(6)(i)(A), (d)(6)(i)(B), (e)(2), and (e)(3) to read as follows:

§ 679.4 Permits.

* * * * *

(d) * * *

(2) * * *

(ii) A legible copy of an IFQ hired master permit issued to an eligible individual in accordance with § 679.42(i) and (j) by the Regional Administrator must be onboard the vessel that harvests IFQ halibut or IFQ sablefish at all times that such fish are retained onboard by a hired master. Except as specified in § 679.42(d), an individual that is issued an IFQ hired master permit must remain onboard the vessel used to harvest IFQ halibut or IFQ sablefish with that IFQ hired master permit during the IFQ fishing trip and at the landing site during all IFQ landings.

* * * * *

(6) * * *

(i) * * *

(A) The IFQ permit holder must present a legible copy of the IFQ permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

(B) The IFQ hired master permit holder must present a legible copy of the IFQ permit and a legible copy of the IFQ hired master permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

* * * * *

(e) * * *

(2) *Halibut CDQ permit.* The CDQ group must obtain a halibut CDQ permit issued by the Regional Administrator. The vessel operator must have a legible copy of the halibut CDQ permit on any fishing vessel operated by, or for, a CDQ group that will have halibut CDQ onboard and must make the permit available for inspection by an authorized officer. The halibut CDQ permit is non-transferable and is issued annually until revoked, suspended, or modified.

(3) *Halibut CDQ hired master permits.* An individual must have onboard the vessel a legible copy of the halibut CDQ hired master permit issued by the Regional Administrator before landing any CDQ halibut. Each halibut CDQ hired master permit will identify a CDQ permit number and the individual authorized by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ.

* * * * *

■ 3. In § 679.7, revise paragraph (f)(6)(iii) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(6) * * *

(iii) *Hired master, CDQ halibut.* Make a CDQ halibut landing without a CDQ

hired master permit listing the name of the hired master.

* * * * *

■ 4. In § 679.24, revise paragraph (c)(4) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(c) * * *

(4) *BSAI.* Operators of vessels using gear types other than hook-and-line, longline pot, pot-and-line, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(b).

* * * * *

■ 5. In § 679.41, revise paragraph (g)(4) and add paragraph (m) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(g) * * *

(4) The Regional Administrator will not approve an Application for Transfer of QS assigned to vessel categories B, C, or D subject to a lease or any other condition of repossession or resale by the person transferring QS, except as provided in paragraphs (h) and (m) of this section, or by court order, operation of law, or as part of a security agreement. The Regional Administrator may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

* * * * *

(m) *Temporary military transfers.* In the event of a military mobilization or order to report for military service affecting a QS holder that prevents him or her from being able to participate in the halibut or sablefish IFQ fisheries, the Regional Administrator may approve a temporary military transfer for the IFQ derived from the QS held by a QS holder affected by the military mobilization.

(1) *General.* A temporary military transfer will be approved if the QS holder demonstrates that he or she is unable to participate in the IFQ fishery for which he or she holds QS because of a military mobilization, order to report for military service, or active duty military service.

(2) *Eligibility.* To be eligible to receive a temporary military transfer, a QS holder must meet all of the following requirements:

(i) Be a member of a branch of the National Guard or a member of a reserve component;

(ii) Possess one or more catcher vessel IFQ permits;

(iii) Not qualify for a hired master exception under § 679.42(i)(1);

(iv) Be in active duty military service as that term is defined at 10 U.S.C. 101(d)(1), be under a call to active service authorized by the President or the Secretary for a period of more than 30 consecutive days under 32 U.S.C. 502(f), or in the case of a member of a reserve component, have been ordered to report for military service beginning on the date of the member's receipt of the order and ending on the date on which the member reports for active duty military service.

(3) *Application.* A QS holder may apply for a temporary military transfer by submitting a temporary military transfer application to the Alaska Region, NMFS. NMFS will transfer, upon approval of the application, the applicable IFQ from the applicant (transferor) to the recipient (transferee). A temporary military transfer application is available at *http://www.fakr.noaa.gov* or by calling 1–800–304–4846. A complete application must include all of the following:

(i) The transferor's identity including his or her full name, NMFS person ID, date of birth, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate.

(ii) The transferee's identity including his or her full name, NMFS person ID, date of birth, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate.

(iii) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, number of units, range of QS serial numbers for IFQ to be transferred, actual number of IFQ pounds, transferor (seller) IFQ permit number, and fishing year.

(iv) Documentation of active military mobilization or deployment. This documentation must include the following:

(A) A copy of official documentation such as valid military orders or call that direct the transferor to report to active duty military service, to mobilize for a military deployment, or to report to active service.

(B) A concise description of the nature of the military deployment or active duty military service, including verification that the applicant is unable to participate in the IFQ fishery for which he or she holds IFQ permits during the IFQ season because of his/her active duty military service.

(v) The signatures and printed names of the transferor and transferee, and date.

(vi) The signature, seal, and commission expiration of a notary public.

(4) *Restrictions.* (i) A temporary military transfer shall be valid only during the calendar year for which the associated IFQ is issued.

(ii) A temporary military transfer will be issued only for the IFQ derived from the QS held by the applicant.

(5) *Temporary military transfer evaluations and appeals*—(i) *Initial evaluation.* The Regional Administrator will evaluate an application for a temporary military transfer submitted in accordance with paragraphs (c)(1) through (c)(9) of this section. An applicant who fails to submit the information specified in the application for a temporary military transfer will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(ii) *Initial administrative determination (IAD).* The Regional Administrator will prepare and send an IAD to the applicant if the Regional Administrator determines that the application provided by the applicant is deficient or if the applicant fails to submit the specified information or a revised application. The IAD will indicate the deficiencies in the application, including any deficiencies with the information on the revised application. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43.

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Proposed Rules

Federal Register
Vol. 73, No. 97
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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.

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1315]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Federal Reserve Board (Board) proposes to amend Regulation DD, which implements the Truth in Savings Act, and the staff commentary to the regulation, to provide additional disclosures about account terms and costs associated with overdrafts. The proposed amendments would set forth content and timing requirements for a notice to consumers about any right to opt out of an institution's overdraft service. Requirements for disclosing overdraft fees on periodic statements would be expanded to apply to all institutions and not solely to institutions that promote the payment of overdrafts. The proposed amendments also address balance disclosures provided in response to balance inquiries from consumers.

DATES: Comments must be received on or before July 18, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R–1315, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Benjamin K. Olson, Attorney, or Vivian W. Wong, Senior Attorney, or Ky Tran-Trong, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. The Truth in Savings Act

The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.,* is implemented by the Board's Regulation DD (12 CFR part 230). The purpose of the act and regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield (APY), the interest rate, and other account terms. An official staff commentary interprets the requirements of Regulation DD (12 CFR part 230 (Supp. I)). Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration (NCUA).

Under TISA and Regulation DD, account disclosures must be provided upon a consumer's request and before an account is opened. Institutions are not required to provide periodic statements; but if they do, the act requires that fees, yields, and other information be provided on the statements. Notice also must be provided to accountholders before an adverse change in account terms occurs and prior to the renewal of certificates of deposit (time accounts).

TISA and Regulation DD contain rules for advertising deposit accounts. Under TISA, there is a prohibition against advertisements, announcements, or solicitations that are inaccurate or misleading, or that misrepresent the deposit contract. Institutions also are prohibited from describing an account as free (or using words of similar meaning) if a regular service or transaction fee is imposed, if a minimum balance must be maintained, or if a fee is imposed when a customer exceeds a specified number of transactions. In addition, the act and regulation impose substantive restrictions on institutions' practices regarding the payment of interest on accounts and the calculation of account balances.

II. Background on Overdraft Services and Regulatory Action to Date

Historically, if a consumer engaged in a transaction that overdrew his or her account, the consumer's depository institution used its discretion on an ad hoc basis to determine whether to pay the overdraft, usually imposing a fee for paying the overdraft. The Board recognized this longstanding practice when it initially adopted Regulation Z in 1969 to implement the Truth in Lending Act (TILA). The regulation provided that these transactions are generally not covered under Regulation Z where there is no written agreement between the consumer and institution to pay an overdraft and impose a fee. *See* 12 CFR 226.4(c)(3). The treatment of overdrafts in Regulation Z was designed to facilitate depository institutions' ability to accommodate consumers' transactions on an ad hoc basis.

Over the years, most institutions have largely automated the overdraft payment process, including setting specific criteria for determining whether to honor overdrafts and limits on the amount of the coverage provided. From the industry's perspective, the benefits of overdraft, or bounced check, services include a reduction in the costs of manually reviewing individual items, as well as the consistent treatment for all customers with respect to overdraft payment decisions. Moreover, industry representatives assert that overdraft services are valued by consumers, particularly for check transactions, as they allow consumers to avoid additional fees that would be charged by the payee if the item was returned unpaid, and other adverse consequences, such as the furnishing of

negative information to a consumer reporting agency.[1]

In contrast, consumer advocates believe overdraft transactions are a high-cost form of lending that traps low- and moderate-income consumers (particularly students and the elderly) into paying high fees. Moreover, consumer advocates note that consumers are enrolled in overdraft services automatically, often with no chance to opt out. In addition, consumer advocates believe that by honoring check and other types of overdrafts, institutions encourage consumers to rely on this service and thereby consumers incur greater costs in the long run than they would if the transactions were not honored. Consumer advocates also express concerns about debit card overdrafts where the dollar amount of the fee may far exceed the dollar amount of the overdraft, and multiple fees may be assessed in a single day for a series of small-dollar transactions.[2]

According to a recent report from the Government Accountability Office (GAO), the average cost of overdraft and insufficient funds fees has increased roughly 11 percent between 2000 and 2007 to just over $26 per item, according to one estimate.[3] The GAO also reported that large institutions on average charged between $4 and $5 more for overdraft and insufficient fund fees compared to smaller institutions.[4] In addition, the GAO Bank Fees Report noted that a small number of institutions (primarily large banks) apply tiered fees to overdrafts, charging higher fees as the number of overdrafts in the account increases.[5]

Overdraft services vary among institutions but typically share certain characteristics. Coverage is ''automatic'' for consumers who meet the institution's criteria (*e.g.*, the account has been open a certain number of days, the account is in ''good standing'', deposits are made regularly). While institutions generally do not underwrite on an individual account basis in determining whether to enroll the consumer in the service initially, most institutions will review individual accounts periodically to determine whether the consumer continues to qualify for the service, and the amounts that may be covered.

Most overdraft program disclosures state that payment of an overdraft is discretionary on the part of the institution, and disclaim any legal obligation of the institution to pay any overdraft. Typically, the service is extended to also cover non-check transactions, including withdrawals at automated teller machines (ATMs), automated clearinghouse (ACH) transactions, debit card transactions at point-of-sale, pre-authorized automatic debits from a consumer's account, telephone-initiated funds transfers, and on-line banking transactions. A flat fee is charged each time an overdraft is paid, and commonly, institutions charge the same amount for paying the overdraft as they would if they returned the item unpaid. A daily fee also may apply for each day the account remains overdrawn.

Where institutions vary most in their provision of overdraft services is the extent to which institutions inform consumers about the existence of the service or otherwise promote the use of the service. For those institutions that choose to promote the existence and availability of the service, they may also disclose to consumers, typically in a brochure or welcome letter, the aggregate dollar limit of overdrafts that may be paid under the service.

As the availability and customer use of these overdraft services has increased, the federal banking agencies (Board, Federal Deposit Insurance Corporation (FDIC), NCUA, Office of the Comptroller of the Currency (OCC) and Office of Thrift Supervision (OTS)) have become concerned about aspects of the marketing, disclosure, and implementation of some of these services. In response to some of these concerns, the agencies published guidance on overdraft protection programs in February 2005.[6] The Joint Guidance addresses three primary areas—safety and soundness considerations, legal risks, and best practices, while the OTS Guidance focuses on safety and soundness considerations and best practices. The best practices focus on the marketing and communications that accompany the offering of overdraft services, as well as the disclosure and operation of program features, including the provision of a consumer election or opt-out of the overdraft service. The agencies have also published a consumer brochure on overdraft services.[7]

In May 2005, the Board separately issued revisions to Regulation DD and the staff commentary pursuant to its authority under the Truth in Savings Act (TISA) to address concerns about the uniformity and adequacy of institutions' disclosure of overdraft fees generally, and to address concerns about advertised overdraft services in particular. 70 FR 29582 (May 24, 2005).[8] The goal of the final rule was to improve the uniformity and adequacy of disclosures provided to consumers about overdraft and returned-item fees to assist consumers in better understanding the costs associated with the payment of overdrafts. In addition, the final rule addressed some of the Board's concerns about institutions' marketing practices with respect to overdraft services.

Under the May 2005 final rule, which became effective July 1, 2006, all depository institutions are required to specify in their account disclosures the categories of transactions for which an overdraft fee may be imposed, and to include in their advertisements about overdraft services, certain information about the costs associated with the service and the circumstances under which the institution would not pay an overdraft. The Board's final rule also requires institutions that promote the payment of overdrafts in an advertisement to disclose separately on their periodic statements the total amount of fees or charges imposed on the account for paying overdrafts and the total amount of fees charged for returning items unpaid. These disclosures must be provided for the statement period and for the calendar

[1] *See, e.g., Overdraft Protection: Fair Practices for Consumers: Hearing before the House Subcomm. on Financial Institutions and Consumer Credit, House Comm. on Financial Services,* 110th Cong. (2007) *Overdraft Protection Hearing),* (available at *http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr0705072.shtml*).

[2] *See, e.g., Overdraft Protection Hearing* n.1; Jacqueline Duby, Eric Halperin & Lisa James, *High Cost and Hidden From View: The $10 Billion Overdraft Loan Market*, Ctr. Responsible Lending (May 26, 2005) (noting that the bulk of overdraft fees are incurred by repeat users) (available at *http://www.responsiblelending.org/pdfs/ip009-High_Cost_Overdraft-0505.pdf*).

[3] *See Bank Fees: Federal Banking Regulators Could Better Insure That Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts,* GAO Report 08–281 (January 2008) (hereinafter, GAO Bank Fees Report). *See also Bankrate 2007 Checking Account Study*, posted September 26, 2007 (available at: *http://www.bankrate.com/brm/news/chk/chkstudy/20070924_bounced_check_fee_al.asp?caret=2e*) (reporting an average overdraft fee of over $28.00 per item).

[4] *See GAO Bank Fees Report* at 16.

[5] According to the GAO, of the financial institutions that applied up to 3 tiers of fees in 2006, the average overdraft fees were $26.74, $32.53 and $34.74, respectively. *See GAO Bank Fees Report* at 14.

[6] *See* Interagency Guidance on Overdraft Protection Programs (Joint Guidance), 70 FR 9127 (Feb. 24, 2005) and OTS Guidance on Overdraft Protection Programs (OTS Guidance), 70 FR 8428 (Feb. 18, 2005).

[7] The brochure entitled ''Protecting Yourself from Overdraft and Bounced-Check Fees,'' can be found at: *http://www.federalreserve.gov/pubs/bounce/default.htm.*

[8] A substantively similar rule applying to credit unions was issued separately by the NCUA. 71 FR 24568 (Apr. 26, 2006). The NCUA previously issued an interim final rule in 2005. 70 FR 72895 (Dec. 8, 2005).

year to date. The final rule for the aggregate fee disclosures was narrower than the proposal, which would have applied the periodic statement requirements to all institutions, regardless of whether they market the payment of overdrafts.

Notwithstanding the issuance of the February 2005 Joint Guidance and the Board's May 2005 final rule under Regulation DD, the Board remains concerned that consumers may not adequately understand the costs of overdraft services nor how overdraft services operate generally. The Board is thus proposing additional disclosure requirements pursuant to its authority under Sections 263, 264, 268 and 269(a) of TISA to facilitate consumers' ability to make informed judgments about the use of their accounts. 12 U.S.C. 4302(e), 4303(b) & (d), 4307, 4308(a). The proposed requirements address disclosures to consumers about the costs associated with overdraft services on periodic statements and disclosures to consumers about account balances in response to consumer inquiries.

In addition, as discussed elsewhere in this **Federal Register**, the Board, along with the OTS and the NCUA, are proposing to adopt substantive protections using their authority under the Federal Trade Commission Act (FTC Act) to address certain unfair or abusive protections associated with overdraft services.[9] The Board's proposal would add a new Subpart D on overdraft services to the Board's Regulation AA, Unfair or Deceptive Acts or Practices (2008 Regulation AA Proposal) (12 CFR part 227). Among other things, the proposal would require institutions to provide consumers the ability to opt out of their institutions' payment of overdrafts. The Board is proposing to amend Regulation DD to ensure that consumers receive effective disclosures about their right to opt out of overdraft services, by setting forth certain content, format and timing requirements for the notice.[10]

During this rulemaking process, Board staff has held discussions with representatives from banks, core systems providers, consumer groups, vendors of overdraft services, payment card associations, and industry trade associations. Board staff has also reviewed current account disclosures, and solicited input from members of the Board's Consumer Advisory Council regarding overdraft services.

III. Summary of Proposal

Disclosure of Consumer Opt-Out of Overdraft Services

The Board is proposing amendments under Regulation DD to set forth content and format requirements for the notices that would be given to consumers informing them about their right to decline, or opt out of, their institution's overdraft service. The substantive opt-out requirement is proposed separately in today's **Federal Register** under the Board's authority under the FTC Act. Under the proposal, the notice must be provided to the consumer before the institution assesses any fees in connection with paying an overdraft, and subsequently during or for each statement period in which a fee is imposed (for example, on a notice sent promptly after an overdraft informing the consumer of that fact, or on each periodic statement reflecting an overdraft fee or charge). The notice following assessment of an overdraft fee would help to ensure that consumers are apprised of their opt-out rights at a time when the information may be most relevant, that is, after the consumer has overdrawn his or her account and received information about the costs of using the service. The content of the notice is discussed in more detail in the Section-by-Section Analysis below. The Board intends to conduct consumer testing on the proposed notice following the issuance of this proposal and review of comments received.

Disclosure of the Aggregate Costs of Overdraft Services on Periodic Statements

As discussed above, the Board's May 2005 final rule under Regulation DD requires, among other things, institutions that promote the payment of overdrafts to provide consumers information about the aggregate costs of the overdraft service for the statement period and the calendar year to date. The Board is proposing to expand this provision to require all institutions, regardless of whether they promote the payment of overdrafts, to disclose aggregate cost information. The amendment is intended to provide all consumers that use overdraft services with additional information about fees to help them better understand the costs associated with their accounts. Under the current rule, institutions that do not promote their overdraft service may be reluctant to provide information about their service, including other alternatives to overdraft services, out of concern that such disclosures might trigger the aggregate fee disclosure requirements. Thus, the proposal would promote greater transparency about the costs and terms of overdraft services for all institutions. The proposed rule would also add format requirements to help make the aggregate fee disclosures are more effective and noticeable to consumers.

Balance Inquiries

To ensure that consumers are not confused or misled about the amount of funds in their account when they request their balance, the Board proposes to require that institutions generally disclose only the amount of funds available for the consumer's immediate use or withdrawal, without incurring an overdraft. This rule would apply to balance inquiries made through any automated system, including, but not limited to, an ATM, Internet web site, and telephone response system. Institutions would be permitted to provide a second balance that includes any additional funds that an institution may advance to cover an overdraft if this fact is also prominently disclosed to the consumer, along with that balance information.

IV. Section-by-Section Analysis

Section 230.10 Opt-Out Disclosure Requirements for Overdraft Services

The February 2005 Joint Guidance recommended as a best practice that where overdraft protection is provided automatically, institutions should offer consumers the option of ''opting out'' of the overdraft service with a clear consumer disclosure of this option. *See* 70 FR at 9132. As discussed separately in this **Federal Register**, the Board is proposing to exercise its authority under the FTC Act to require institutions to provide consumers with a right to opt out of an institution's overdraft service before assessing a fee or charge for the service. Proposed § 230.10 sets forth content and timing requirements for the notice to ensure that the opt-out right is disclosed effectively to consumers. The Board anticipates that any final actions taken under the FTC Act and TISA will be issued simultaneously after the Board has reviewed comments received on the proposals.

To facilitate compliance, Sample Form B–10 provides a model form institutions may use to satisfy their disclosure obligations under the proposed rule. Following issuance of the proposal, the Board intends to conduct consumer testing to determine

[9] For simplicity, this notice will refer only to the Board's proposal.

[10] While NCUA is not proposing amendments to its 12 CFR part 707 in today's **Federal Register**, TISA requires NCUA to promulgate regulations substantially similar to Regulation DD. Accordingly, NCUA will issue amendments to part 707 following the Board's adoption of final rules under Regulation DD.

how well consumers understand and can use the proposed opt-out notice.

10(a) General Rule

Proposed § 230.10(a) states the general rule that if a depository institution provides a consumer the right to opt out of the institution's payment of overdrafts pursuant to the institution's payment of overdrafts on the consumer's account pursuant to the institution's overdraft service, the institution must provide notice of that right in writing. As noted above, the Board is separately proposing, pursuant to its authority under the FTC Act, to require institutions to provide consumers with a right to opt out of the institution's overdraft service before assessing a fee or charge for the service. Section 230.10 generally sets forth requirements regarding the content and timing requirements for providing this opt-out. *See* proposed comment 10–1.

10(b) Format and Content

Under proposed § 230.10(b), institutions are required to include in their opt-out notice specified information about the institution's overdraft service. The new disclosures are proposed pursuant to the Board's authority under TISA Sections 264, 268, and 269. 12 U.S.C. 4303(b) & (d), 4308. Consistent with TISA's purpose, the proposal would require institutions to provide disclosures about the terms of deposit accounts to assist consumers in comparing accounts. Specifically, the proposed disclosures relate to the fees that are assessed against consumer accounts for the payment of overdrafts, the conditions under which the fees are imposed, how consumers can avoid such fees by opting out, and the availability of potentially less costly alternatives.

Under proposed § 230.10(b)(1), the notice must state the categories of transactions for which an overdraft fee may be imposed. For example, if the institution pays overdrafts created by check, ATM withdrawals and point-of-sale debit card transactions, it must indicate this fact. *See* comment 4(b)(4)–5.

Under the proposal, the notice must also include information about the costs of the institution's overdraft service. *See* proposed § 230.10(b)(2). In addition to stating the dollar amount of any fees or charges imposed on the account for paying overdraft items, including daily fees, institutions would also be required to inform consumers in the notice that overdraft fees could be charged in connection with an overdraft as low as $1, or the lowest dollar amount for which the institution could charge a fee. This latter disclosure is intended to make consumers aware, in some cases, that the per item overdraft fee may far exceed the amount of the overdraft. *See* proposed § 230.10(b)(3).

In the February 2005 Joint Guidance, the federal banking agencies recommended that institutions consider imposing a cap on consumers' potential daily costs from the overdraft program, such as a limit on the number of overdraft transactions subject to a fee per day, or a dollar limit on the total fees that will be imposed per day. *See* 70 FR at 9132. The Board is proposing to require additional disclosures about the maximum costs that could be incurred in connection with an institution's overdraft service. Under the proposal, institutions must disclose any daily dollar limits on the amount of overdraft fees or charges that may be assessed in addition to any limits for the statement period. If the institution does not limit the amount of fees that can be imposed either for a single day or for a statement period, it must disclose that fact. *See* proposed § 230.10(b)(4). The Board intends that both this disclosure about fee limits as well as the notice that overdraft fees in some cases will exceed the amount of the overdraft would alert consumers to the potentially high costs of overdraft services, so that they may more effectively determine whether the service's terms and features are suited to their needs, or whether other alternatives would be more appropriate.

Proposed § 230.10(b)(5) requires institutions to inform a consumer of the right to opt out of the institution's payment of overdrafts, including the method(s) that the consumer may use to exercise the opt-out right.[11] Such methods may include providing a toll-free telephone number that the consumer may call to opt out or allowing the consumer to mail in the opt-out request. *See* proposed comment 10(b)–2. Comment is requested as to whether institutions should be required to provide a form with a check-off box that consumers may mail in to opt out. Comment is also requested regarding whether consumers should also be allowed to opt out electronically, provided that the consumer has agreed to the electronic delivery of information.

Proposed § 230.10(b)(6) incorporates the February 2005 Joint Guidance recommendation that when describing an overdraft protection program, institutions should inform consumers generally of other overdraft services and credit products, if any, that are available. These alternatives may include transfers from other accounts held at the institution, overdraft lines of credit, or transfers from a credit card issued by the institution. In some cases, these alternatives may be less costly than the overdraft service offered by the institution. Under the proposed rule, institutions must state whether it offers any alternatives for the payment of overdrafts. If one of the alternatives that the institution offers is an overdraft line of credit, it must state this fact. Institutions may also, but are not required to, list any additional alternatives they may offer to overdraft services.

In some cases, institutions may wish to explain to consumers the consequences of opting out of overdraft services. For example, the institution may explain that if a consumer opts out and writes a check that overdraws an account, the institution may still charge a fee if the check is returned, and that the merchant may also assess a fee. Proposed comment 10(b)–3 permits institutions to briefly describe the consequences of opting out. Of course, institutions should not represent that the payment of overdrafts is guaranteed or assured if they are not. *See* comment 8(a)–10.ii.

Comment is requested regarding whether the proposed content requirements provide sufficient information for consumers to evaluate effectively whether an institution's overdraft service meets their needs. In addition, the Board's proposal would require that all opt-out notices contain the same content, regardless of when the notice is provided. As further discussed below, the Board is requesting comment whether the content requirements should differ when the opt-out notice is provided after an overdraft fee has been charged to the consumer's account.

Proposed § 230.10(b) also requires institutions to provide the opt-out notice in a format substantially similar to Sample Form B–10 to ensure that the opt-out content is segregated from other disclosures provided by the institution and noticeable by the consumer. The Board recognizes, however, that institutions may need flexibility in formatting disclosures, depending on where and when the disclosure is provided. For example, if the opt-out notice is included in disclosures provided at account opening,

[11] Under the Board's Regulation AA proposal in today's **Federal Register**, an institution would be required to allow consumers to opt out of the institution's overdraft service for all transaction types. In addition, the proposal would require the institution to allow consumers to opt out of the payment of overdrafts resulting only from ATM withdrawals and point-of-sale debit card transactions.

segregating the required content from other disclosures may overemphasize the importance of the disclosure to the consumer in comparison to other information about the account that the consumer is given at that time. In contrast, consumers may benefit from a more conspicuous opt-out notice when the notice is provided on the periodic statement once the consumer has incurred fees. As noted above, the Board expects to conduct consumer testing of the proposed sample form following issuance of this proposal, which may include exploring how the opt-out notice may be presented in a manner that complies with the regulation's general clear and conspicuous requirements under § 230.3, including formatting methods.

10(c) Timing

Proposed § 230.10(c) sets forth timing requirements for providing an opt-out notice. The opt-out notice must initially be provided before the overdraft service is provided and overdraft fees are imposed on the consumer's account. For example, notice may be given at the time of account opening, either as part of the deposit account agreement or in a stand-alone document. Some institutions, however, do not enroll consumers in their overdraft service until some time after account opening, after the consumer has maintained his or her account in good standing for a certain period of time. Thus, institutions may provide the opt-out notice closer to the time in which overdraft services would be added to the consumer's account. The proposed rule would allow this later notice so long as it is provided, and the consumer has a reasonable opportunity to exercise the opt-out right, before the institution imposes any fees in connection with paying an overdraft.

The Board believes that providing an opt-out notice only at account opening may have limited effectiveness. For example, consumers may not focus on the significance of the information at account opening because they may assume they will not overdraw the account.[12] Thus, under both the Board's 2008 Regulation AA proposal and this proposed rule, institutions must also provide consumers notice of the right to opt-out of their institution's payment of overdrafts at a time when the consumer is more likely to be focused on the cost impact of the service, specifically after the consumer has overdrawn the account and fees have been assessed on the account. Proposed § 230.10(c)(2)(i) generally requires institutions to provide a notice meeting the content requirements of § 230.10(b) on each periodic statement reflecting the assessment of any overdraft fee or charge. In addition, pursuant to authority under section 269 of TISA, the proposed rule requires that if the notice is included on the periodic statement, it must be provided in close proximity to the aggregate fee disclosures required under § 230.11(a) to ensure that these related disclosures are presented together.

Alternatively, many institutions notify consumers promptly after paying an overdraft of the fact of the overdraft and the amount the consumer's account is overdrawn. While this separate notice is not required by Regulation DD (it is considered a best practice under the February 2005 Joint Guidance), institutions providing an opt-out notice at this time would also be deemed to comply with the timing requirements of this proposed rule. *See* proposed § 230.10(c)(2)(ii). Institutions that elect to provide the opt-out disclosure on a separate notice sent following the institution's payment of an overdraft need only provide the opt-out notice once per statement period. For example, assume a statement cycle is for a calendar month. If a consumer overdraws on the account at the beginning of the month and receives an opt-out notice shortly after the overdraft is paid, the institution is not required to provide another opt-out notice for any additional overdrafts that occur during that statement period.

As noted above, the Board's proposal would require that institutions provide the same content in proposed § 230.10(b) for all opt-out notices to ensure uniform notices and because consumers may not see the initial opt-out notice. However, the Board is cognizant of the compliance burden imposed on institutions from the proposed content requirements. In addition, the Board recognizes that consumers may not require all of the information in proposed § 230.10(b) in the notices following an individual overdraft. For example, the consumer may not need to be reminded that he or she may incur an overdraft fee for a small dollar overdraft if the periodic statement reflects both the fee and the amount of the transaction that caused the consumer to overdraw the account. Similarly, the amount of the fee may not need to be included in the opt-out notice if the transaction history on the statement reflects fees charged to the account, including for paying an overdraft.

Comment is requested on the content requirements of the opt-out notice, and the burden to institutions and benefits to consumers of providing all of the proposed content in each notice, including the information about alternatives to overdraft services. Comment is also requested regarding whether consumers should receive the same content for all opt-out notices, regardless of when a notice is provided, or whether the rule should permit institutions to exclude some of the required content in subsequent notices. For example, if the information about alternatives to overdraft services is retained generally, should this information be excluded from periodic statements. In addition, comment is requested on the burden to institutions of requiring that the opt-out disclosures appear in close proximity to the fees. The Board also intends to explore these issues through its consumer testing of the opt-out notice following the issuance of this proposal.

The Board anticipates that the requirement to provide notice before overdraft fees are assessed would apply only to accounts opened after the effective date of the final rule. Thus, depository institutions would not be required to provide initial opt-out notices to existing customers. Nonetheless, the requirement to provide subsequent notice of the opt-out after the consumer has overdrawn the account and fees have been assessed on the account would apply to all accounts after the effective date of the final rule, including those existing as of the effective date of the rule.

Section 230.11 Additional Disclosure Requirements Regarding Overdraft Services

11(a) Disclosure of Total Fees on Periodic Statements

Applicability of Aggregate Fee Disclosures

Although periodic statements are not required under TISA, institutions that do provide such statements are required to disclose fees or charges imposed on

[12] This behavior is referred to as ''hyperbolic discounting.'' *See* Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers,* 80 Tex. L. Rev. 451, 467–478 (2008) (discussing consumers' tendency to underestimate their future credit card usage when they apply for a card and thereby failing to adequately anticipate the costs of the product, and citing Shane Frederick, George Loewenstein & Ted O'Donoghue, *Time Discounting and Time Preference: A Critical Review,* 40 J. Econ. Literature 351, 366–67 (2002); Ted O'Donoghue & Matthew Rabin, *Doing It Now or Later,* 89 Am. Econ. Rev. 103, 103, 111 (1999) (explaining people's preference for delaying unpleasant activities and accepting immediate rewards despite their knowledge that the delay may lessen potential future rewards or increase potential adverse consequences)).

the account during the statement period. *See* 12 U.S.C. 4307(3) and 12 CFR 230.6(a)(3). Section 230.11(a) further requires institutions that promote the payment of overdrafts in an advertisement to provide aggregate dollar amount totals for overdraft fees and for returned item fees, both for the statement period as well as for the calendar year to date. Under the proposed rule, § 230.11(a) is amended to require all institutions to provide these fee disclosures, whether or not they promote the payment of overdrafts.

As originally proposed in May 2004, all institutions would have been required to separately disclose the total dollar amount of overdraft fees and the total dollar amount of returned-item fees for the statement period and for the calendar year to date. Most industry commenters opposed the proposal, stating that it would be costly and provide little benefit to consumers. The majority of industry commenters stated that if the Board adopted such a requirement, it should apply to all institutions and not just institutions that market overdraft services. Some of these commenters stated that a rule based on ''marketing'' would be too vague, while others asserted that if the Board believed the cost disclosures are useful, they would be just as beneficial to consumers regardless of whether the overdraft service is marketed. *See* 70 FR at 29,588.

In limiting the aggregate fee disclosures to institutions that market overdraft services in the May 2005 final rule, the Board stated its intention to avoid imposing compliance burdens on institutions that pay overdrafts infrequently, such as institutions that only pay overdrafts on an ad hoc basis. *See* 70 FR at 29,589. To address industry concerns that a rule based on marketing would be too vague to administer, the final rule also specified certain types of communications and practices that would not trigger the requirement for disclosing aggregate fees on periodic statements, including responding to consumer-initiated inquiries about deposit accounts or overdrafts or making disclosures that are required by federal or other applicable law. *See* § 230.10(a)(2).

Since issuance of the May 2005 final rule, Board staff and staff of other federal banking agencies have received a number of questions and requests for more guidance about when an institution is deemed to be promoting the payment of overdrafts in an advertisement to trigger the aggregate fee disclosure requirements. Compliance issues have most often been raised by financial institutions that are concerned that implementing the best practices recommended by the February 2005 Joint Guidance may lead to a determination that they are promoting their overdraft service. For example, Board staff has received a number of inquiries about how institutions may provide notices informing consumers about their ability to opt out of an institution's overdraft service without being considered to be promoting the service. Similarly, an institution may want to inform consumers of less costly alternatives to the institution's overdraft service as recommended by the February 2005 Joint Guidance, but refrain from doing so because they may inadvertently trigger the aggregate fee disclosure requirements under § 230.11(a). Based on further analysis, the Board is concerned that limiting the scope of the rule to institutions that market the service may have led to the unintended consequence of discouraging transparency by depository institutions regarding their overdraft payment practices.

In addition, although the rule's application only to institutions that market overdraft services was intended to avoid imposing compliance burdens on institutions that pay overdrafts infrequently, the Board is concerned that the vast majority of institutions may no longer pay overdrafts on an entirely ''ad hoc'' basis, but rather automate most of their overdraft payment decision process, leading to more frequent payment of overdrafts. Available data reviewed by Board staff indicates that the percentage of accountholders with one or more overdrafts paid during a calendar year appears to be consistent across institutions, whether or not an institution promotes its overdraft service. Thus, a significant number of consumers who use overdraft services on a regular basis do not receive the benefit of the aggregate fee disclosures which might otherwise help them in evaluating their approach to account management and determine whether other types of accounts or services would be more appropriate for their needs. Moreover, the Board notes that the ability of consumers to compare effectively the terms of accounts is potentially undercut by a rule that distinguishes between institutions that promote overdraft services and those that do not.

In light of the concerns noted above, the Board is proposing to require all institutions to provide aggregate dollar amount totals of fees for paying overdrafts and for fees for returning items unpaid on periodic statements provided to consumers, pursuant to its authority under Sections 268 and 269 of TISA. *See* § 230.11(a)(1). As under the current rule, institutions must provide these totals for both the statement period and the calendar year to date. *See* § 230.11(a)(2). Comment is requested on the potential benefits to consumers and compliance burden for institutions for the proposed approach.

Format of Aggregate Fee Disclosures

Board staff's review of current periodic statement disclosures for institutions that promote overdraft services indicates the aggregate fee totals are often disclosed in a manner that may not be effective in informing consumers of the totals. Accordingly, pursuant to its authority under Section 269 of TISA, the Board is proposing to require that these disclosures be provided in close proximity to fees identified under § 230.6(a)(3). *See* proposed § 230.11(a)(3). For example, the aggregate fee totals could appear immediately after the transaction history on the periodic statement reflecting the fees that have been imposed on the account during the statement period. The proposed format requirement has been informed to a significant degree by the Board's consumer testing in the context of credit card disclosures. In that testing, consumers consistently reviewed transactions identified on their periodic statements and noticed totals for fees and interest charges when they were grouped together with transactions. *See* 72 FR at 32996. Similarly, the Board believes that the requirement to provide the aggregate cost disclosures for overdraft and returned item fees will be more noticeable to consumers when grouped together with the itemized fees, thus enabling them to act as appropriate to manage their accounts effectively. In addition, the proposed rule requires the information to be presented in a tabular format similar to the proposed interest charge and fees total disclosures under the Board's June 2007 proposal under Regulation Z. *See* 72 FR at 32996, 33052; proposed 12 CFR 226.7(b)(6). The proposal includes two alternatives for Sample Form B–11 to illustrate how institutions may provide the aggregate cost information on their periodic statements. Following issuance of this proposal, the Board intends to conduct additional consumer testing to test the format, placement, and content of this periodic statement disclosure.

The proposal contains additional revisions to the provisions in § 230.11(a) and accompanying staff commentary to reflect the revised scope of institutions subject to the disclosure requirement, including deletion as unnecessary of the

examples in § 230.11(a)(2) of communications that would not trigger the aggregate fee disclosure requirement.

11(b) Advertising Disclosures for Overdraft Services

Section 230.11(b) contains a list of communications about the payment of overdrafts that are not subject to additional advertising disclosures. The Board proposes to add a new example under § 230.11(b) to include the proposed opt-out notice under § 230.10 of this rule. *See* proposed § 230.11(b)(2)(xii).

11(c) Disclosure of Account Balances

Section 230.11(b)(1) currently requires institutions that promote the payment of overdrafts to include certain disclosures in their advertisements about the service to avoid confusion between overdraft services and traditional lines of credit. The May 2005 final rule provided additional guidance in the staff commentary in the form of examples of institutions promoting the payment of overdrafts and stated that an institution must include the additional advertising disclosures if it ''discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed on an automated system, such as a telephone response machine, ATM screen or the institution's Internet site.'' *See* comment 11(b)–1.iii; *see also* § 230.11(b)(1); 70 FR at 29,590. To facilitate responsible use of overdraft services and ensure that consumers receive accurate information about their account balances, the Board is proposing additional restrictions on account balances that may be disclosed in response to a consumer inquiry. Specifically, to avoid consumer confusion with respect to account balances disclosed in response to an inquiry, proposed § 230.11(c) would prohibit institutions from including in the consumer's disclosed balance any funds the institution may provide to cover an overdraft item. The proposed provision would apply to any automated system used by an institution to provide balance information. The proposed rule would not apply to in-person discussions or telephone discussions or Internet chats with live personnel due to concerns about the compliance burden associated with monitoring individual conversations and responses. Of course, such discussions may not be deceptive.

The proposed provision implements the prohibition in TISA § 263(e) (12 U.S.C. 4303(e)) on misleading or inaccurate advertisements, announcement, or solicitations relating to a deposit account. Thus, under proposed § 230.11(c), institutions must disclose an account balance that solely includes funds that are available for the consumer's immediate use or withdrawal, and may not include any additional amount that the institution may provide to cover an overdraft. For example, as part of its overdraft service, an institution may add a $500 cushion or overdraft limit to the consumer's account balance when determining whether to pay an overdrawn item; the additional $500 could not be included in this balance disclosed to the consumer in response to an inquiry. The proposed provision incorporates a best practice recommended by the February 2005 Joint Guidance. Similarly, as provided in the February 2005 Joint Guidance, institutions may, at their option, disclose a second balance that includes funds that may be advanced through the institution's overdraft service, provided that the institution prominently discloses at the same time that the second balance includes funds provided by the institution to cover overdrafts.

Proposed comment 11(c)–1 clarifies that for purposes of this provision, the institution may, but need not, include funds that are deposited in the consumer's account, such as from a check, but that are not yet made available for withdrawal in accordance with the funds availability rules under the Board's Regulation CC (12 CFR part 229). Similarly, the balance may, but need not, include any funds that are held by the bank to satisfy a prior obligation of the consumer (for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the bank has not settled). The proposed comment recognizes that the methods used by depository institutions for determining the balances that are available for the consumer's use or withdrawal may vary significantly by institution. For example, smaller institutions may only consider a balance that reflects the ledger balance for the consumer's account at the end of the previous day after the institution has completed its processing activities. Other institutions may update the balance on a near-or real-time basis to reflect recent transactions that have been authorized, but have not been presented for settlement. The proposed comment is intended to make clear that institutions are not expected to reconfigure their internal systems to provide ''real-time'' balance disclosures. Regardless of the transactions that are reflected in the account balance disclosed to consumers, the proposed rule is intended only to require that the balance must not include any additional amounts that the institution may provide to pay an overdraft.

Proposed comment 11(c)–2 provides that the balance disclosure requirement applies to *any* automated system through which the consumer requests a balance, including, but not limited to, a telephone response machine (such as an interactive voice response system), at an ATM (both on the ATM screen and on receipts), or on an institution's Internet site (other than live chats with an account representative). The proposed comment further clarifies that the reference to ATM inquiries applies equally to inquiries at ATMs owned or operated by a consumer's account-holding institution, as well as to inquiries at foreign ATMs, including those operated by non-depository institutions.

While the Board considered addressing concerns about potentially deceptive balances under its separate rulemaking authority under Section 5(a) of the FTC Act (15 U.S.C. 45(n)), the Board is proposing to address this issue under its TISA authority because such rules (if similarly adopted under the NCUA's separate authority under TISA, *see* 12 CFR part 707) would also extend to state-chartered credit unions.[13] Nevertheless, the Board believes that adoption of this rule under TISA would not preclude a separate determination by a federal banking agency that it is a deceptive practice under the FTC Act to disclose a single balance that includes funds that an institution may provide to cover an overdraft, if the institution does not state that fact.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not

[13] The Board notes that rules promulgated by the NCUA under the FTC Act do not apply to state-chartered credit unions. As noted above, following the Board's adoption of final rules under Regulation DD, NCUA intends to issue substantially similar amendments to 12 CFR part 707.

have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. Such disclosures allow consumers to make meaningful comparisons between different accounts and also allow consumers to make informed judgments about the use of their accounts. 12 U.S.C. 4301. TISA requires the Board to prescribe regulations to carry out the purpose and provisions of the statute. 12 U.S.C. 4308(a)(1).

The Board is revising Regulation DD to set forth content, timing and format requirements for a notice provided to consumers about their right to opt out of an institution's overdraft service. The proposed requirements are intended to ensure that consumers receive effective disclosures about the opt-out right. In addition, current requirements for disclosing totals for overdraft and returned item fees on periodic statements would be expanded to apply to all institutions and not solely to institutions that promote the payment of overdrafts. Thus, all consumers that use overdraft services will receive additional information about fees to help them better understand the costs associated with their accounts, regardless of whether the service is marketed to them. Lastly, the proposed rule would ensure that consumers are not misled about the funds they have available for a transaction by requiring institutions that provide balance information through an automated system in response to a consumer inquiry, to only include funds available for the consumer's immediate use or withdrawal pursuant to the terms of the account agreement, and not any funds that may be advanced through the institution's overdraft service.

2. *Small entities affected by the proposed rule.* Approximately 12,117 depository institutions in the United States that must comply with TISA have assets of $150 million or less and thus are considered small entities for purposes of the RFA, based on 2007 call report data. Approximately 4,774 are institutions that must comply with the Board's Regulation DD; approximately 7,343 are credit unions that must comply with NCUA's Truth in Savings regulations which must be substantially similar to the Board's Regulation DD.

Under the proposed rule, all small depository institutions that pay overdrafts will have to revise their disclosures both at account opening (or before the overdraft service is provided) and on periodic statements, to reflect the proposed consumer right to opt out. (The rule provides alternative means for complying with the periodic statement opt-out disclosure requirement, such as by providing the opt-out disclosure on a notice sent promptly after an overdraft. To the extent a depository institution elects to comply with this alternative means, it will have to revise those disclosures, as appropriate.) The Board notes, however, that some depository institutions likely already provide some form of consumer opt-out based on their implementation of best practices under the February 2005 Joint Guidance.

In addition, institutions that did not previously revise their periodic statement disclosures to comply with the prior May 2005 Regulation DD amendments because they did not promote their overdraft service will need to do so to reflect aggregate overdraft and aggregate returned-item fees for the statement period and year to date. Lastly, institutions will have to reprogram their automated systems to provide balances that exclude additional funds the institution may provide to cover an overdraft in response to consumer balance inquiries, if the institution has not done so as previously recommended by the February 2005 Joint Guidance.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed revisions to Regulation DD require all depository institutions to provide consumers notice of their right to opt out of the institution's overdraft service before the service is provided, and on each periodic statement reflecting an overdraft fee or charge (or alternatively, on a notice sent promptly after an overdraft informing the consumer of that fact). In addition, as discussed in more detail above, institutions that have not previously provided total dollar amounts of fees imposed on the account for paying overdrafts and total dollar amounts of fees for returning items unpaid will be required to do so for both the statement period and the calendar year to date. Disclosures of account balances that include funds that the institution may provide to cover an overdraft will be prohibited, unless the institution specifically discloses that fact.

4. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation DD.

5. *Significant alternatives to the proposed revisions.* The Board solicits comment about additional ways to reduce regulatory burden associated with this proposed rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Federal Reserve by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this proposed rulemaking is found in 12 CFR part 230. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0271.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation DD, including for-profit financial institutions and small businesses.

Section 269 of the Truth in Savings Act (TISA) (12 U.S.C. 4308) authorizes the Board to issue regulations to carry out the provisions of TISA. TISA and Regulation DD require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield earned during those statement periods. The act and regulation mandate the methods by which institutions determine the account balance on which interest is calculated. They also contain rules about advertising deposit accounts. To ease the compliance cost (particularly for small entities), model clauses and sample forms are appended to the regulation. Depository institutions are required to retain evidence of compliance for twenty-four months, but the regulation does not specify types of records that must be retained.

Regulation DD applies to all depository institutions except credit unions. Credit unions are covered by a substantially similar rule issued by the National Credit Union Administration. Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation DD only for

Board-supervised institutions. Regulation DD defines Board-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the depository institutions for which they have administrative enforcement authority.

As mentioned in the preamble, the proposed rulemaking sets forth content, timing and format requirements for a notice provided to consumers about their right to opt out of an institution's overdraft service. Current requirements for disclosing totals for overdraft and returned item fees on periodic statements would be extended to apply to all institutions and not solely to institutions that promote the payment of overdrafts. The proposed rule would also require institutions that provide balance information in response to a balance inquiry by the consumer, to only include funds available for the consumer's immediate use or withdrawal without incurring an overdraft, and not any funds added through the institution's overdraft service.

The Board estimates that 1,172 respondents regulated by the Board would take, on average, 40 hours (one business week) to re-program and update their systems to comply with the proposed disclosure requirements. These disclosure requirements include opt-out disclosures for overdraft services (§ 230.10), disclosure of total fees on periodic statements (§ 230.11(a)), and disclosure of account balances (§ 230.11(c)). The Board estimates the total annual one-time burden to be 46,880 hours and believes that, on a continuing basis, there would be no increase in burden as the proposed disclosures would be sufficiently accounted for once incorporated into the current account disclosures (§ 230.4) and periodic statement disclosure (§ 230.6). To ease the compliance cost model clauses, B–10 consumer opt-out from overdraft services sample form (§ 230.10) and B–11 aggregate overdraft and returned item fees sample form (§ 230.11), are proposed in Appendix B.

The current total annual burden is estimated to be 176,177 hours for 1,172 Board-covered institutions. The proposed total annual burden is estimated to be 223,057 hours, an increase of 46,880 hours.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Board's burden estimates. Using the Board's method, the total estimated annual burden for all financial institutions subject to Regulation DD, including Board-supervised institutions, would be approximately 2,898,548 hours. The proposed amendments would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation DD by 772,000 hours to 3,670,548 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including depository institutions (of which there are approximately 19,300), potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation and staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Reporting and recordkeeping requirements, Truth in savings.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation DD, 12 CFR part 230, and the Official Staff Commentary, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Section 230.1 is amended by revising paragraph (a) to read as follows:

§ 230.1 Authority, purpose, coverage, and effect on state laws.

(a) *Authority.* This regulation, known as Regulation DD, is issued by the Board of Governors of the Federal Reserve System to implement the Truth in Savings Act of 1991 (the act), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 3201 *et seq.*, Pub. L. 102–242, 105 Stat. 2236). Information-collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. **[**7100–0255**]** **►**7100–0271**◄**.

* * * * *

3. Section 230.10 is added to read as follows:

§ 230.10 ►Opt-out disclosure requirements for overdraft services.

(a) *General rule.* If a depository institution provides a consumer the right to opt out of the institution's payment of overdrafts pursuant to the institution's overdraft service, as defined in 12 CFR 227.31(c), the institution must provide written notice of that right in accordance with the requirements of this section.

(b) *Format and content.* The notice described in paragraph (a) of this section must use a format substantially similar to Sample Form B–10, and include the following information:

(1) *Overdraft policy.* The categories of transactions for which a fee for paying an overdraft may be imposed;

(2) *Fees imposed.* The dollar amount of any fees or charges imposed for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn;

(3) *Potential impact of fee in relation to overdraft amount.* A statement that a fee may be charged for overdrafts as low as $1, or the lowest dollar amount for which the institution may charge an overdraft fee;

(4) *Limits on fees charged.* The maximum amount of overdraft fees or

charges that may be assessed per day and per statement period, or, if applicable, that there is no limit to the fees that can be imposed;

(5) *Disclosure of opt-out right.* An explanation of the consumer's right to opt out of the institution's payment of overdrafts, including the method(s) by which the consumer may exercise that right; and

(6) *Alternative payment options.* As applicable, a statement that the institution offers other alternatives for the payment of overdrafts. In addition, if the institution offers a line of credit subject to the Board's Regulation Z (12 CFR part 226) for the payment of overdrafts, the institution must also state that fact. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.

(c) *Timing.* As applicable, the notice described in paragraph (a) of this section must be provided:

(1) Prior to the institution's imposition of any fee for paying a check or other item when there are insufficient or unavailable funds in the consumer's account, provided that the consumer has a reasonable opportunity to exercise the opt-out right prior to the assessment of any fee for paying an overdraft; and

(2)(i) On each periodic statement reflecting any fee(s) or charge(s) for paying an overdraft, in close proximity to the disclosures required by § 230.11(a); or

(ii) At least once per statement period on any notice sent promptly after the institution's payment of an overdraft.◄

4. Section 230.11 is amended by revising the heading, paragraphs (a) (b)(2)(x) and (b)(2)(xi), and adding paragraphs (b)(2)(xii) and (c) to read as follows:

§ 230.11 Additional disclosure requirements [for institutions advertising the payment of overdrafts] ►for overdraft services.◄

(a) [Periodic statement disclosures] ►*Disclosure of total fees on periodic statements*◄—(1) *Disclosure of total fees*] ►*General*◄. [(i) Except as provided in paragraph (a)(2) of this section, if a depository institution promotes the payment of overdrafts in an advertisement, the] ►A depository◄ institution must separately disclose on each periodic statement►, as applicable◄:

[(A)] ►(i)◄ The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient funds and the account becomes overdrawn; and

[(B)] ►(ii)◄ The total dollar amount for all fees imposed on the account for returning items unpaid.

[(ii)] ►(2) *Totals required.*◄ The disclosures required by [this] paragraph ►(a)(1) of this section◄ must be provided for the statement period and for the calendar year to date [for any account to which the advertisement applies];

►(3) *Format requirements.* The aggregate fee disclosures required by paragraph (a) of this section must be disclosed in close proximity to fees identified under § 230.6(a)(3), using a format substantially similar to Sample Form B–11 in appendix B.◄

[(2) *Communications not triggering disclosure of total fees.* The following communications by a depository institution do not trigger the disclosures required by paragraph (a)(1) of this section:

(i) Promoting in an advertisement a service for paying overdrafts where the institution's payment of overdrafts will be agreed upon in writing and subject to the Board's Regulation Z (12 CFR part 226);

(ii) Communicating (whether by telephone, electronically, or otherwise) about the payment of overdrafts in response to a consumer-initiated inquiry about deposit accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, an ATM, or an institution's Internet site, is not a response to a consumer-initiated inquiry for purposes of this paragraph;

(iii) Engaging in an in-person discussion with a consumer;

(iv) Making disclosures that are required by federal or other applicable law;

(v) Providing a notice or including information on a periodic statement informing a consumer about a specific overdrawn item or the amount the account is overdrawn;

(vi) Including in a deposit account agreement a discussion of the institution's right to pay overdrafts;

(vii) Providing a notice to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or providing a general notice that items overdrawing an account may trigger a fee; or

(viii) Providing informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service.

(3) *Time period covered by disclosures.* An institution must make the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after an institution advertises the payment of overdrafts. An institution may disclose total fees imposed for the calendar year by aggregating fees imposed since the beginning of the calendar year, or since the beginning of the first statement period that year for which such disclosures are required.

(4) *Termination of promotions.* Paragraph (a)(1) of this section shall cease to apply with respect to a deposit account two years after the date of an institution's last advertisement promoting the payment of overdrafts applicable to that account.

(5) *Acquired accounts.* An institution that acquires an account must thereafter provide the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after the institution promotes the payment of overdrafts in an advertisement that applies to the acquired account. If disclosures under paragraph (a)(1) of this section are required for the acquired account, the institution may, but is not required to, include fees imposed prior to acquisition of the account.]

(b) * * *

* * * * *

(2) * * *

(x) A notice provided to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee; [or]

(xi) Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service[.]►; or

(xii) An opt-out notice regarding the institution's payment of overdrafts under § 230.10 of this part.◄

* * * * *

►(c) *Disclosure of account balances.* In response to an account balance inquiry by a consumer through an automated system, an institution must provide a balance that solely includes funds that are available for the consumer's immediate use or withdrawal, and may not include additional amounts that the institution may provide to cover an item when there are insufficient or unavailable funds in the consumer's account. The institution may, at its option, disclose a second account balance that includes such an additional amount, if the institution prominently indicates that this balance includes funds provided by the institution to cover overdrafts.◄

5. In Appendix B to Part 230, and new forms B–10 Overdraft Services Opt-Out Notice Sample Form and B–11 Aggregate Overdraft And Returned Item Fees Sample Form to read as follows:

Appendix B to Part 230—Model Clauses and Sample Forms

* * * * *

B-10 Overdraft Services Opt-Out Notice Sample Form

We provide overdraft services for your account. This means that if there is a debit to your account when your account does not have sufficient funds, we may pay your overdraft.

There are fees associated with our overdraft services:

- We will charge you a fee of $__ for each overdraft item that we pay, including ATM withdrawals, debit card purchases, checks, and in-person transactions.
- We may charge you this fee even if your overdraft amount is as low as $__.
- [We may also charge you additional daily fees of $__ for each day your account remains overdrawn.]
- [We can charge you a maximum of $__ in fees per day and $ __ per statement period for overdrawing your account.] [There is no limit to the amount of fees we can charge you for overdrawing your account per day/per statement period.]

You have the right to opt out of this service and tell us not to pay any overdrafts. If you do, however, you may have to pay a fee if you make transactions that are returned unpaid. You also have the right to tell us not to pay overdrafts for ATM withdrawals and debit card purchases, but to continue to pay overdrafts for other types of transactions.

We also offer less costly overdraft payment services that you may qualify for, including a line of credit. To opt out of our overdraft service, or to obtain information about other alternatives, call us at 1-800-XXX-XXXX or write us at [insert address].

B-11 Aggregate Overdraft and Returned Items Fee Sample Form

Alternative 1:

Summary of Overdraft and Returned Item Fees		
	Total For This Period	Total Year-to-Date
Total Overdraft Fees	$50.00	$75.00
Total Returned Item Fees	$0.00	$33.00

Alternative 2:

Summary of Overdraft and Returned Item Fees	
Total overdraft fees charged this period	$50.00
Total overdraft fees charged year-to-date	$75.00
Total returned item fees charged this period	$0.00
Total returned item fees charged year-to-date	$33.00

6. In Supplement I to part 230:

a. In Section 230.10, the heading is revised and new paragraphs 1. through 3. are added.

b. In Section 230.11 and Section 230.11(a), the headings are revised and paragraphs (a)(1)1. and (a)(1)2. are removed.

c. In Section 230.11, paragraphs (a)(1)3. through (a)(1)8. are redesignated as paragraphs (a)(1)1. through (a)(1)6., respectively.

d. In Section 230.11, new paragraphs (a)(1)2. and (a)(1)3. are revised.

e. In Section 230.11, new paragraphs (c)1. and (c)2. are added.

Supplement I to Part 230—Official Staff Interpretations

* * * * *

Section 230.10 Opt-out Disclosure Requirements for the Payment of Overdrafts

►1. *Disclosure of opt-out right.* Section 230.10 sets forth the disclosures that must be provided if a depository institution provides a consumer the right to opt out of the institution's payment of overdrafts. Institutions may be required to provide consumers with the right to opt out in accordance with federal or other applicable law. *See, e.g.*, § 227.31(a) of the Board's Regulation AA (12 CFR part 227).

2. *Methods of opting out.* Reasonable methods that a consumer may use to opt out of an institution's payment of overdrafts include mailing a form and calling a toll-free telephone number.

3. *Additional opt-out notice content.* In the opt-out notice provided under § 230.10(a) of this part, an institution may briefly describe the consequences of the consumer's election to opt out of the institution's payment of overdrafts. For example, the institution may state that if a consumer opts out, the consumer's payment may be denied, or returned unpaid, and that the consumer may incur returned item fees from both the institution as well as the payee.◄

* * * * *

Section 230.11 Additional Disclosures Regarding the Payment of Overdrafts

(a) Disclosure of total fees on periodic statements.

(a)(1) General.

* * * * *

2. *Fees for paying overdrafts.* [An institution that advertises the payment of overdrafts] ►Institutions◄ must disclose on periodic statements a total dollar amount for all fees charged to the account for paying overdrafts. The institution must disclose separate totals for the statement period and for the calendar year to date. The total dollar amount includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another account to avoid an overdraft, or fees charged when the institution has previously agreed in writing to pay items that overdraw the account and the service is subject to the Board's Regulation Z, 12 CFR part 226.

3. *Fees for returning items unpaid.* [An institution that advertises the payment of overdrafts must disclose a] ►The◄ total dollar amount ►of◄ [for all] fees ►for returning items unpaid must include all fees◄ charged to the account for dishonoring or returning checks or other items drawn on the account. The institution must disclose separate totals for the statement period and for the calendar year to date. Fees imposed when deposited items are returned are not included.

* * * * *

►(c) *Disclosure of account balances.*

1. *Funds available for consumer's immediate use or withdrawal.* For purposes of the balance disclosure requirement in § 230.11(c), an institution must generally disclose a balance that solely reflects the funds that are available for the consumer's immediate use or withdrawal, without the consumer incurring an overdraft. The balance disclosed may, but need not, include funds that are deposited in the consumer's account, such as from a check, that are not yet made available for withdrawal in accordance with the funds availability rules under the Board's Regulation CC (12 CFR part 229). In addition, the balance disclosed may, but need not, include any funds that are held by the institution to satisfy a prior obligation of the consumer (for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the bank has not settled).

2. *Balance inquiry channels.* The balance disclosure requirement in § 230.11 applies to any automated system through which the consumer requests a balance, including, but not limited to, a telephone response system, the institution's Internet site or an automated teller machine (ATM) (whether or not the ATM is owned or operated by the institution). If the balance is obtained at an

ATM, the disclosure requirement applies whether the balance is disclosed on the ATM screen or on a paper receipt.◀

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 2, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–10243 Filed 5–16–08; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0556; Directorate Identifier 2007–NM–028–AD]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With Honeywell Primus II RNZ–850( )/–851(–) Integrated Navigation Units

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to various aircraft equipped with certain Honeywell Primus II RNZ–850( )/–851( ) integrated navigation units (INUs). The existing AD, as one alternative for compliance, provides for a one-time inspection to determine whether a certain modification has been installed on the Honeywell Primus II NV–850 navigation receiver module (NRM), which is part of the INU. In lieu of accomplishing this inspection, and for aircraft found to have an affected NRM, that AD provides for revising the aircraft flight manual to include new limitations for instrument landing system approaches. That AD also requires an inspection to determine whether certain other modifications have been done on the NRM; and doing related investigative, corrective, and other specified actions, as applicable; as well as further modifications to address additional anomalies. This proposed AD would extend the compliance time for a certain inspection and associated actions. This proposed AD would also revise the applicability to include additional affected INUs. This proposed AD results from reports indicating that erroneous localizer and glideslope indications have occurred on certain aircraft equipped with the subject INUs. We are proposing this AD to ensure that the flight crew has accurate localizer and glideslope deviation indications. An erroneous localizer or glideslope deviation indication could lead to the aircraft making an approach off the localizer, which could result in impact with an obstacle or terrain.

DATES: We must receive comments on this proposed AD by July 3, 2008.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact *https://pubs.cas.honeywell.com* or contact Honeywell International, Inc., Commercial Electronic Systems, 21111 North 19th Avenue, Phoenix, Arizona 85027–2708.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5345; fax (562) 627–5210.

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–2008–0556; Directorate Identifier 2007–NM–028–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On October 13, 2006, we issued AD 2006–22–05, amendment 39–14802 (71 FR 62907, October 27, 2006), for various aircraft equipped with certain Honeywell Primus II RNZ–850( )/–851( ) integrated navigation units (INUs). That AD, as one alternative for compliance, provides for a one-time inspection to determine whether a certain modification has been installed on the Honeywell Primus II NV–850 navigation receiver module (NRM), which is part of the INU. In lieu of accomplishing this inspection, and for aircraft found to have an affected NRM, that AD provides for revising the aircraft flight manual to include new limitations for instrument landing system approaches. That AD also requires an inspection to determine whether certain other modifications have been done on the NRM; and doing related investigative, corrective, and other specified actions, as applicable; as well as further modifications to address additional anomalies. That AD resulted from reports indicating that erroneous glideslope indications have occurred on certain aircraft equipped with the subject INUs. We issued that AD to ensure that the flightcrew has an accurate glideslope deviation indication. An erroneous glideslope deviation indication could lead to the aircraft making an approach off the glideslope, which could result in impact with an obstacle or terrain.

Actions Since Existing AD Was Issued

Since we issued AD 2006–22–05, we have become aware of the need to change three aspects of the existing AD:

1. Additional INU part numbers need to be added to the applicability.

2. Paragraph (j) of the existing AD requires related investigative, corrective, and other specified actions for certain NRMs before further flight. Our intention was to allow the full compliance time for both the inspection for the discrepant NRMs and the other associated actions for those NRMs.

3. We have determined that the existing AD's compliance time for the inspection and other associated actions (paragraph (j) in the NPRM) may be extended to 30 months and still provide an adequate level of safety for the fleet.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other products of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–22–05 and retain its requirements, with revised compliance times for a certain inspection and other associated actions. This proposed AD would also revise the applicability to include additional affected INUs.

Additional Changes to Existing AD

Where paragraph (i) of the existing AD incorrectly refers to paragraph (k), the proper reference should be to paragraph (j). We have revised this proposed AD accordingly.

We also clarified the unsafe condition by also referring to the localizer (in addition to the glideslope).

Costs of Compliance

There are about 3,063 aircraft of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The manufacturer states that it will supply required parts to existing customers at no cost.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per aircraft	Number of U.S.-registered aircraft	Fleet cost
Inspection for NRM modification level.	1	$80	$0	$80	Up to 1,500	Up to $120,000.
AFM revision	1	80	0	80	Up to 1,500	Up to $120,000.
Modification (to Mod T configuration).	1	80	0	80	Up to 1,500	Up to $120,000.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed actions specified in this NPRM, and that no operator would accomplish those actions in the future if this AD were not adopted. We have been advised, however, that the actions have already been done on some affected airplanes. Therefore, the future economic cost impact of this rule on U.S. operators is expected to be less than the cost impact figures indicated above.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14802 (71 FR 62907, October 27, 2006) and adding the following new airworthiness directive (AD):

Various Aircraft: Docket No. FAA–2008–0556; Directorate Identifier 2007–NM–028–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 3, 2008.

Affected ADs

(b) This AD supersedes AD 2006–22–05.

Applicability

(c) This AD applies to various aircraft, certificated in any category, equipped with any Honeywell Primus II RNZ–850( )/–851( ) integrated navigation unit (INU) identified in a service bulletin identified in Table 1 of this AD. The aircraft include but are not limited to BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes; Bombardier Model BD–700–1A10 series airplanes; Bombardier Model CL–215–6B11 (CL–415 variant) series airplanes; Cessna Model 560, 560XL, and 650 airplanes; Dassault Model Mystere-Falcon 50 series airplanes; AvCraft Dornier Model 328–100 and –300 series airplanes; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; Learjet Model 45

airplanes; Raytheon Model Hawker 800XP and Hawker 1000 airplanes; and Sikorsky Model S–76A, S–76B, and S–76C aircraft.

TABLE 1.—INUS AFFECTED BY THIS AD

INUs listed in Honeywell—	Revision—	Dated—
(1) Alert Service Bulletin 7510134–34–A0016	001	March 4, 2003.
(2) Service Bulletin 7510134–34–0018	Original	July 8, 2004.
(3) Alert Service Bulletin 7510100–34–A0034	Original	February 28, 2003.
(4) Alert Service Bulletin 7510100–34–A0035	Original	July 11, 2003.
(5) Service Bulletin 7510100–34–0037	Original	July 8, 2004.

Note 1: This AD applies to Honeywell Primus II RNZ–850( )/–851( ) INUs installed on any aircraft, regardless of whether the aircraft has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (o) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Unsafe Condition

(d) This AD results from reports indicating that erroneous localizer and glideslope indications have occurred on certain aircraft equipped with the subject INUs. We are issuing this AD to ensure that the flight crew has accurate localizer and glideslope deviation indications. An erroneous localizer or glideslope deviation indication could lead to the aircraft making an approach off the localizer, which could result in impact with an obstacle or terrain.

Compliance

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

Restatement of Certain Requirements of AD 2006–22–05

Compliance Time for Action

(f) For any INU identified in Table 2 of this AD: Within 5 days after March 11, 2003 (the effective date of AD 2003–04–06, which was superseded by AD 2006–22–05), accomplish the requirements of either paragraph (g) or (h) of this AD. After December 1, 2006 (the effective date of AD 2006–22–05), only accomplishing the requirements of paragraph (g) of this AD is acceptable for compliance with this paragraph.

TABLE 2.—INUS IDENTIFIED IN AD 2006–22–05

P/N 7510100–811 through 7510100–814 inclusive.
P/N 7510100–831 through 7510100–834 inclusive.
P/N 7510100–901 through 7510100–904 inclusive.

TABLE 2.—INUS IDENTIFIED IN AD 2006–22–05—Continued

P/N 7510100–911 through 7510100–914 inclusive.
P/N 7510100–921 through 7510100–924 inclusive.
P/N 7510100–931 through 7510100–934 inclusive.

Inspection to Determine Part Number

(g) For any INU identified in Table 2 of this AD: Perform a one-time general visual inspection of the modification plate for the Honeywell Primus II NV–850 Navigation Receiver Module (NRM); part number 7510134–811, –831, –901, or –931; which is part of the Honeywell Primus II RNZ–850( )/–851( ) INU; to determine if Mod L has been installed. The modification plate is located on the bottom of the Honeywell Primus II RNZ–850( )/–851( ) INU, is labeled NV–850, and contains the part number and serial number for the Honeywell Primus II NV–850 NRM. If Mod L is installed, the letter L will be blacked out. Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003, is an acceptable source of service information for the inspection required by this paragraph.

(1) If Mod L is installed, before further flight, do paragraph (h) or (j) of this AD. After December 1, 2006, only accomplishment of paragraph (j) is acceptable for compliance with this paragraph.

(2) If Mod L is not installed, no further action is required by this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Aircraft Flight Manual (AFM) Revision

(h) For aircraft having an INU identified in Table 2 of this AD: Revise the Limitations section of the AFM to include the following statements (which may be accomplished by inserting a copy of the AD into the AFM):

''Flight Limitations

When crossing the Outer Marker on glideslope, the altitude must be verified with the value on the published procedure.

For aircraft with a single operating glideslope receiver, the approach may be flown using normal procedures no lower than Localizer Only Minimum Descent Altitude (MDA).

For aircraft with two operating glideslope receivers, the aircraft may be flown to the published minimums for the approach using normal procedures if both glideslope receivers are tuned to the approach and both crew members are monitoring the approach using independent data and displays.''

Parts Installation

(i) For aircraft having an INU identified in Table 2 of this AD: As of March 11, 2003, no person may install a Honeywell Primus II NV–850 NRM on which Mod L has been installed, on the Honeywell Primus II RNZ–850( )/–851( ) INU of any aircraft, unless paragraph (h) or (j) of this AD is accomplished. As of December 1, 2006, only accomplishment of paragraph (j) is acceptable for compliance with this paragraph.

Inspection to Determine Modification Level of NRM

(j) For any INU identified in Table 2 of this AD on which Mod L was found to be installed during the inspection required by paragraph (g) of this AD, or for aircraft on which paragraph (h) of this AD was accomplished: Within 30 months after December 1, 2006, do an inspection of the modification plate on the Honeywell Primus II NV–850 NRM; part number 7510134–811, –831, –901, or –931; which is part of the Honeywell Primus II RNZ–850( )/–851( ) INU; to determine if Mod L, N, P, R, or T is installed. The modification plate located on the bottom of the Honeywell Primus II RNZ–850( )/–851( ) INU is labeled NV–850, and contains the part number and serial number for the Honeywell Primus II NV–850 NRM. If Mod L, N, P, R, or T is installed, the corresponding letter on the modification plate will be blacked out. Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003, is an acceptable source of service information for this inspection. If Mod T is installed, no further action is required by this paragraph. If Mod L, N, P, or R is installed, within 30 months after December 1, 2006, do all applicable related investigative, corrective, and other specified actions, in accordance with the Accomplishment Instructions of Honeywell

Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003; and Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004; to ensure that the NRM is at the Mod T configuration. Once the actions in this paragraph are completed, the AFM revision required by paragraph (h) of this AD may be removed from the AFM.

(k) If the inspection specified in paragraph (j) of this AD is done within the compliance time specified in paragraph (f) of this AD, paragraph (g) of this AD does not need to be done.

New Requirements of This AD

Inspection to Determine Mod Level

(l) *For any INU that is not identified in Table 2 of this AD:* Within 30 months after the effective date of this AD, perform a one-time general visual inspection of the modification plate for the Honeywell Primus II NV–850 Navigation Receiver Module (NRM); part number 7510134–811, –831, –901, or –931; which is part of the Honeywell Primus II RNZ–850( )/–851( ) INU; to determine whether Mod L, N, P, R, or T is installed. The modification plate located on the bottom of the Honeywell Primus II RNZ–850( )/–851( ) INU is labeled NV–850, and contains the part number and serial number for the Honeywell Primus II NV–850 NRM. If Mod L, N, P, R, or T is installed, the corresponding letter on the modification plate will be blacked out. Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003, is an acceptable source of service information for this inspection.

(1) If Mod T is installed: No further action is required by this paragraph.

(2) If Mod L, N, P, or R is installed: Within 30 months after the effective date of this AD, do all applicable related investigative, corrective, and other specified actions, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003; and Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004; to ensure that the NRM is at the Mod T configuration.

Note 3: For more information on the inspection specified in paragraphs (g), (j), and (l) of this AD, refer to Honeywell Technical Newsletter A23–3850–001, Revision 1, dated January 21, 2003.

Parts Installation

(m) For aircraft that have an INU that is not identified in Table 2 of this AD: As of the effective date of this AD, no person may install a Honeywell Primus II NV–850 NRM on which Mod L has been installed on the Honeywell Primus II RNZ–850( )/–851( ) INU of any aircraft, unless paragraph (l) is accomplished.

No Report

(n) Where Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003 (or any of the related service information referenced therein), specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on May 10, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–11104 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0555; Directorate Identifier 2008–NM–074–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) Series Airplanes and Model CL–600–2D24 (Regional Jet Series 900) Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2C10 (Regional Jet series 700 & 701) series airplanes and Model CL–600–2D24 (Regional Jet series 900) series airplanes. The existing AD currently requires revising the Airworthiness Limitations section of the Instructions of Continued Airworthiness by incorporating new repetitive inspections and an optional terminating action for the repetitive inspections, and repairing any crack. This proposed AD would clarify the applicability of the existing AD. This proposed AD results from reports of hydraulic pressure loss in either the number 1 or number 2 hydraulic system due to breakage or leakage of hydraulic lines in the aft equipment bay and reports of cracks on the aft pressure bulkhead web around these feed-through holes. We are proposing this AD to prevent loss of hydraulic pressure, which could result in reduced controllability of the airplane, and to detect and correct cracks on the aft pressure bulkhead web, which could result in reduced structural integrity of the aft pressure bulkhead.

DATES: We must receive comments on this proposed AD by June 18, 2008.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Pong Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7324; fax (516) 794–5531.

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–2008–0555; Directorate Identifier 2008–NM–074–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy

aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On June 10, 2005, we issued AD 2005–13–02, amendment 39–14138 (70 FR 35987, June 22, 2005), for certain Bombardier Model CL–600–2C10 (Regional Jet series 700 & 701) series airplanes, and Model CL–600–2D24 (Regional Jet series 900) series airplanes. That AD requires revising the Airworthiness Limitations section of the Instructions of Continued Airworthiness by incorporating new repetitive inspections and an optional terminating action for the repetitive inspections, and repairing any crack. That AD resulted from reports of hydraulic pressure loss in either the number 1 or number 2 hydraulic system due to breakage or leakage of hydraulic lines in the aft equipment bay and reports of cracks on the aft pressure bulkhead web around these feed-through holes. We issued that AD to prevent loss of hydraulic pressure, which could result in reduced controllability of the airplane, and to detect and correct cracks on the aft pressure bulkhead web, which could result in reduced structural integrity of the aft pressure bulkhead.

Actions Since Existing AD Was Issued

Since we issued AD 2005–13–02, we have determined that is it necessary to clarify the affected airplanes in paragraph (c), ''Applicability,'' of that AD. Paragraph (c) excludes ''airplanes on which Modification Summaries 670T00494 or 670T11944; and Modification Summary 670T11508 or Bombardier Service Bulletin 670BA–29–008, dated March 12, 2004, or Revision A, dated May 5, 2004; has been incorporated in production.'' In the case of AD 2005–13–02, Bombardier Service Bulletin 670BA–29–008 affects only airplanes in service, not airplanes ''in production.'' Therefore, for clarification purposes, we have revised paragraph (c) of the existing AD by removing the phrase ''in production.''

U.S. Type Certification of Airplanes

These airplanes are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

This proposed AD would revise AD 2005–13–02 and would retain the requirements of the existing AD. This proposed AD would clarify the applicability of the existing AD.

Costs of Compliance

This proposed AD would affect about 116 airplanes of U.S. registry. The actions that are required by AD 2005–13–02 and retained in this proposed AD take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is $9,280, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14138 (70 FR 35987, June 22, 2005) and adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–0555; Directorate Identifier 2008–NM–074–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 18, 2008.

Affected ADs

(b) This AD revises AD 2005–13–02.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category, excluding those airplanes on which Modification Summaries 670T00494 or 670T11944; and Modification Summary 670T11508 or Bombardier Service Bulletin 670BA–29–008, dated March 12, 2004, or Revision A, dated May 5, 2004; has been incorporated.

TABLE 1.—APPLICABILITY

Bombardier model	Serial Nos.
(1) CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes	10003 through 10999 inclusive.

TABLE 1.—APPLICABILITY—Continued

Bombardier model	Serial Nos.
(2) CL–600–2D24 (Regional Jet Series 900) series airplanes	15001 through 15990 inclusive.

Unsafe Condition

(d) This AD resulted from reports of hydraulic pressure loss in either the number 1 or number 2 hydraulic system due to breakage or leakage of hydraulic lines in the aft equipment bay and reports of cracks on the aft pressure bulkhead web around these feed-through holes. We are issuing this AD to prevent loss of hydraulic pressure, which could result in reduced controllability of the airplane, and to detect and correct cracks on the aft pressure bulkhead web, which could result in reduced structural integrity of the aft pressure bulkhead.

Compliance

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

Restatement of Requirements of AD 2005–13–02

Revision of Airworthiness Limitations Section

(f) Within 30 days after July 27, 2005 (the effective date of AD 2005–13–02), revise the Airworthiness Limitations section of the Instructions of Continued Airworthiness by inserting a copy of the new repetitive inspections and an optional terminating action of Bombardier CRJ 700/900 Series Temporary Revision (TR) MRM2–129, dated June 1, 2004, into Section 1.4, Part 2 (Airworthiness Limitations), of Bombardier Regional Jet Model CL–600–2C10 and CL–600–2D24 Maintenance Requirements Manual, CSP B–053. Thereafter, except as provided in paragraph (h)(2) or (i) of this AD, no alternative structural inspection intervals may be approved for this aft pressure bulkhead and pylon pressure pan in the vicinity of the hydraulic fittings and the hydraulic tube adapters.

(g) When the information in TR MRM2–129, dated June 1, 2004, is included in the general revisions of the Maintenance Requirement Manual, the general revisions may be inserted into the Airworthiness Limitations section of the Instructions of Continued Airworthiness and this TR may be removed.

Corrective Action

(h) If any crack is found during any inspection done in accordance with Bombardier CRJ 700/900 Series TR MRM2–129, dated June 1, 2004, or the same inspection specified in the general revisions of the Maintenance Requirement Manual, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Before further flight, repair the crack in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(2) At the applicable time specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD, revise the Airworthiness Limitations section of the Instructions of Continued Airworthiness by inserting a copy of the inspection requirements for the repair required by paragraph (h)(1) of this AD into Section 1.4, Part 2 (Airworthiness Limitations), of Bombardier Regional Jet Model CL–600–2C10 and CL–600–2D24 Maintenance Requirements Manual, CSP B–053. Thereafter, except as provided in paragraph (i) of this AD, no alternative structural inspection intervals may be approved for this aft pressure bulkhead and pylon pressure pan in the vicinity of the hydraulic fittings, and the hydraulic tube adapters.

(i) If the repair required by paragraph (h)(1) of this AD is done after the effective date of this AD: Revise the Airworthiness Limitations section within 12 months after the repair.

(ii) If the repair required by paragraph (h)(1) of this AD was accomplished before July 27, 2005: Revise the Airworthiness Limitations section within 12 months after the repair or 30 days after July 27, 2005, whichever occurs later.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, New York ACO, FAA, ATTN: Pong Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7324; fax (516) 794–5531; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Related Information

(j) Canadian airworthiness directive CF–2004–14, dated July 20, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on May 8, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–11112 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0052; Directorate Identifier 2008–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Engine Components Inc. (ECi) Reciprocating Engine Cylinder Assemblies

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, ''Parallel Valve'' reciprocating engines, with certain Engine Components Inc. (ECi) cylinder assemblies, part number (P/N) AEL65102 series ''Titan'', installed. This proposed AD would require initial and repetitive visual inspections and compression tests to detect cracks at the head-to-barrel interface, replacement of cylinder assemblies found cracked, and replacement of certain cylinder assemblies, at new reduced times-in-service. This proposed AD results from reports of 45 failures with head separations of ECi cylinder assemblies. We are proposing this AD to prevent loss of engine power due to cracks at the head-to-barrel interface in the cylinder assemblies and possible engine failure caused by separation of a cylinder head, which could result in loss of control of the aircraft.

DATES: We must receive any comments on this proposed AD by July 18, 2008.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

You can get the service information identified in this proposed AD from Engine Components, Inc., 9503 Middlex, San Antonio, TX 78217; Phone (800) 324–2359; fax (210) 820–8102.

FOR FURTHER INFORMATION CONTACT:

Peter W. Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76193; e-mail: *peter.w.hakala@faa.gov*; telephone (817) 222–5145; fax (817) 222–5785.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–0052; Directorate Identifier 2008–NE–01–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

In November 2005, we started receiving reports from the National Transportation Safety Board, FAA Flight Standards District Offices, and other FAA offices, of failures of ECi cylinder assemblies, P/N AEL65102 series, installed on Lycoming Engines models 320, 360, and 540 series, parallel valve reciprocating engines. ECi holds the Parts Manufacturer Approval (PMA) for the affected cylinder assemblies. Parallel valve Lycoming reciprocating engines are identified by the intake and exhaust valves in a parallel configuration. We investigated the failures and determined they were caused by fatigue cracking of the aluminum alloy cylinder head at the head-to-barrel interface.

We identified two manufacturing groups of cylinder assemblies requiring action. Group ''A'' cylinder assemblies (serial number (SN) 1138–02 through SN 35171–22) require initial and repetitive visual inspections and compression tests, and removal from service at 2,000 operating hours time-in-service (TIS), unless installed in helicopters. If installed in helicopters, group ''A'' cylinder assemblies require the same actions, but must be removed from service at 1,500 operating hours TIS. The helicopter ECi cylinder assemblies are removed at 1,500 hours, because the more strenuous operating conditions require a shorter time between overhaul (TBO). Group ''B'' cylinder assemblies (SN 35239–01 through SN 37016–28) require the same initial visual inspection and compression test, but must be removed from service before exceeding 350 operating hours TIS. All of the affected cylinder assemblies are marked with cylinder head P/N AEL85099. This unsafe condition, if not corrected, could result in loss of engine power due to cracks in the cylinder assembly and possible engine failure caused by cylinder head separation.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

We are proposing this AD, which would require:

• Determining if Group ''A'' or Group ''B'' ECi cylinder assemblies, P/N AEL65102 series ''Titan'', with cylinder head P/N AEL85099, are installed on your engine.

• For any Group ''A'' cylinder assembly, performing initial and repetitive visual inspections and compression tests, and replacement not later than 2,000 operating hours TIS or within 25 operating hours TIS if the cylinder assembly exceeds 2,000 operating hours TIS on the effective date of the proposed AD.

• For any Group ''A'' cylinder assembly installed in a helicopter, performing the same initial and repetitive visual inspections and compression tests, but replacement not later than 1,500 operating hours TIS or within 25 operating hours TIS if the cylinder assembly exceeds 1,500 operating hours TIS on the effective date of the proposed AD.

• For any Group ''B'' cylinder assembly, performing the same initial visual inspection and compression test, and replacement not later than 350 operating hours TIS or within 25 operating hours TIS if the cylinder assembly exceeds 350 operating hours TIS on the effective date of the proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 13,000 ECi cylinder assemblies installed in aircraft of U.S. registry. The visual inspection and compression tests would take about 4 work-hours for each engine. An individual cylinder replacement would require $1,100 for parts and 6 work-hours. Lycoming engines with a set of 4 ECi cylinders would require 12 work-hours for the cylinder replacement. Lycoming engines with a set of 6 ECi cylinders would require 16 work-hours for the cylinder replacement. We estimate 18 percent of the affected population of cylinders will be replaced. The total cost of the proposed AD to U.S. operators to be $7,952,000. Our estimate is exclusive of any possible warranty coverage.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration 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:

Engine Components Inc. (ECi): Docket No. FAA–2008–0052; Directorate Identifier 2008–NE–01–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by July 18, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, ''Parallel Valve'', reciprocating engines listed in Table 1 of this AD, with ECi cylinder assembly, part number (P/N) AEL65102 series ''Titan'', and with cylinder head, P/N AEL85099, installed.

(1) The applicable cylinder assembly serial numbers (SNs) are SN 1138–02 through SN 35171–22, (referred to in this AD as Group ''A'' cylinder assemblies); and

(2) SN 35239–01 through SN 37016–28 (referred to in this AD as Group ''B'' cylinder assemblies).

(3) Note that the cylinder assembly P/N is at the crankcase end of the cylinder assembly, and might be difficult to see. As a guide in determining if your cylinder assemblies are affected, all affected cylinder assemblies have cylinder head P/N AEL85099. The cylinder head P/N is at the top of the cylinder head, near the intake and exhaust valve springs, and is easier to locate than the cylinder assembly P/N.

(4) Note that the set of numbers appearing on the cylinder, above and to the left of the SN, in the form of ''123456'' is not used for determining applicability.

TABLE 1.—ENGINE MODELS

Cylinder assembly part No.	Installed on engine models
AEL65102–NST04	O–320–A1B, A2B, A2C, A2D, A3A, A3B, B2B, B2C, B2D, B2E, B3B, B3C, C2B, C2C, C3B, C3C, D1A, D1AD, D1B, D1C, D1D, D1F, D2A, D2B, D2C, D2F, D2G, D2H, D2J, D3G, E1A, E1B, E1C, E1F, E1J, E2A, E2B, E2C, E2D, E2E, E2F, E2G, E2H, E3D, E3H.
	IO–320–A1A, A2A, B1A, B1B, B1C, B1D, B1E, B2A, D1A, D1AD, D1B, D1C, E1A, E1B, E2A, E2B.
	AEIO–320–D1B, D2B, E1A, E1B, E2A, E2B.
	AIO–320–A1A, A1B, A2A, A2B, B1B, C1B.
	LIO–320–B1A.
AEL65102–NST05	IO–320–C1A, C1B, C1F, F1A.
	LIO–320–C1A.
AEL65102–NST06	O–320–A1A, A2A, A2B, A2C, A3A, A3B, A3C, E1A, E1B, E2A, E2C, (also, an O–320 model with no suffix).
	IO–320–A1A, A2A.
AEL65102–NST07	IO–320–B1A, B1B.
	LIO–320–B1A.
AEL65102–NST08	O–320–B1A, B1B, B2A, B2B, B3A, B3B, B3C, C1A, C1B, C2A, C2B, C3A, C3B, C3C, D1A, D1B, D2A, D2B, D2C.
AEL65102–NST10	O–360–A1A, A1C, A1D, A2A, A2E, A3A, A3D, A4A, B1A, B1B, B2A, B2B, C1A, C1C, C1G, C2A, C2B, C2C, C2D, D1A, D2A, D2B.
	IO–360–B1A, B1B, B1C.
	HO–360–A1A, B1A, B1B.
	HIO–360–B1A, B1B.
	AEIO–360–B1B.
	O–540–A1A, A1A5, A1B5, A1C5, A1D, A1D5, A2B, A3D5, A4A5, A4B5, A4C5, A4D5, B1A5, B1B5, B1D5, B2A5, B2B5, B2C5, B2C5D, B4A5, B4B5, B4B5D, D1A5, E1A, E4A5, E4B5, E4C5, F1A5, F1B5, G1A5, G2A5.
	IO–540–C1B5, C1C5, C2C, C4B5, C4B5D, C4C5, D4A5, D4B5, N1A5, N1A5D.
AEL65102–NST12	O–360–A1A, A1AD, A1D, A1F, A1F6, A1F6D, A1G, A1G6, A1G6D, A1H, A1H6, A1J, A1LD, A1P, A2A, A2D, A2F, A2G, A2H, A3A, A3AD, A3D, A4A, A4AD, A4D, A4G, A4J, A4JD, A4K, A4M, A4N, A4P, A5AD, B1A, B2C, C1A, C1C, C1E, C1F, C1G, C2A, C2B, C2C, C2D, C2E, C4F, C4P, D2A, F1A6, G1A6.
	HO–360 –C1A.
	LO–360–A1G6D, A1H6.
	HIO–360–B1A, B1B, G1A.
	LTO–360–A1A6D.
	TO–360–A1A6D.
	IO–360–B1B, B1BD, B1D, B1E, B1F, B1F6, B1G6, B2E, B2F, B2F6, B4A, E1A, L2A, M1A, M1B.
	AEIO–360–B1B, B1D, B1E, B1F, B1F6, B1G6, B1H, B2F, B2F6, B4A, H1A, H1B.
	O–540–A4D5, B2B5, B2C5, B2C5D, B4B5, B4B5D, E4A5, E4B5, E4B5D, E4C5, G1A5, G1A5D, G2A5, H1A5, H1A5D, H1B5, H1B5D, H2A5, H2A5D, H2B5D.

TABLE 1.—ENGINE MODELS—Continued

Cylinder assembly part No.	Installed on engine models
	IO–540–C4B5, C4B5D, C4D5, C4D5D, D4A5, D4B5, D4C5, N1A5, N1A5D, T4A5D, T4B5, T4B5D, T4C5D, V4A5, V4A5D.
	AEIO–540–D4A5, D4B5, D4C5, D4D5.
AEL65102–NST26	IO–540–J4A5, R1A5.
	TIO–540–C1A, E1A, G1A, H1A.
AEL65102–NST38	IO–360–F1A.
	TIO–540–AA1AD, AB1AD, AB1BD, AF1A, AG1A, AK1A, C1A, C1AD, K1AD.
	LTIO–540–K1AD.
AEL65102–NST43	O–360–J2A.
	O–540–F1B5, J1A5D, J1B5D, J1C5D, J1D5D, J2A5D, J2B5D, J2C5D, J2D5D, J3A5, J3A5D, J3C5D.
	IO–540–AB1A5, W1A5, W1A5D, W3A5D.
AEL65102–NST44	O–540–L3C5D.

For information, the Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, ''Parallel Valve'', reciprocating engines are installed on, but not limited to, the aircraft listed in the following Table 2:

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO

Engine models	Installed on, but not limited to
O–320–A1A	Piper Aircraft: Tri-Pacer (PA–22 ''150'', PA–22S ''150''), Apache (PA–23), Pawnee (PA–25).
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Mooney Aircraft: Mark (20A).
	Dinfia: Ranquel (1A–46).
	Simmering-Graz Pauker: Flamingo (SGP–M–222).
	Aviamilano: Scricciolo (P–19).
	Vos Helicopter Co.: Spring Bok.
O–320–A1B	Piper Aircraft: Tri-Pacer (PA–22 ''150'', PA–22S ''150''), Apache (PA–23).
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	S.O.C.A.T.A.: Horizon (Gardan).
O–320–A2A	Piper Aircraft: Tri-Pacer (PA–22 ''150'', PA–22S ''150''), Agriculture (PA–18A ''150''), Super Cub (PA–18 ''150''), Caribbean (PA–22 ''150''), Pawnee (PA–25).
	Intermountain Mfg. Co.: Call Air Texas (A–5, A–5T).
	Lake Aircraft: Colonial (C–1).
	Rawdon Bros.: Rawdon (T–1, T–15, T–15D).
	Shinn Engineering: Shinn (2150–A).
	Dinfia: Ranquel (1A–46).
	Neiva: (1PD–5802).
	Sud: Gardan-Horizon (GY–80).
	LaVerda: Falco (F8L Series II, America).
	Malmo: Vipan (MF1–10).
	Kingsford Smith: Autocrat (SCRM–153).
	Aero Commander: 100.
O–320–A2B	Piper Aircraft: Tri-Pacer (PA–22 ''150'', PA–22S ''150''), Cherokee (PA–28 ''150''), Super Cub (PA–18 ''150'').
	Champion Aircraft: Challenger (7GCA, 7GCB, 7KC), Citabria (7GCAA, 7GCRC), Agriculture (7GCBA).
	Beagle: Pup (150).
	Artic: Interstate S1B2.
	Robinson: R–22.
	Varga: Kachina 2150A.
O–320–A2C	Robinson: R–22.
	Cicare: Cicare AG.
	Bellanca Aircraft: Citabria 150 (7GCAA), Citabria 150S (7GCBC).
O–320–A2D	Piper Aircraft: Apache (PA–23).
O–320–A3A	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Corben-Fettes: Globe Special (Globe GC–1B).
O–320–A3B	Piper Aircraft: Apache (PA–23).
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Teal II: TSC (1A2).
O–320–B1A	Piper Aircraft: Apache (PA–23 ''160'').
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Malmo: Vipan (MF1–10).
O–320–B1B	Piper Aircraft: Apache (PA–23 ''160'').
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
O–320–B2A	Piper Aircraft: Tri-Pacer (PA–22 ''160'', PA–22S ''160'').
O–320–B2B	Piper Aircraft: Tri-Pacer (PA–22 ''160'', PA–22S ''160'').
	Beagle: Airedale (D5–160).
	Fuji-Heavy Industries: Fuji (F–200).
	Uirapuru: Aerotec 122.
O–320–B2C	Robinson: R–22.
O–320–B2D	Maule: MX–7–160.

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models	Installed on, but not limited to
O–320–B2E	Lycon.
O–320–B3A	Piper Aircraft: Apache (PA–23 "160").
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
O–320–B3B	Piper Aircraft: Apache (PA–23 "160").
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Sud: Gardan (GY80–160).
O–320–C1A	Piper Aircraft: Apache (PA–23 "160").
	Riley Aircraft: Rayjay (Apache).
O–320–C1B	Piper Aircraft: Apache (PA–23 "160").
O–320–C3A	Piper Aircraft: Apache (PA–23 "160").
O–320–C3B	Piper Aircraft: Apache (PA–23 "160").
O–320–D1A	Sud: Gardan (GY–80).
	Gyroflug: Speed Cancard.
	Grob: G115.
O–320–D1F	Slingsby: T67 Firefly.
O–320–D2A	Piper Aircraft: Cherokee (PA–28S "160").
	Robin: Major (DR400–140B), Chevalier (DR–360), (R–3140).
	S.O.C.A.T.A.: Tampico TB9.
	Slingsby: T67C Firefly.
	Daetwyler: MD–3–160.
	Nash Aircraft Ltd.: Petrel.
	Aviolight: P66D Delta.
	General Avia: Pinguino.
O–320–D2B	Beech Aircraft: Musketeer (M–23).
	Piper Aircraft: Cherokee (PA–28 "160").
O–320–D2J	Cessna Aircraft: Skyhawk 172.
O–320–D3G	Piper Aircraft: Warrior II, Cadet (PA–28–161).
O–320–E1A	Grob: G115.
O–320–E1C	M.B.B. (Messerschmitt-Boelkow-Blohm): Monsun (BO–209–B).
O–320–E1F	M.B.B.: Monsun (BO–209–B).
O–320–E2A	Piper Aircraft: Cherokee (PA–28 "140", PA–28 "150").
	Robin: Major (DR–340), Sitar, Bagheera (GY–100–135).
	S.O.C.A.T.A.: Super Rallye (MS–886), Rallye Commodore (MS–892).
	Siai-Marchetti: (S–202).
	F.F.A.: Bravo (AS–202/15).
	Partenavia: Oscar (P66B), Bucker (131 APM).
	Aeromot: Paulistina P–56.
	Pezetel: Koliber 150.
O–320–E2C	Beech Aircraft: Musketeer III (M–23III).
	M.B.B.: Monsun (BO–209–B).
O–320–E2D	Cessna Aircraft: Cardinal (172–I, 177).
O–320–E2F	M.B.B.: Monsun (BO–209–B), Wassmer Pacific (WA–51).
O–320–E2G	American Aviation Corp.: Traveler.
O–320–E3D	Piper Aircraft: Cherokee (140).
	Beech Aircraft: Sport.
IO–320–B2A	Piper Aircraft: Twin Comanche (PA–30).
IO–320–B1C	Hi. Shear: Wing.
IO–320–B1D	Ted Smith Aircraft: Aerostar.
IO–320–C1A	Piper Aircraft: Twin Comanche (PA–30 Turbo).
IO–320–D1A	M.B.B.: Monsun (BO–209–C).
IO–320–D1B	M.B.B.: Monsun (BO–209–C).
IO–320–E1A	M.B.B.: Monsun (BO–209–C).
IO–320–E1B	Bellanca Aircraft.
IO–320–E2A	Champion Aircraft: Citabria.
IO–320–E2B	Bellanca Aircraft.
IO–320–F1A	CAAR Engineering: Carr Midget.
LIO–320–B1A	Piper Aircraft: Twin Comanche (PA–39).
LIO–320–C1A	Piper Aircraft: Twin Comanche (PA–39).
AIO–320–B1B	M.B.B.: Monsun (BO–209–C).
AEIO–320–D1B	Slingsby: T67M Firefly.
AEIO–320–D2B	Hundustan Aeronautics Ltd.: HT–2.
AEIO–320–E1A	Bellanca Aircraft.
	Champion Aircraft.
AEIO–320–E1B	Bellanca Aircraft.
	Champion Aircraft: Decathalon (8KCAB–CS).
AEIO–320–E2B	Bellanca Aircraft.
	Champion Aircraft: Decathalon (8KCAB).
O–320–A1A	Riley Aircraft: Riley Twin.
O–360–A1A	Beech Aircraft: Travel Air (95, B–95).
	Piper Aircraft: Comanche (PA–24).
	Intermountain Mfg. Co.: Call Air (A–6).
	Lake Aircraft: Colonial (C–2, LA–4, 4A or 4P).

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models	Installed on, but not limited to
	Doyn Aircraft: Doyn-Cessna (170B, 172, 172A, 172B).
	Mooney Aircraft: Mark "20B" (M–20B).
	Earl Horton: Pawnee (Piper PA–25).
	Dinfia: Ranquel (1A–51).
	Neiva: (1PD–5901).
	Regente: (N–591).
	Wassmer: Super 4 (WA–50A), Sancy (WA–40), Baladou (WA–40), Pariou (WA–40).
	Sud: Gardan (GY–180).
	Bolkow: (207).
	Partenavia: Oscar (P–66).
	Siai-Marchetti: (S–205).
	Procaer: Picchio (F–15–A).
	S.A.A.B.: Safir (91–D).
	Malmo: Vipan (MF–10B).
	Aero Boero: AB–180.
	Beagle: Airedale (A–109).
	DeHavilland: Drover (DHA–3MK3).
	Kingsford-Smith: Bushmaster (J5–6).
	Aero Engine Service Ltd.: Victa (R–2).
O–360–A1AD	S.O.C.A.T.A.: Tabago TB–10.
O–360–A1D	Piper Aircraft: Comanche (PA–24).
	Lake Aircraft: Colonial (LA–4, 4A or 4P).
	Doyn Aircraft: Doyn-Beech (Beech 95).
	Mooney Aircraft: Master "21" (M–20E), Mark "20B", "20D", (M20B, M20C), Mooney Statesman (M–20G).
	Dinfia: Querandi (1A–45).
	Wassmer: (WA–50).
	Malmo: Vipan (MF1–10).
	Cessna Aircraft: Skyhawk.
	Doyn Aircraft: Doyn-Piper (PA–23 "160").
O–360–A1F6	Cessna Aircraft: Cardinal.
O–360–A1F6D	Cessna Aircraft: Cardinal 177.
	Teal III: TSC (1A3).
O–360–A1G6	Aero Commander.
O–360–A1G6D	Beech Aircraft: Duchess 76.
O–360–A1H6	Piper Aircraft: Seminole (PA–44).
O–360–A1LD	Wassmer: Europa WA–52.
O–360–A1P	Aviat: Husky.
O–360–A2A	Center Est Aeronautique: Regente (DR–253).
	S.O.C.A.T.A.: Rallye Commodore (MS–893).
	Societe Aeronautique Normande: Mousquetaire (D–140).
	Bolkow: Klemm (K1–107C).
	Partenavia: Oscar (P–66).
	Beagle: Husky (D5–180) (J1–U).
O–360–A2D	Piper Aircraft: Comanche (PA–24), Cherokee "C" (PA–28 "180").
	Mooney Aircraft: Master "21" (M–20D), Mark "21" (M–20E).
O–360–A2E	Std. Helicopter.
O–360–A2F	Aero Commander: Lark (100).
	Cessna Aircraft: Cardinal.
O–360–A2G	Beech Aircraft: Sport.
O–360–A3A	C.A.A.R.P.S.A.N.: (M–23III).
	Societe Aeronautique Normande: Jodel (D–140C).
	Robin: Regent (DR400/180), Remorqueur (DR400/180R), R–3170.
	S.O.C.A.T.A.: Rallye 180GT, Sportavia Sportsman (RS–180).
	Norman Aeroplace Co.: NAC–1 Freelance.
	Nash Aircraft Ltd.: Petrel.
O–360–A3AD	S.O.C.A.T.A.: TB–10.
	Robin: Aiglon (R–1180T).
O–360–A4A	Piper Aircraft: Cherokee "D" (PA–28 "180").
O–360–A4D	Varga: Kachina.
O–360–A4G	Beech Aircraft: Musketeer Custom III.
O–360–A4K	Grumman American: Tiger.
	Beech Aircraft: Sundowner 180.
O–360–A4M	Piper Aircraft: Archer II (PA–28 "18").
	Valmet: PIK–23.
O–360–A4N	Cessna Aircraft: 172 (Optional).
O–360–A4P	Penn Yan: Super Cub Conversion.
O–360–A5AD	C. Itoh and Co.: Fuji FA–200.
O–360–B2C	Seabird Aviation: SB7L.
O–360–C1A	Intermountain Mfg. Co.: Call Air (A–6).
O–360–C1E	Bellanca Aircraft: Scout (8GCBC–CS).
O–360–C1F	Maule: Star Rocket MX–7–180.
O–360–C1G	Christen: Husky (A–1).

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models	Installed on, but not limited to
O–360–C2B	Hughes Tool Co.: (269A).
O–360–C2D	Hughes Tool Co.: (269A).
O–360–C2E	Hughes Tool Co.: (YHO–2HU) Military.
	Bellanca Aircraft: Scout (8GCBC FP).
O–360–C4F	Maule: MX–7–180A.
O–360–C4P	Penn Yan: Super Cub Conversion.
O–360–F1A6	Cessna Aircraft: Cutlass RG.
O–360–J2A	Robinson: R22.
IO–360–B1A	Beech Aircraft: Travel-Air (B–95A).
	Doyn Aircraft: Doyn-Piper (PA–23 "200").
IO–360–B1B	Beech Aircraft: Travel-Air (B–95B).
	Doyn Aircraft: Doyn-Piper (PA–23 "200").
	Fuji: (FA–200).
IO–360–B1D	United Consultants: See-Bee.
IO–360–B1E	Piper Aircraft: Arrow (PA–28 "180R").
IO–360–B1F	Utva: 75.
IO–360–B2E	C.A.A.R.P. C.A.P. (10).
IO–360–B1F6	Great Lakes: Trainer.
IO–360–B1G6	American Blimp: Spector 42.
IO–360–B2F6	Great Lakes: Trainer.
LO–360–A1G6D	Beech Aircraft: Duchess.
LO–360–A1H6	Piper Aircraft: Seminole (PA–44).
IO–360–E1A	T.R. Smith Aircraft: Aerostar.
IO–360–L2A	Cessna Aircraft: Skyhawk C–172.
IO–360–M1A	Diamond Aircraft: DA–40.
IO–360–M1B	Vans Aircraft: RV6, RV7, RV8.
	Lancair: 360.
AEIO–360–B1F	F.F.A.: Bravo (200).
	Grob: G115/Sport-Acro.
AEIO–360–B1G6	Great Lakes.
AEIO–360–B2F	Mundry: CAP–10.
AEIO–360–B4A	Pitts: S–1S.
AEIO–360–H1A	Bellanca Aircraft: Super Decathalon (8KCAB–180).
AEIO–360–H1B	American Champion: Super Decathalon.
VO–360–A1A	Brantly Hynes Helicopter: (B–2).
VO–360–A1B	Brantly Hynes Helicopter: (B–2, B2–A), Military (YHO–3BR).
VO–360–B1A	Brantly Hynes Helicopter: (B–2, B2–A).
IVO–360–A1A	Brantly Hynes Helicopter: (B2–B).
HO–360–B1A	Hughes Tool Co.: (269A).
HO–360–B1B	Hughes Tool Co.: (269A).
HO–360–C1A	Schweizer: (300C).
HIO–360–B1A	Hughes Tool Co.: Military (269–A–1), (TH–55A).
HIO–360–B1B	Hughes Tool Co.: (269A).
HIO–360–G1A	Schweizer: (CB).
O–540–A1A	Rhein-Flugzeugbau: (RF–1).
O–540–A1A5	Piper Aircraft: Comanche (PA–24 "180").
	Helio: Military (H–250).
	Yoeman Aviation: (YA–1).
O–540–A1B5	Piper Aircraft: Aztec (PA–23 "250"), Comanche (PA–24 "250").
O–540–A1C5	Piper Aircraft: Comanche (PA–24 "250").
O–540–A1D	Found Bros.: (FBA–2C).
	Dornier: (DO–28–B1).
O–540–A1D5	Piper Aircraft: Aztec (PA–23 "250"), Comanche (PA–24 "250"), Military Aztec (U–11A).
	Dornier: (DO–28).
O–540–A2B	Aero Commander: (500).
	Mid-States Mfg. Co.: Twin Courier (H–500), (U–5).
O–540–A3D5	Piper Aircraft: Navy Aztec (PA–23 "250").
O–540–B1A5	Piper Aircraft: Apache (PA–23 "235").
O–540–B1B5	Piper Aircraft: Comanche (PA–24 "250").
	Doyn Aircraft: Doyn-Piper (PA–24 "250").
O–540–B1D5	Wassmer: (WA–421).
O–540–B2B5	Piper Aircraft: Pawnee (PA–25 "235"), Cherokee (PA–28 "235"), Aztec (PA–23 "235").
	Intermountain Mfg. Co.: Call Air (A–9).
	Rawdon Bros.: Rawdon (T–1).
	S.O.C.A.T.A.: Rallye 235CA.
O–540–B2C5	Piper Aircraft: Pawnee (PA–25 "235").
O–540–B4B5	Piper Aircraft: Cherokee (PA–28 "235").
	Embraer: Corioca (EMB–710).
	S.O.C.A.T.A.: Rallye 235GT, Rallye 235C.
	Maule: Star Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
O–540-E4A5	Piper Aircraft: Comanche (PA–24 "260").
	Aviamilano: Flamingo (F–250).

TABLE 2.—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models	Installed on, but not limited to
	Siai-Marchetti: (SF–260), (SF–208).
O–540–E4B5	Britten-Norman: (BN–2).
	Piper Aircraft: Cherokee Six (PA–32 "260").
O–540–E4C5	Pilatus Britten-Norman: Islander (BN–2A–26), Islander (BN–2A–27), Islander II (BN–2B–26), Islander (BN–2A–21), Trislander (BN–2A–Mark III–2).
O–540–F1B5	Omega Aircraft: (BS–12D1).
	Robinson: (R–44).
O–540–G1A5	Piper Aircraft: Pawnee (PA–25 "260").
O–540–H1B5D	Aero Boero: 260.
O–540–H2A5	Embraer: Impanema "AG".
	Gippsland: GA–200.
O–540–H2B5D	Aero Boero: 260.
O–540–J1A5D	Maule: Star Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
O–540–J3A5	Robin: R–3000/235.
O–540–J3A5D	Piper Aircraft: Dakota (PA–28–236).
O–540–J3C5D	Cessna Aircraft: Skylane RG.
O–540–L3C5D	Cessna Aircraft: TR–182, Turbo Skylane RG.
IO–540–C1B5	Piper Aircraft: Aztec B (PA–23 "250"), Comanche (PA–24 "250").
IO–540–C1C5	Riley Aircraft: Turbo-Rocket.
IO–540–C4B5	Piper Aircraft: Aztec C (PA–23 "250"), Aztec F.
	Wassmer: (WA4–21).
	Avions Pierre Robin: (HR100/250).
	Bellanca Aircraft: Aries T–250.
	Aerofab: Renegade 250.
IO–540–C4D5	S.O.C.A.T.A.: TB–20.
IO–540–C4D5D	S.O.C.A.T.A.: Trinidad TB–20.
IO–540–D4A5	Piper Aircraft: Comanche (PA–24 "260").
	Siai-Marchetti: (SF–260).
IO–540–D4B5	Cerva: (CE–43 Guepard).
IO–540–J4A5	Piper Aircraft: Aztec (PA–23 "250").
IO–540–R1A5	Piper Aircraft: Comanche (PA–24).
IO–540–T4A5D	General Aviation: Model 114.
IO–540–T4B5	Commander: 114B.
IO–540–T4B5D	Rockwell: 114.
IO–540–T4C5D	Lake Aircraft: Seawolf.
IO–540–V4A5	Maule: MT–7–260, M–7–260.
	Aircraft Manufacturing Factory.
IO–540–V4A5D	Brooklands: Scoutmaster.
IO–540–W1A5	Maule: MX–7–235, MT–7–235, M7–235.
IO–540–W1A5D	Maule: Star Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
IO–540–W3A5D	Schweizer: Power Glider.
AEIO–540–D4A5	Christen: Pitts (S–2S, S–2B).
	Siai-Marchetti: SF–260.
	H.A.L.: HPT–32.
	Slingsby: Firefly T3A.
AEIO–540–D4B5	Moravan: Zlin–50L.
	H.A.L.: HPT–32.
AEIO–540–D4D5	Burkhart Grob: Grob G, 115T Aero.
TIO–540–C1A	Piper Aircraft: Turbo Aztec (PA–23–250).
TIO–540–K1AD	Piper Aircraft.
TIO–540–AA1AD	Aerofab Inc.: Turbo Renegade (270).
TIO–540–AB1AD	S.O.C.A.T.A.: Trinidad TC TB–21.
TIO–540–AB1BD	Schweizer.
TIO–540–AF1A	Mooney Aircraft: "TLS" M20M.
TIO–540–AG1A	Commander Aircraft: 114TC.
TIO–540–AK1A	Cessna Aircraft: Turbo Skylane T182T.
LTIO–540–K1AD	Piper Aircraft.

Unsafe Condition

(d) This AD results from reports of 45 failures with head separations of ECi cylinder assemblies. We are issuing this AD to prevent loss of engine power due to cracks at the head-to-barrel interface in the cylinder assemblies and possible engine failure caused by separation of a cylinder head, which could result in loss of control of the aircraft.

Compliance

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

Engines Not Overhauled or Cylinder Assemblies Not Replaced Since New

(f) If your engine has not been overhauled or had any cylinder assemblies replaced since new, no further action is required.

Engines Overhauled or Cylinder Assemblies Replaced Since New

(g) If your engine was overhauled or had a cylinder assembly replaced since new, do the following:

(1) Before further flight, inspect the maintenance records and engine logbook to determine if the overhaul or repair facility used ECi cylinder assemblies, P/N AEL65102, with cylinder head, P/N AEL85099, with a SN 1138–02 through SN

35171–22, or a SN 35239–01 through SN 37016–28, installed.

(2) If the cylinder assemblies are not ECi, P/N AEL65102, no further action is required.

(3) If the cylinder assemblies are ECi, P/N AEL65102, and if the serial number is not listed in this AD, no further action is required.

(4) If the cylinder assemblies are ECi, P/N AEL65102, and if the serial number is listed in this AD, do the following:

Group ''A'' Cylinder Assemblies

(i) For Group ''A'' cylinder assemblies:

(A) Perform an initial visual inspection as specified in paragraphs (h) through (j) of this AD, and an initial compression test as specified in paragraphs (k) through (o) of this AD, within the next 10 operating hours time-in-service (TIS), if the cylinder assembly has 350 or more operating hours TIS on the effective date of this AD, but fewer than 2,000 operating hours TIS.

(B) Perform an initial visual inspection as specified in paragraphs (h) through (j) of this AD, and an initial compression test as specified in paragraphs (k) through (o) of this AD, before exceeding 350 operating hours TIS, if the cylinder assembly has fewer than 350 operating hours TIS on the effective date of this AD.

(C) Replace cylinder assemblies installed in helicopter engines within the next 25 operating hours TIS after the effective date of this AD if the cylinder assembly has 1,500 operating hours TIS or more on the effective date of this AD.

(D) Replace cylinder assemblies installed in airplane engines within the next 25 operating hours TIS after the effective date of this AD if the cylinder assembly has 2,000 operating hours TIS or more on the effective date of this AD.

(E) Perform repetitive visual inspections as specified in paragraphs (h) through (j) of this AD, and repetitive compression tests as specified in paragraphs (k) through (o) of this AD, within every 50 operating hours TIS.

(F) Replace cylinder assemblies installed in helicopter engines that pass the visual inspections and compression tests, no later than 1,500 operating hours TIS after the effective date of this AD.

(G) Replace cylinder assemblies installed in airplane engines that pass the visual inspections and compression tests, no later than 2,000 operating hours TIS after the effective date of this AD.

Group ''B'' Cylinder Assemblies

(ii) For Group ''B'' cylinder assemblies:

(A) Perform an initial visual inspection as specified in paragraphs (h) through (j) of this AD, and initial compression test as specified in paragraphs (k) through (o) of this AD, within an additional 10 operating hours TIS.

(B) Replace the cylinder assembly within the next 25 operating hours TIS after the effective date of this AD if the cylinder assembly has 350 or more operating hours TIS on the effective date of this AD.

(C) Replace cylinder assemblies that pass the initial visual inspections and compression tests, before exceeding 350 operating hours TIS after the effective date of this AD.

Visual Inspection

(h) Visually inspect around the exhaust valve side, for cracks or any signs of black or white residue of combustion leakage from cracks.

(i) Replace cracked cylinder assemblies before further flight.

(j) Information on cylinder assembly visual inspection can be found in ECi Mandatory Service Bulletin (MSB) No. 08–1, Revision 1, dated April 8, 2008.

Cylinder Assembly Compression Test

(k) Compression test the cylinder assembly.

(l) Information on cylinder assembly compression testing can be found in ECi MSB No. 08–1, Revision 1, dated April 8, 2008.

(m) During the compression test, if the cylinder pressure gauge reads below 70 pounds-per-square-inch, apply a water and soap solution to the side of the leaking cylinder, near the head-to-barrel interface.

(n) Replace the cylinder assembly before further flight, if air leakage and bubbles are observed on the side of the cylinder assembly, near the head-to-barrel interface.

(o) Repair or replace the engine cylinder assembly before further flight if the cause of the low gauge reading in paragraph (m) of this AD is from leaking intake or exhaust valves, or from leaking piston rings.

Prohibition of ECi Cylinder Assemblies Affected By This AD

(p) After the effective date of this AD, do not install any ECi cylinder assembly, P/N AEL65102, with cylinder head, P/N AEL85099, and with SN 1138–02 through SN 35171–22, or SN 35239–01 through SN 37016–28, onto any engine, and do not attempt to repair or reuse these ECi cylinder assemblies.

Alternative Methods of Compliance

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

Special Flight Permits

(r) Under 14 CFR 39.23, we will not approve special flight permits for this AD for engines that have failed the visual inspection or the cylinder assembly compression test required by this AD.

Related Information

(s) ECi Mandatory Service Bulletin No. 08–1, Revision 1, dated April 8, 2008, pertains to the subject of this AD.

(t) Contact Peter W. Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76193; e-mail: *peter.w.hakala@faa.gov*; telephone (817) 222–5145; fax (817) 222–5785, for more information about this AD.

Issued in Burlington, Massachusetts, on May 13, 2008.

Peter A. White,

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

[FR Doc. E8–11116 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0434; Airspace Docket No. 08–ASW–6]

Proposed Establishment of Class D Airspace; Victoria, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace at Victoria Regional Airport, Victoria, TX. The establishment of an air traffic control tower has made this action necessary for the safety of Instrument Flight Rule (IFR) operations at Victoria Regional Airport.

DATES: 0901 UTC July 31, 2008. Comments must be received on or before July 3, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0434/Airspace Docket No. 07–ASW–6, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Mallett, Central Service Center, System Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 222–4949.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0434/Airspace Docket No. 08–ASW–6.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faagp* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by establishing a Class D airspace area for IFR operations at Victoria Regional Airport, Victoria, TX. The establishment of an air traffic control tower has made this action necessary. The area would be depicted on appropriate aeronautical charts.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 will only affect 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. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 controlled airspace at Victoria Regional Airport, Victoria, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Victoria, TX (New)

Victoria Regional Airport, TX
(Lat. 28°51′09″ N., long. 96°55′07″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.7-mile radius of Victoria Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on May 5, 2008.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Center.

[FR Doc. E8–10953 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100798–06]

RIN 1545–BF28

Contributed Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations under section 704(c) of the Internal Revenue Code (Code) provide that the section 704(c) anti-abuse rule takes into account the tax liabilities of both the partners in a partnership and certain direct and indirect owners of such partners. The proposed regulations further provide that a section 704(c) allocation method cannot be used to achieve tax results inconsistent with the intent of subchapter K of the Code. The proposed regulations affect partnerships and their partners.

DATES: Written or electronic comments and requests for a public hearing must be received by August 18, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–100798–06), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–100798–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–100798–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Laura Fields or Steven A. Schmoll at (202) 622–3050; concerning submissions of comments, and hearing requests, e-

mail *Richard.A.Hurst@irscounsel.treas.gov,* (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Under section 704(c), a partnership must allocate items of income, gain, loss and deduction attributable to contributed property to take into account any variation between the property's adjusted tax basis and its fair market value at the time of contribution. Section 1.704–3(a) permits the use of any reasonable allocation method that is consistent with the purposes of section 704(c). Section 1.704–3 provides three allocation methods that are generally reasonable and consistent with the purposes of section 704(c): The traditional method, the traditional method with curative allocations and the remedial method.

Section 1.704–3(a)(10) provides that an allocation method (or combination of methods) is not reasonable if the contribution of property (or event that results in reverse section 704(c) allocations) and the corresponding allocation of tax items with respect to the property are made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability (the anti-abuse rule).

In 2003, the Staff of the Joint Committee on Taxation (JCT) prepared *The Report of Investigation of Enron Corporation and Related Entities Regarding Federal Tax and Compensation Issues, and Policy Recommendations* (JCS–3–03), February 2003 (Enron Report). As part of the Enron Report, the JCT considered a transaction identified as ''Project Condor.'' See Enron Report, pgs. 208–221. Responding to the Enron Report, Congress enacted section 755(c) in the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) to address the unwarranted tax benefits for transactions similar to Project Condor.

In addition to the legislative recommendation, the Enron Report states that the rules of section 704(c) should not be used by related parties to shift basis among assets in the manner attempted in Project Condor. Although the Enron Report noted that the anti-abuse rule of § 1.704–3(a)(10) ''* * * should apply to preclude the tax benefits Project Condor purported to generate,'' the Enron Report recommended strengthening the anti-abuse rule relating to ''* * * partnership allocations for property contributed to a partnership, especially in the case of partners that are members of the same consolidated group to ensure that the allocation rules are not used to obtain unwarranted tax benefits.'' See Enron Report, pg. 220.

These proposed regulations address the JCT recommendation by clarifying certain aspects of the anti-abuse rule. These clarifications are consistent with the general principles of sections 701 and 704, and make conforming changes to those that were recently adopted in § 1.704–1(b)(2)(iii).

Explanation of Provisions

Under the anti-abuse rule, an allocation method (or combination of methods) is not reasonable if the contribution of property and the corresponding allocation of tax items with respect to the property are made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability. Failing to consider a substantial reduction in the present value of an indirect partner's tax liability when analyzing the reasonableness of an allocation method would be inconsistent with the purposes of section 704(c) because it would allow a partnership to adopt a tax-advantaged allocation method if the tax advantages of the method accrued to an indirect partner, rather than a direct partner. Accordingly, § 1.704–3(a)(10) is amended to provide that, for purposes of applying the anti-abuse rule, the tax effect of an allocation method (or combination of methods) on both direct and indirect partners is considered. The proposed regulations provide that an indirect partner is any direct or indirect owner of a partnership, S corporation, or controlled foreign corporation (as defined in section 957(a) or 953(c)), or direct or indirect beneficiary of a trust or estate, that is a partner in the partnership, and any consolidated group of which the partner in the partnership is a member (within the meaning of section 1.1502–1(h)). However, an owner of a controlled foreign corporation is treated as an indirect partner only with respect to the allocation of items that enter into the computation of a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, enter into any person's income attributable to a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, or would enter into the computations described in this paragraph if such items were allocated to the controlled foreign corporation.

The Treasury Department and IRS believe that this amendment merely confirms the proper application of the anti-abuse rule contained in the existing regulations. This clarifying addition is consistent with the recent modification to § 1.704–1(b)(2)(iii) (substantiality test) confirming that, for purposes of the substantiality test, the tax consequences to an owner of a look-through entity that is a partner in the partnership must be taken into account when evaluating an allocation to such partner.

These proposed regulations further provide that the principles of section 704(c), together with the allocation methods described in § 1.704–3, paragraphs (b), (c) and (d), apply only with respect to the contributions of property to the partnership. In that regard, the anti-abuse rule of § 1.701–2(b) provides that, if a partnership is formed or availed of in connection with a transaction a principal purpose of which is to reduce substantially the present value of the partners' Federal tax liability in a manner inconsistent with the intent of subchapter K, the IRS may recast the transaction for federal tax purposes as appropriate to achieve tax results that are consistent with the intent of subchapter K. Thus, even though a transaction may satisfy the literal words of the statute or regulations, the IRS may recast a transaction as appropriate to avoid tax results that are inconsistent with the intent of subchapter K, including but not limited to: (i) Disregarding purported partnerships, in whole or part, so that partnership assets are treated as owned by the partner; (ii) disregarding one or more contributions or (iii) disregarding one or more purported partners. The proposed regulations also provide that, in determining if a purported contribution of property to a partnership should be recast to avoid results that are inconsistent with subchapter K, one factor that may be relevant is the use of the remedial method in which allocations of remedial items of income, gain, loss or deduction are made to one partner and allocations of offsetting remedial items are made to a related partner.

Proposed Effective Date

These regulations are proposed to apply for taxable years beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. No inference should be drawn from this effective date with respect to prior law.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Laura Fields and Steven A. Schmoll, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.704–3 is amended by:

1. Adding five sentences to paragraph (a)(1) at the end of the last sentence and revising paragraph (a)(10) to read as follows.

The revisions and additions read as follows:

§ 1.704–3 Contributed property.

(a) * * * (1) * * * The principles of this paragraph (a)(1), together with the methods described in paragraphs (b), (c) and (d) of this section, apply only to contributions of property that are otherwise respected. See § 1.701–2. Accordingly, even though a partnership's allocation method may be described in the literal language of paragraphs (b), (c) or (d) of this section, based on the particular facts and circumstances, the Commissioner can recast the contribution as appropriate to avoid tax results inconsistent with the intent of subchapter K. One factor that may be considered by the Commissioner is the use of the remedial allocation method by related partners in which allocations of remedial items of income, gain, loss or deduction are made to one partner and the allocations of offsetting remedial items are made to a related partner. The preceding four sentences are effective for taxable years beginning after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

* * * * *

(10) *Anti-abuse rule*—(i) *In general.* An allocation method (or combination of methods) is not reasonable if the contribution of property (or event that results in reverse section 704(c) allocations) and the corresponding allocation of tax items with respect to the property are made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability. For purposes of this paragraph (a)(10), the tax effect of an allocation method (or combination of methods) on direct and indirect partners is considered.

(ii) *Definition of indirect partner.* An indirect partner is any direct or indirect owner of a partnership, S corporation, or controlled foreign corporation (as defined in section 957(a) or 953(c)), or direct or indirect beneficiary of a trust or estate, that is a partner in the partnership, and any consolidated group of which the partner in the partnership is a member (within the meaning of § 1.1502–1(h)). An owner (whether directly or through tiers of entities) of a controlled foreign corporation is treated as an indirect partner only with respect to allocations of items of income, gain, loss, or deduction that enter into the computation of a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, enter into any person's income attributable to a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, or would enter into the computations described in this sentence if such items were allocated to the controlled foreign corporation.

(iii) *Effective/applicability date.* The last sentence of paragraph (a)(10)(i), and paragraph (a)(10)(ii) of this section are effective for taxable years beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–11174 Filed 5–16–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0053]

32 CFR Part 322

Privacy Act; Implementation

AGENCY: National Security Agency/Central Security Services, DoD.

ACTION: Proposed rule.

SUMMARY: The National Security Agency/Central Security Services (NSA/CSS) is proposing to add an exemption rule for the system of records GNSA 23, ''NSA/CSS Operations Security Support Program and Training Files'' when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the record when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records.

DATES: Comments must be received on or before July 18, 2008 to be considered by this agency.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 322

Privacy.

Accordingly, 32 CFR part 322 is proposed to be amended as follows:

1. The authority citation for 32 CFR part 322 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 322.7 is amended by adding paragraph (r) to read as follows:

§ 322.7 Exempt systems of records.

* * * * *

(r) GNSA 23.

(1) *System name:* NSA/CSS Operations Security Support and Program Files.

(2) *Exemption.* All portions of this system of records which fall within the scope of 5 U.S.C. 552a (k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

Dated: May 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–11140 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0418; SW–FRL–8566–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of a delisting petition. Based on waste specific information provided by the petitioner, EPA is proposing to use the

DRAS to evaluate the impact of the petitioned waste on human health and the environment. This proposal provides background information on the updates and revisions made to the DRAS, and the use of the DRAS in delisting decision-making. The EPA is also proposing to grant petitions submitted by Bayer Material Science in Baytown, Texas; Lockheed Martin Aeronautics Company in Ft. Worth, Texas; and ConnocoPhillips Company Borger Refinery in Borger, Texas, to exclude (or delist) certain solid wastes generated by these facilities from the lists of hazardous wastes.

DATES: We will accept comments until June 18, 2008. We will stamp comments postmarked after the close of the comment period as ''late.'' These ''late'' comments may not be considered in formulating a final decision.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2008–0418 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: peace.michelle@epa.gov.*
3. *Mail:* Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.
4. *Hand Delivery or Courier:* Deliver your comments to: Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2008–0418. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this proposed rule, EPA–R06–RCRA–2008–0418, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at $0.15 per page. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket or the Bayer facility petition, contact Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202, by calling 214–665–7430 or by e-mail at *peace.michelle@epa.gov*.

For technical information regarding the ConocoPhillips Company petition, contact Youngmoo Kim at 214–665–6788 or by e-mail at *kim.youngmoo@epa.gov*.

For information regarding the Lockheed Martin petition, contact Wendy Jacques at (214) 665–7395 or by e-mail at *jacques.wendy@epa.gov*.

Your requests for a hearing must reach EPA by June 3, 2008. The request must contain the information described in § 260.20(d).

SUPPLEMENTARY INFORMATION: Each company listed in the **SUMMARY** submitted a petition under 40 CFR 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of §§ 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude the petitioned wastes from these facilities are nonhazardous with respect to the original listing criteria and that the waste process used will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that the processes minimize short-term and long-term threats from the petitioned waste to human health and the environment.

The information in this section is organized as follows:

I. Overview Information
A. What action is EPA proposing?
B. Why is EPA proposing to approve these delistings?
C. What is unique about these delistings?
II. Background
A. What is the history of the delisting program?
B. What is a delisting petition, and what does it require of a petitioner?
C. What factors must EPA consider in deciding whether to grant a delisting petition?
D. When would the proposed delisting exclusion be finalized?
E. How would this action affect states?
III. EPA's Evaluation of the Individual Waste Information and Data
A. Bayer Material Science LLC, Baytown, Texas—TDI Residue
1. What waste did Bayer petition EPA to delist?
2. Who is Bayer and what process does it use to generate the petitioned waste?
3. What information did the facility submit to support this petition?
4. What were the results of Bayer's analyses?
5. What did EPA conclude about the facility's analysis?
6. What other factors did EPA consider in its evaluation?
7. What is EPA's evaluation of this delisting petition?

8. What is the final disposition of the waste?
B. ConnocoPhillips Company, Borger, Texas—Thermal Desorber Residual Solids
1. What waste did ConnocoPhillips Company petition EPA to delist?
2. Who is ConnocoPhillips Company and what process does it use to generate the petitioned waste?
3. How did ConnocoPhillips Company sample and analyze the data in this petition?
4. What were the results of ConnocoPhillips Company's analysis?
5. What did EPA conclude about the facility's analysis?
6. What other factors did EPA consider in its evaluation?
7. What is EPA's evaluation of this delisting petition?
8. What is the final disposition of the waste?
C. Lockheed Martin Aeronautics Company, Fort Worth, Texas—F019 Waste Water Treatment Sludge
1. What waste did Lockheed Martin Aeronautics Company petition EPA to delist?
2. Who is Lockheed Martin Aeronautics Company and what process do they use to generate the petition waste?
3. What information did Lockheed Martin Aeronautics Company submit to support this petition?
4. What were the results of Lockheed Martin Aeronautics Company's analysis?
5. What did EPA conclude about the facility's analysis?
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IV. The Risk Evaluation
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V. Next Steps
A. With what conditions must the petitioner comply?
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A. How may I as an interested party submit comments?
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VII. Statutory and Executive Order Reviews

I. Overview Information

A. What action is EPA proposing?

EPA is proposing to grant the delisting petitions submitted by Bayer, ConnocoPhillips Company, and Lockheed Martin Aeronautics Company (Lockheed Martin Aeronautics Company) to have their petitioned wastes excluded, or delisted, from the definition of a hazardous waste.

B. Why is EPA proposing to approve these delistings?

Each individual petition requests a delisting for the waste stream be delisted. They do not believe that their petitioned wastes meet the criteria for which EPA listed them. They also believe no additional constituents or factors could cause the wastes to be hazardous. EPA's review of these petitions included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4). In making the initial delisting determination, EPA evaluated each of the petitioned wastes against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioners that the wastes are non-hazardous with respect to the original listing criteria. If EPA had found, based on these reviews, that the wastes remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petitions. EPA evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. EPA considered whether the wastes were acutely toxic, the concentration of the constituents in the wastes, their tendencies to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned waste, the quantities of wastes generated, and waste variability. EPA believes that the each petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist these individual waste streams from the facilities above is based on the information submitted in support of this rule, including descriptions of the waste and analytical data from each facility.

C. What is unique about these delistings?

Each of the petitioned wastes has been submitted by individual facilities. Each waste stream has been evaluated on its own merit. The proposed rule is being combined because each of these petitions have been evaluated using the new provisional delisting numbers generated by DRAS Version 3.0.

II. Background

A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in §§ 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not believe the wastes should be hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See Part 261 and the background documents for the listed waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those

for which EPA listed the waste, if a reasonable basis exists to determine that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

D. When would the proposed delisting exclusions be finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion unless and until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1), at 42 USCA 6930(b)(1), allows rules to become effective in less than six months after EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect the states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows the states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law. Delisting petitions approved by the EPA Administrator (or his designee) under 40 CFR 260.22 are effective in the State of Texas only after the final rule has been published in the **Federal Register**.

III. EPA's Evaluation of the Individual Waste Information and Data

A. Bayer Material Science LLC, Baytown Texas—TDI Residue

1. What waste did Bayer petition EPA to delist?

On September 2, 2004, Bayer petitioned EPA to exclude from the lists of hazardous waste contained in § 261.32, toluene diisocyanate (TDI) residues generated from its facility located in Baytown, Texas. The waste falls under the classification of a listed waste under § 261.30. The waste is listed as K027 hazardous wastes. These are centrifuge and distillation residues from TDI production. Specifically, in its petition, Bayer requested that EPA grant a conditional exclusion for 9,780 cubic yards per year of the TDI residues.

2. Who is Bayer and what process does it use to generate the petitioned waste?

Bayer as a facility has four manufacturing groups: Plastics, Coatings, Polyurethanes, and Industrial Chemicals. They manufacture six products within the manufacturing groups. Hydrazine Hydrate; Maleic Anhydride; Coatings; Makrolon Polycarbonate; Methane Diisocyanate; and Toluene Diisocyanate (TDI) which is used in flexible foam applications such as auto seating, furniture and bedding.

TDI is produced by a reaction of toluene diamine (TDA) and phosgene. The reaction takes place in a solvent (orthodichlorobenzene, ODB). The reaction produces TDI, HCL gas and a small amount of high boiling impurities, which are removed in the TDI residue stream. The HCL gas is recovered and re-used, all the phosgene is stripped from the product stream and returned to the process in the reaction step. The TDI, ODB, and the residue stream are processed further by separating the residue from the TDI and ODB through a distillation process. The stream resulting from the distillation process contains bottom residues mixed with TDI and solvent. The residue separation step removes the TDI and ODB, leaving the residue waste. ODB is separated from TDI and recycled back into the process and pure TDI is sold as product.

3. What information did the facility submit to support this petition?

To support its petition, Bayer submitted:

- Analytical results of the toxicity characteristic leaching procedure (TCLP) and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for five TDI samples;
- Analytical results from multiple pH leaching of metals; and
- A description of the TDI production process.

4. What were the results of Bayer's analyses?

EPA believes that the descriptions of the Bayer analytical characterization provide a reasonable basis to grant Bayer's petition for an exclusion of the TDI residues. EPA believes the data submitted in support of the petition show the TDI residues are non-hazardous. Analytical data for the residue samples were used in the DRAS to develop delisting levels. The data summaries for compounds of concern (COC)s are presented in Table 1. EPA has reviewed the sampling procedures used by Bayer and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the TDI residues. In addition, the data submitted in support of the petition show that constituents in Bayer's waste are presently below risk-based levels used in the delisting decision-making. EPA believes that Bayer has successfully demonstrated that the TDI residues are non-hazardous.

TABLE 1.—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE TDI RESIDUES AT BAYER POLYMERS LLC IN BAYTOWN, TX

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allowable TCLP delisting level (mg/L)
Arsenic	1.0	0.011	0.10
Barium	0.17	0.837	36.0
Chloromethane (Methyl Chloride)	0.09	0.033	6.06
Chromium	30.2	0.0034	2.27
Cobalt	0.42	0.0007	13.6
Copper	0.64	0.00610	25.9
Cyanide	0.265	0.0133	3.08
Dichlorophenoxyacetic acid	0.0310	0.0020	1.08
Diethyl phthalate	8.90	0.0010	1000.0
Endrin	0.28	0.0002	0.02
Lead	0.18	0.00210	0.702
Nickel	24.8	0.0525	13.5
Selenium	88.0	0.0209	0.89
Tin	1.70	0.0196	22.5
2–4 Toluenediamine	1.80	0.020	0.0459
Vanadium	8.40	0.0225	0.976
Zinc	2.20	0.0628	197.0

Note: 1. These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific level found in one sample.

5. What did EPA conclude about the facility's analysis?

EPA concluded, after reviewing Bayer's processes that no other hazardous constituents of concern, other than those for which Bayer tested, are likely to be present or formed as reaction products or by-products in Bayer's wastes. In addition, on the basis of explanations and analytical data provided by Bayer, pursuant to § 260.22, EPA concludes that the petitioned waste, sludge, does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24 respectively.

6. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.*, air emissions and surface runoff) for the sludge. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the sludge under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the sludge.

7. What is EPA's evaluation of this delisting petition?

The descriptions by Bayer's of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 1). EPA believes that the sludge generated by Bayer contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes that it should grant to Bayer an exclusion from the list of hazardous wastes for the TDI residue. EPA believes that the data submitted in support of the petition show the Bayer's TDI residue to be non-hazardous.

EPA has reviewed the sampling procedures used by Bayer and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the TDI residue. The data submitted in support of the petition show that constituents in Bayer's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that Bayer has successfully demonstrated that the TDI residue is non-hazardous.

EPA, therefore, proposes to grant an exclusion to Bayer for the TDI residue described in its July 2004 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the TDI residue.

If EPA finalizes the proposed rule, EPA will no longer regulate 9,780 cubic yards per year of TDI residue from Bayer's Baytown facility under parts 262 through 268 and the permitting standards of part 270.

8. What is the final disposition of the waste?

If EPA finalizes the proposed rule, the TDI residue will be disposed of in a Subtitle D landfill.

B. ConocoPhillips Company, Borger, Texas—Thermal Desorber Residual Solids

1. What waste did ConocoPhillips Company petition EPA to delist?

On August 26, 2005, ConocoPhillips Company, (now WRB Refining LLC) petitioned EPA to exclude from the lists of hazardous wastes contained in §§ 261.31, thermal desorber residual solids from processing oil-bearing hazardous secondary materials including F037, F038, K048, K049, K050 and K051 generated by its facility located in Borger, Texas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, ConocoPhillips Company requested that EPA grant a conditional exclusion for 1500 cubic yards per year

of thermal desorber residual solids for a period of 10 years.

2. Who is ConocoPhillips Company and what process does it use to generate the petitioned waste?

Effective, January 1, 2007, ConocoPhillips and EnCana Corporation of Canada created an integrated North American heavy oil business consisting of both upstream and downstream assets. The downstream venture, WRB Refining LLC, consists of ConocoPhillips Company's Wood River Refinery located in Roxana, IL and Borger Refinery, located in Borger, TX. ConocoPhillips Company remains the operator of both refineries.

ConocoPhillips Company operates the WRB Refining LLC (formerly ConocoPhillips Company Borger Refinery which processes crude oil into unleaded gasoline, furnace oil, jet fuels, stove oil, kerosene, dual-purpose fuel oil, isobutene, propane, butane, hexane, heptane, propylene and sulfur. Processes used in the refining of these products are atmospheric distillation, vacuum distillation, desalting, fluid catalytic cracking, hydrotreating, hydrogen fluoride alkylation reforming. The use of the thermal desorption enables ConocoPhillips Company Borger Refinery to process its oil-bearing hazardous secondary materials in a manner that allows oil recovered from the desorption process to be recycled back into the refining process. The thermal desorber residual solids are currently disposed into the Texas Commission for Environmental Quality (TCEQ) Class I–H hazardous waste landfill, and the waste to be delisted will be disposed in the TCEQ Class I/II proposed non-hazardous landfill location on site. The Class I/II landfill is located within the facility and the nearest property line is located more than 500 feet from the area of landfill operations. The landfill is equipped with a 3-foot bentonite-amended clay liner and a 60-mil geomembrane on its bottom and side slopes, and a leachate collection system.

3. How did ConocoPhillips Company sample and analyze the data in this petition?

To support its petition, ConocoPhillips Company submitted:

- Historical information on waste generation and management practices;
- Results of the total constituents list for 40 CFR part 264, Appendix IX volatile and semi-volatile organic compounds and metals. These wastes are also analyzed for cyanide and sulfide.
- Results of the constituent list for appendix IX on Toxicity Characteristic Leaching Procedure(TCLP) extract for volatiles, semi-volatiles, and metals.
- Results from total oil and grease analyses and multiple pH measurements and;
- Results from a total of ten composite samples including two duplicates, representing 60 discrete thermal desorber residual solids samples.

4. What were the results of ConocoPhillips Company's analyses?

EPA believes that the descriptions of the ConocoPhillips Company analytical characterization provide a reasonable basis to grant ConocoPhillips Company's petition for an exclusion of the thermal desorber residual solids. EPA believes the data submitted in support of the petition show the thermal desorber residual solids are non-hazardous. Analytical data for the thermal desorber solid samples were used in the DRAS to develop delisting levels. The data summaries for compounds of concern (COC)s are presented in Table 2. EPA has reviewed the sampling procedures used by ConocoPhillips Company and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the thermal desorber residual solids. In addition, the data submitted in support of the petition show that constituents in ConocoPhillips Company's waste are presently below risk-based levels used in the delisting decision-making. EPA believes that ConocoPhillips Company has successfully demonstrated that the thermal desorber residual solids are non-hazardous.

TABLE 2.—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION OF THE THERMAL DESORBER RESIDUAL SOLIDS AT CONOCOPHILLIPS REFINERY COMPANY, BORGER, TEXAS

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allowable TCLP delisting level (mg/L)
Benzene	0.047	<0.05	0.5
Carbon Disulfide	0.040	<0.05	552.00
Ethylbenzene	0.008	<0.05	106.00
Methylene Chloride	0.016	<0.05	0.077
Trichlorofluoromethane	0.005	<0.05	151.00
Toluene	0.150	<0.05	148.00
Xylenes	0.040	<0.05	93.40
Acenapthene	2.60	<0.10	104.00
Anthracene	0.44	<0.10	253.00
2-chlorophenol	0.73	<0.10	28.10
1,4-Dichlorobenzene	1.90	<0.10	90.90
Dibenzofuran	0.59	<0.10	0.14
Fluoranthene	0.066	<0.10	24.00
Napthalene	0.94	<0.10	0.32
Phenol	1.20	<0.10	1690.00
Pyrene	1.10	<0.10	43.40
1,2,4-Trichlorobenzene	2.30	<0.10	9.68
Silver	8.70	<0.10	5.0
Barium	734.00	2.60	100.0
Beryllium	1.80	<0.05	0.76
Cobalt	70.30	<0.10	130.00
Chromium	320.00	<0.10	5.0
Copper	1090.00	0.23	234.00
Nickel	864.00	0.14	129.00
Tin	22.60	0.015	379000.00

TABLE 2.—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION OF THE THERMAL DESORBER RESIDUAL SOLIDS AT CONOCOPHILLIPS REFINERY COMPANY, BORGER, TEXAS—Continued

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allowable TCLP delisting level (mg/L)
Vanadium	267.00	0.24	6.93
Zinc	1940.00	0.52	1930.00
Antimony	186.00	1.69	2.65
Arsenic	64.10	0.25	1.69
Cadmium	1.55	0001	1.0
Lead	135.00	0.007	5.00
Selenium	2280.00	0.37	1.0
Chromium+6	0.06	0.10	5.0
Mercury	0.05	0.002	0.20
Cyanide	1.30	0.012	30.10

5. What did EPA conclude about the facility's analysis?

EPA concluded, after reviewing ConocoPhillips Company's processes that no other hazardous constituents of concern, other than those for which ConocoPhillips Company tested, are likely to be present or formed as reaction products or by-products in ConocoPhillips Company's wastes. In addition, on the basis of explanations and analytical data provided by ConocoPhillips Company, pursuant to § 260.22, EPA concludes that the petitioned waste, sludge, does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24 respectively.

6. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.*, air emissions and surface runoff) for the sludge. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the sludge under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the sludge.

7. What is EPA's evaluation of this delisting petition?

The descriptions by ConocoPhillips Company of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 2). EPA believes that the thermal desorber residual solids generated by ConocoPhillips Company contain hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes that it should grant to WRB Refining LLC (formerly ConocoPhillips Company Borger Refinery) an exclusion from the list of hazardous wastes for the thermal desorber residual solids. EPA believes that the data submitted in support of the petition show the ConocoPhillips Company's thermal desorber residual solids to be non-hazardous.

EPA has reviewed the sampling procedures used by ConocoPhillips Company and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the thermal desorber residual solids. The data submitted in support of the petition show that constituents in ConocoPhillips Company's thermal desorber residual solids are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that ConocoPhillips Company has successfully demonstrated that the thermal desorber residual solids are non-hazardous.

EPA, therefore, proposes to grant an exclusion to WRB Refining LLC (formerly ConocoPhillips Company Borger Refinery) for the thermal desorber residual solids described in its 2005 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the solids.

If EPA finalizes the proposed rule, EPA will no longer regulate 1500 cubic yards per year of thermal desorber residual solids from WRB Refining LLC (formerly ConocoPhillips Company Borger Refinery), Borger, TX facility under Parts 262 through 268 and the permitting standards of Part 270.

8. What is the final disposition of the waste?

If EPA finalizes the proposed rule, the thermal desorber residual solids will be disposed of in an onsite non-hazardous industrial solid waste landfill.

C. Lockheed Martin Aeronautics Company, Fort Worth, Texas—F019 Waste Water Treatment Sludge

1. What waste did Lockheed Martin Aeronautics Company petition EPA to delist?

Lockheed Martin Aeronautics Company petitioned EPA on February 21, 2006, to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, the sludge from its waste water treatment plant. The sludge waste stream is generated from the Lockheed Martin Aeronautics Company facility located in Fort Worth, Texas. The sludge is listed under EPA Hazardous Waste No. F019, because it is derived from the treatment of listed waste water which is treated at the facility's waste water treatment plant. Specifically, in its petition, Lockheed Martin Aeronautics Company requested that EPA grant an exclusion for 90 cubic yards per calendar year of sludge resulting from the treatment of waste waters from the manufacturing processes at its facility.

2. Who is Lockheed Martin Aeronautics Company and what process do they use to generate the petition waste?

Lockheed Martin Aeronautics Company is engaged in design, development, production and full system support of fighter/attack aircraft for the United States Air Force and foreign governments. The United States Air Force Plant No. 4 (AFP4), operated by Lockheed Martin Aeronautics Company, consists of over seven million square feet of advanced tactical fighter aircraft manufacturing, research, development, and office area on a six hundred acre site. Manufacturing advanced aircraft requires typical metal finishing techniques such as aqueous cleaning, sulfuric acid anodizing, and chromate conversion coating. Waste water from these processes is routed to a centralized pre-treatment industrial waste water pre-treatment facility through segregated waste collection lines. Industrial waste water is primarily generated from the sulfuric acid anodize and chromated conversion coating process line. This line consists of fourteen, 8,000 gallon tanks arranged in linear fashion for the etch-clean-rinse-clean-rinse-anodize-rinse-seal process.

Lockheed Martin Aeronautics Company intends to dispose of the delisted sludge at a Subtitle D Landfill.

Treatment of the waste waters, which result from the manufacturing process generates the sludge that is classified as F019 listed hazardous waste pursuant to 40 CFR 261.31. The 40 CFR Part 261, Appendix VII hazardous constituents which are the basis for listing F019 hazardous waste are: Hexavalent chromium and cyanide.

3. What information did Lockheed Martin Aeronautics Company submit to support this petition?

To support its petition, Lockheed Martin Aeronautics Company submitted:

- Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for six sludge samples;
- Analytical results from multiple pH leaching of metals; and
- Descriptions of the waste water treatment process.

4. What were the results of Lockheed Martin Aeronautics Company's analysis?

EPA believes that the descriptions of Lockheed Martin Aeronautics Company's waste, and the analytical data submitted in support of the petition show that the sludge is non-hazardous. Analytical data from Lockheed Martin Aeronautics Company's sludge samples were used in the Delisting Risk Assessment Software. The data summaries for detected constituents are presented in Table 3. EPA has reviewed the sampling procedures used by Lockheed Martin Aeronautics Company and has determined that they satisfy EPA's criteria for collecting representative samples of the variations in constituent concentrations in the sludge. The data submitted in support of the petition show that constituents in Lockheed Martin Aeronautics Company's wastes are presently below health-based risk levels used in the delisting decision-making. EPA believes that Lockheed Martin Aeronautics Company has successfully demonstrated that the sludge is non-hazardous.

TABLE 3.—MAXIMUM TCLP AND TOTAL CONSTITUENT CONCENTRATIONS OF THE SLUDGE AND CORRESPONDING DELISTING LIMITS [1]

Chemical name	Waste stream total concentration (mg/kg)	Waste stream TCLP concentration (mg/l)	Delisting concentration (mg/l)
Acetone	3.40E+00	5.00E–02	4.06E+04
Acetonitrile	2.20E–02	<1.00E–02	7.66E+02
Antimony	6.30E+02	1.30E–01	8.45E+00
Arsenic	9.30E+01	<5.00E–02	6.57E–01
Barium	3.40E+02	6.80E–01	1.00E+02
Bis(2-Ethylhexyl) Phthalate	3.20E+03	<1.00E–01	4.68E+29
Cadmium	<1.20E+01	6.10E–02	1.00E+00
Carbon Disulfide	1.00E–02	<1.00E–02	4.40E+03
Chromium	2.50E+04	1.60E+00	5.00E+00
Chromium, Hexavalent	4.00E+2	<2.00E–02	5.00E+00
Cobalt	8.50E+01	5.60E–01	1.04E+03
Copper	4.00E+03	2.10E+01	1.81E+03
Cyanide	3.00E+02	9.90E–01	2.40E+02
Ethylbenzene	2.20E–02	<1.00E–02	8.46E+02
Formaldehyde	1.20E+02	1.40E+03	6.76E+03
Lead	3.80E+03	1.40E–01	5.00E+00
Mercury	1.90E+00	<2.00E–02	2.00E–01
Methyl Ethyl Ketone (2-butanone)	7.80E–01	2.50E–02	2.00E+02
Methyl Isobutyl Ketone	<4.80E–02	<5.00E–02	3.61E+03
Methylene Chloride	3.90E–01	6.00E–02	6.16E+00
Nickel	4.90E+03	3.00E+01	3.00E+01
Selenium	<6.00E+01	2.20E–02	1.00E+00
Silver	3.30E+02	4.00E–02	5.00E+00
Toluene	1.10E–02	<1.00E–02	1.18E+03
Vanadium	1.10E+03	1.30E–02	5.15E+01
Xylenes, Total	6.70E–02	<2.50E–02	7.45E+02
Zinc	2.50E+03	1.50E+01	1.58E+04

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

< # Denotes that the constituent was below the detection limit.

5. What did EPA conclude about the facility's analysis?

EPA concluded, after reviewing Lockheed Martin Aeronautics Company's processes that no other hazardous constituents of concern, other than those for which Lockheed Martin Aeronautics Company tested, are likely to be present or formed as reaction products or by-products in Lockheed Martin Aeronautics Company's wastes. In addition, on the basis of explanations and analytical data provided by Lockheed Martin Aeronautics Company, pursuant to § 260.22, EPA concludes that the petitioned waste, sludge, does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24 respectively.

6. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.*, air emissions and surface runoff) for the sludge. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the sludge under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the sludge.

7. What is EPA's evaluation of this delisting petition?

The descriptions by Lockheed Martin Aeronautics Company of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 3). EPA believes that the sludge generated by Lockheed Martin Aeronautics Company contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes that it should grant to Lockheed Martin Aeronautics Company an exclusion from the list of hazardous wastes for the sludge. EPA believes that the data submitted in support of the petition show the Lockheed Martin Aeronautics Company's sludge to be non-hazardous.

EPA has reviewed the sampling procedures used by Lockheed Martin Aeronautics Company and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the sludge. The data submitted in support of the petition show that constituents in Lockheed Martin Aeronautics Company's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that Lockheed Martin Aeronautics Company has successfully demonstrated that the sludge is non-hazardous.

EPA, therefore, proposes to grant an exclusion to Lockheed Martin Aeronautics Company for the sludge described in its February 2006 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the sludge.

If EPA finalizes the proposed rule, EPA will no longer regulate 242,000 pounds per year of sludge from Lockheed Martin Aeronautics Company's Fort Worth facility under Parts 262 through 268 and the permitting standards of Part 270.

IV. The Risk Evaluation

A. How did EPA evaluate the risk of delisting this waste?

The worst case scenario for management of the sludge was modeled for disposal in a landfill. EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, soil, air) for hazardous constituents present in the sludge. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for the wastes. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health and/or the environment. The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the facilities have never directly disposed of this material in a solid waste landfill, so no representative data exists. Therefore, EPA has

determined that it would be unnecessary to request ground water monitoring data.

EPA believes that the descriptions of the wastes and analytical characterization which illustrate the presence of toxic constituents at lower concentrations in these waste streams provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the wastes are presented in Tables 1, 2 and 3. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Tables 1, 2, and 3, the petitioned wastes should be delisted because no constituents of concern are likely to be present or formed as reaction products or by products in the wastes.

B. What changes have been made to the DRAS model?

In July 2007, U.S. EPA prepared an update of the *Delisting Risk Assessment Software (DRAS)* by releasing version 3.0. The update addressed a number of issues with version 2 and improved the fate and transport modeling.

To estimate the downgradient concentrations of waste leachate constituents released into groundwater, the *DRAS* utilizes conservative dilution-attenuation factors (DAFs) taken from Monte-Carlo applications of U.S. EPA's *Composite Model for Leachate Migration with Transformation Products (CMTP). DRAS 3.0* includes all new DAFs from new CMTP modeling runs. The new modeling takes advantage of: Updated saturated flow and transport modules; a new surface impoundment module and database; model corrections for unrealistic scenarios (like water tables modeled above the ground surface); new isotherms for metals; and a revised recharge and infiltration database. As a result, many of the DAFs used in previous versions of *DRAS* have changed.

Further affecting the groundwater calculation, the relationships for determining scaling factors used to scale the DAFs to account for very small waste streams have been updated to reflect the new database information on landfills and surface impoundments and were also corrected for a metric conversion of cubic meters to cubic yards. The new scaling factors are generally higher than those of previous versions of *DRAS*, resulting in higher estimated dilution and attenuation at lower waste volumes for both landfills and surface impoundments.

The new metals DAFs, based on MINTEQA2 isotherms, can vary as a function of the landfill leachate concentration. This means that the effective DAF (including a scaling factor adjustment, if necessary) for an input concentration may differ significantly with the effective DAF that corresponds to the allowable leachate concentration. *DRAS 3.0* now displays the DAFs in both the forward calculated risk tables and the tables of maximum allowable concentrations so that the difference is evident to the user. The isotherms that vary by leachate concentration are represented in *DRAS* by a look-up table with leachate concentrations paired with DAFs. In the event that an actual concentration input to *DRAS* lies between two values in the table, or an allowable receptor concentration lies between two calculated receptor concentrations from the table, *DRAS 3.0* will linearly and proportionally extrapolate between the two values to determine the corresponding exposure or allowable leachate concentration.

EPA changed the calculation for particle emissions caused by vehicles driving over the waste at the landfill to provide a more realistic estimate. The estimate depends upon the number of trips per day landfill vehicles make back and forth over the waste. In previous versions of *DRAS*, this value was conservatively set at a 100 trips per day, corresponding with an extremely high annual waste volume. In *DRAS 3.0*, a minimum number of trips per day was conservatively assumed from the Subtitle D landfill survey (7.4 trips per day at the 95th percentile of values reported). The number of trips per day specific to the actual waste volume is then added to the minimum to reflect the impact of very large waste streams. This will considerably reduce the particle emission estimate for wastes generated at all but the largest annual volumes.

EPA added a conversion from English to metric tons to the calculation of particle emissions from waste unloading, resulting in a decrease of roughly 10% over previous versions of *DRAS*. We also made a unit-conversion factor correction to part of the air-volatile pathway which will reduce the impact to the receptor.

An error in the back-calculation for fish ingestion pathway was corrected to reflect the difference between freely dissolved and total water column waste constituent concentrations.

For the estimation of risk and hazard, we made a number of updates to the forward and back calculations. Previous versions of *DRAS* assumed that only 12.5% of particles are absorbed by the receptor's respiratory system. This is no longer necessary as toxicity reference values for inhalation currently recommended by U.S. EPA relate risk or hazard directly to exposure concentration. *DRAS 3.0* does not include the 12.5% reduction. This change significantly increases estimated risks due to particle inhalation and lowers corresponding allowable concentrations.

DRAS Version 3.0.47 has a reformulated back calculation of the allowable leachate concentrations from exposure due to contaminants volatilized during household water use to match the forward calculation of risk. In previous versions of *DRAS*, the forward calculation summed the risks from exposure to all three evaluated household compartments (the shower, the bathroom, and the whole house) while the back calculation based the maximum allowable level on the single most conservative compartment. The *DRAS 3.0* maximum allowable leachate concentrations are now based on the combined impact of all three compartments. The house exposure was also expanded to a 900 minute (15 hour) daily exposure to reflect non-working residents who have an overall 16 hour in-house exposure (the other 1 hour is spent in the shower and bathroom).

EPA resolved the inconsistencies with the way *DRAS* chooses limiting pathways for specific waste constituents in *DRAS 3.0*.

EPA checked all toxicity reference values in *DRAS* and updated where necessary. Approximately 180 changes were made to the toxicity reference values in *DRAS* based on data in IRIS, PPRTV, HEAST, NCEA, CalEPA and other sources. Some route-to-route extrapolations of oral toxicity data to inhalation exposure have been returned to *DRAS 3.0* if consistent with Agency policy. See U.S. EPA 2006 for full accounting of this methodology. The same reference also includes discussions of toxicity reference choices where the multiple values were available or where the toxicity reference values were specific to particular species of constituents.

V. Next Steps

A. With What Conditions Must the Petitioners Comply?

The petitioners must comply with the requirements in 40 CFR Part 261, Appendix IX, Tables 1 and 2 as amended by this notice. The text below

gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituent concentrations for which the facility must test in the petitioned wastes, below which these wastes would be considered non-hazardous.

EPA selected the set of inorganic and organic constituents specified in paragraph (1) and listed in 40 CFR Part 261, Appendix IX, Tables 1 and 2, based on information in the petition. EPA compiled the inorganic and organic constituents list from descriptions of the manufacturing processes used by the facilities, previous test data provided for the wastes, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the leachable concentrations of the petitioned wastes.

(2) Waste Holding and Handling

Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) has occurred for two consecutive quarterly sampling events. For example, if the facility is issued a final exclusion in August, the first quarter samples are due in November and the second quarter samples are due in February. If EPA deems that both the first and second quarter samples (a total of four) meet all the delisting limits, classification of the waste as non-hazardous can begin in March. If constituent levels in any sample taken by the facility exceed any of the delisting levels set in paragraph (1), the facility must: (i) notify EPA in accordance with paragraph (6), and; (ii) manage and dispose of the petitioned waste as hazardous waste generated under Subtitle C of RCRA.

(3) Verification Testing Requirements

The petitioner must complete a verification testing program on the wastes to assure that they do not exceed the maximum levels specified in paragraph (1). If EPA determines that the data collected under this paragraph does not support the data provided in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The first part of the quarterly verification testing program consists of testing a batch of sludge for specified indicator parameters as described in paragraph (1). Each quarterly sampling event will consist of at least two samples of the waste. Levels of constituents measured in the samples of the waste that do not exceed the levels set forth in paragraph (1) can be considered non-hazardous after two consecutive quarters of sampling data meet the levels listed in paragraph (1).

The second part of the verification testing program is the annual testing of two representative composite samples of the wastes for all constituents specified in paragraph (1).

If the petitioner demonstrates for two consecutive quarters complete attainment of all specified limits, then the facility may request approval of EPA to reduce the frequency of testing to annually. If, after review of performance of the treatment system, EPA finds that annual testing is adequately protective of human health and the environment, then EPA may authorize the facility to reduce the quarterly comprehensive sampling frequency to an annual basis. If the annual testing of the wastes does not meet the delisting levels in paragraph (1), the facility must notify EPA according to the requirements in paragraph (6). EPA will then take the appropriate actions necessary to protect human health and the environment as described in paragraph (6). The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

The exclusion is effective upon publication in the **Federal Register** but the change in waste classification as ''non-hazardous'' cannot begin until two consecutive quarters of verification sampling comply with the levels specified in paragraph (1). The waste classification as ''non-hazardous'' is also not authorized, if the facility fails to perform the quarterly and yearly testing as specified herein. Should the facility fail to conduct the quarterly/yearly testing as specified herein, then disposal of sludge as delisted waste may not occur in the following quarter(s)/year(s) until the facility obtains the written approval of EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow the facility the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, the facility must prove the effectiveness of the modified process and request approval from EPA. The facility must manage wastes generated during the new process demonstration as hazardous waste through verification sampling within 30 days of start-up.

(5) Data Submittals

To provide appropriate documentation that the facility is correctly managing the waste, the facility must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained pursuant to paragraph (3), including quality control information, for five years. Paragraph (5) requires that the facility furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, then it will apply only to amount of wastes designated by the exclusion per calendar year.

EPA would require a petitioner to submit additional verification data under any of the following circumstances:

(a) If the facility significantly alters the manufacturing process treatment system except as described in paragraph (4).

(b) If the facility uses any new manufacturing or production process(es), or significantly changes the current process(es) described in its petition; or

(c) If the facility makes any changes that could affect the composition or type of waste generated.

The facility must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. EPA will publish an amendment to the exclusion if the changes are acceptable.

The facility must manage waste volumes greater than those designated by the exclusion as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management by the facility of the wastes covered in this petition would be relieved from Subtitle C jurisdiction. The facility may not classify the waste as non-hazardous until the revised exclusion is finalized.

(6) Reopener

The purpose of paragraph (6) is to require the facility to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. The petitioner must also use this procedure if the waste sample in the annual testing fails to meet the levels found in paragraph (1). This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which it based the decision to see if it is still correct or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires the petitioner to report differing site

conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delisting is merited in light of EPA's experience. See the **Federal Register** notice regarding Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA section 553 (b)(3)(B).

B. What happens if the petitioner violates the terms and conditions?

If the petitioner violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects the petitioner to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

VI. Public Comments

A. How may I as an interested party submit comments?

EPA is requesting public comments on this proposed decision. You may submit comments on one of the three petitions or the decision as a whole. Please send three copies of your comments. Send two copies to the Chief, Corrective Action and Waste Minimization Section, Multimedia Permitting and Planning Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711–3087. Identify your comments at the top with this regulatory docket number. You may submit your comments electronically to Michelle Peace at *peace.michelle@epa.gov.*

B. How may I review the docket or obtain copies of the proposed exclusion?

You may review the RCRA regulatory docket for this proposed rule at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, TX 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages and at fifteen cents per page for additional copies.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties, 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: May 2, 2008.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

2. In Table 1 of Appendix IX of part 261 add the following waste streams in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Lockheed Martin Aeronautics Company.	Fort Worth, TX	Sludge (EPA Hazardous Waste Number F019) generated at a maximum rate of 90 cubic yards per calendar year after [insert publication date of the final rule]. For the exclusion to be valid, Lockheed Martin Aeronautics Company must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Sludge Leachable Concentrations (mg/l): Antimony—8.45; Arsenic—0.657; Barium—100.0; Cadmium—1.00; Chromium—5.0; Chromium, Hexavalent—5.0; Cobalt—1040; Copper—1810; Cyanide—240; Lead—5.0; Mercury—0.20; Nickel—1040; Selenium—1.0; Silver—5.0; Vanadium—51.5; Zinc—15800; Acetone—40600; Acetonitrile—766; Carbon Disulfide—4400; Ethylbenzene—846; Methyl Ethyl Ketone—200.0; Methyl Isobutyl Ketone—3610; Methylene Chloride—6.16; Toluene—1180; Xylenes—745. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for sludge has occurred for two consecutive quarterly sampling events. (B) If constituent levels in any sample taken by Lockheed Martin Aeronautics Company exceed any of the delisting levels set in paragraph (1) for the sludge, Lockheed Martin Aeronautics Company must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose of the sludge as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, Lockheed Martin Aeronautics Company may perform quarterly analytical testing by sampling and analyzing the sludge as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the sludge at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking each quarterly sample, Lockheed Martin Aeronautics Company will report its quarterly analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters or sampling events, Lockheed Martin Aeronautics Company can manage and dispose the non-hazardous sludge according to all applicable solid waste regulations. (B) Annual Testing: (i) If Lockheed Martin Aeronautics Company completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), Lockheed Martin Aeronautics Company may begin annual testing as follows: Lockheed Martin Aeronautics Company must test two representative composite samples of the sludge for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B,1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the Lockheed Martin Aeronautics Company sludge are representative for all constituents listed in paragraph (1).

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report should include the total amount of waste in cubic yards disposed during the calendar year. (4) Changes in Operating Conditions: If Lockheed Martin Aeronautics Company significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. Lockheed Martin Aeronautics Company must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: Lockheed Martin Aeronautics Company must submit the information described below. If Lockheed Martin Aeronautics Company fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Lockheed Martin Aeronautics Company must: (A) Submit the data obtained through paragraph (3) to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas, 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Reopener: (A) If, anytime after disposal of the delisted waste Lockheed Martin Aeronautics Company possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, Lockheed Martin Aeronautics Company must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If Lockheed Martin Aeronautics Company fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.

* * * * *

2. In Table 1of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
WRB Refining LLC	Borger, TX	Thermal desorber residual solids (Hazardous Waste No. F037, F038, K048, K049, K050, K051) generated at a maximum annual rate of 1,500 cubic yards per calendar year after [insert publication date of the final rule] and disposed in Subtitle D Landfill. For the exclusion to be valid, WRB Refining LLC must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Thermal Desorber Residual Solid Leachable Concentrations (mg/l): Antimony—2.65; Arsenic—1.69; Barium—100; Beryllium—0.76; Cadmium—1.00; Chromium—5.0; Chromium, Hexavalent—5.0; Cobalt—130.0; Copper—234.0; Cyanide—30.10; Lead—5.0; Mercury—0.20; Nickel—129.0; Selenium—1.0; Silver—5.0; Tin—3790.00; Vanadium—6.93; Zinc—1930.0; Acenapthene—104.0; Anthracene—253.0; Benzene—0.5; Carbon Disulfide—552.0; Dibenzofuran—0.14; 1,4-Dichlororbenzene—7.50; Ethylbenzene—106.0; Fluoranthene—24.00; Methylene Chloride—0.077; Naphthalene—0.32; Phenol—1690.00; Pyrene—43.40; Toluene—148.0; 1,2,4-Trichlorobenzene—9.68; Trichlorofluoromethane—151.0; Xylenes—93.40. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for thermal desorber residual solids has occurred for two consecutive quarterly sampling events. (B) If constituent levels in any sample taken by WRB Refining LLC exceed any of the delisting levels set in paragraph (1) for the thermal desorber residual solids, WRB Refining LLC must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose the thermal desorber residual solids as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, WRB Refining LLC may perform quarterly analytical testing by sampling and analyzing the desorber residual solids as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the sludge at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking its first quarterly sample, WRB Refining LLC will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, WRB Refining LLC can manage and dispose the non-hazardous thermal desorber residual solids according to all applicable solid waste regulations.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) Annual Testing: (i) If WRB Refining LLC completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), WRB Refining LLC may begin annual testing as follows: WRB Refining LLC must test two representative composite samples of the thermal desorber residual solids for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the WRB Refining LLC thermal desorber residual solids are representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report should include the total amount of waste in cubic yards disposed during the calendar year. (4) Changes in Operating Conditions: If WRB Refining LLC significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. WRB Refining LLC must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: WRB Refining LLC must submit the information described below. If WRB Refining LLC fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). WRB Refining LLC must: (A) Submit the data obtained through paragraph (3) to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas, 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Reopener (A) If, anytime after disposal of the delisted waste WRB Refining LLC possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, WRB Refining LLC must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If WRB Refining LLC fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.

* * * * *

3. In Table 2 of Appendix IX of Part 261 add the following waste streams in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under § § 260.20 and 260.22

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Bayer Material Science LLC	Baytown, TX	Toluene Diisocyanate (TDI) Residue (EPA Hazardous Waste Nos. K027) generated at a maximum rate of 9,780 cubic yards per calendar year after [insert publication date of the final rule]. For the exclusion to be valid, Bayer must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. TDI Residue Leachable Concentrations (mg/l): Arsenic—0.10, Barium—36.0; Chloromethane—6.06; Chromium—2.27; Cobalt—13.6; Copper—25.9; Cyanide—3.08; Dichlorophenoxyacetic acid—1.08; Diethyl phthalate—1000.0; Endrin—0.02; Lead—0.702; Nickel—13.5; Selenium—0.89; Tin—22.5; Vanadium—0.976; Zinc—197.0; 2,4-Toluenediamine—0.0459. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for the TDI residue has occurred for two consecutive quarterly sampling events and the reports have been approved by EPA. (B) If constituent levels in any sample taken by Bayer exceed any of the delisting levels set in paragraph (1) for the TDI residue, Bayer must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose of the TDI residue as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, Bayer must perform quarterly analytical testing by sampling and analyzing the TDI residue as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the TDI residue at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the TDI residue must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking its first quarterly sample, Bayer will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the TDI residue do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, Bayer can manage and dispose the non-hazardous TDI residue according to all applicable solid waste regulations. (B) Annual Testing:

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(i) If Bayer completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), Bayer can begin annual testing as follows: Bayer must test two representative composite samples of the TDI residue for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the Bayer spent carbon are representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report must include the total amount of waste in cubic yards disposed during the calendar year. (4) Changes in Operating Conditions: If Bayer significantly changes the process described in its petition or starts any process that generates the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. Bayer must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: Bayer must submit the information described below. If Bayer fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Bayer must: (A) Submit the data obtained through paragraph 3 to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted.'' Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Reopener: (A) If, anytime after disposal of the delisted waste Bayer possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, then the facility must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, Bayer must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data.

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) If Bayer fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, EPA will make a preliminary determination as to whether the reported information requires action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information requires action, EPA will notify the facility in writing of the actions it believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information explaining why the proposed EPA action is not necessary. The facility shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), EPA will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise.

* * * * *

4. In Table 2 of Appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	* *	* * * *
WRB Refining LLC (formerly ConocoPhillips Company).	Borger, TX	Thermal desorber residual solids (Hazardous Waste No. F037, F038, K048, K049, K050, K051) generated at a maximum annual rate of 1,500 cubic yards per calendar year after [insert publication date of the final rule] and disposed in Subtitle D Landfill. ConocoPhillips must implement the testing program described in Table 1.—Waste Excluded From Non-Specific Sources for the petition to be valid.

[FR Doc. E8–11004 Filed 5–16–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–RCRA–2008–0123; FRL–8567–2]

RIN 2050–AG42

Polychlorinated Biphenyls: Manufacturing (Import) Exemption for Veolia ES Technical Solutions, L.L.C.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of informal hearing.

SUMMARY: This **Federal Register** publication is providing notice that EPA will hold an informal public hearing on June 19, 2008, in Port Arthur, Texas, on the proposed rule entitled, Polychlorinated Biphenyls (PCBs): Manufacturing (Import) Exemption for Veolia ES Technical Solutions, L.L.C. published on March 6, 2008 (73 FR 12053). On November 14, 2006, Veolia ES Technical Solutions, L.L.C., (Veolia) submitted a petition to EPA to import up to 20,000 tons of PCB waste from Mexico for disposal at Veolia's TSCA-approved facility in Port Arthur, Texas. As a result of that petition, on March 6, 2008, EPA proposed to grant the request and provided a 45-day public comment period. The Agency extended the comment period, based on a request from a commenter, by 45 days to June 5, 2008. In addition, the Agency also agreed to hold a public hearing on the proposed rule.

DATES: The hearing will take place on Thursday, June 19, 2008, from 3:30 p.m. to 8:30 p.m. All those wishing to provide oral comments at the hearing must send a written request to EPA. Requests must be received on or before June 12, 2008.

ADDRESSES: The hearing will be held at City Hall, 444 4th Street, Port Arthur, Texas 77640, telephone (409) 983–8105. The hearing will be on the 5th floor of City Hall in the Council Chambers.

Requests to Participate: A request to provide oral comments at the informal hearing must be submitted to the Hearing Clerk by one of the following methods.

- *E-mail:* Requests may be sent by electronic mail to: *noggle.william@epa.gov,* Attention Docket ID No. EPA–HQ–RCRA–2008–0123.
- *Fax:* Requests may be faxed to (703) 308–0514, Attention: William Noggle; Docket ID No. EPA–HQ–RCRA–2008–0123.
- *Mail:* Requests may be sent to William Noggle, U.S. EPA, Office of Solid Waste, 5304P, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2008–0123. Request must be received by June 12, 2008. Note that mail is subject to significant delays due to security screening, so please plan for additional delivery time.
- *Hand Delivery:* Requests may be hand delivered to William Noggle, U.S. EPA, Office of Solid Waste, Two Potomac Yard, 2733 South Crystal Drive, 5th Floor, N5612, Arlington, VA 22202. Such deliveries are only accepted during business hours from 9 a.m. to 5 p.m. on Monday through Friday.

See **SUPPLEMENTARY INFORMATION** for the type of information that must be included in the request, who may participate, as well as the procedures that EPA will follow in conducting the hearing. Please note that oral comments will only be heard from people who have requested to participate in the hearing. Members of the public can attend without prior notification to the Hearing Clerk, but they will not be part of the hearing schedule to give presentations and/or oral comments. Also note that the advance participation requests will assist in planning for the hearing. Additionally, the time for individual presentations may be limited, depending on the number of requests received.

Requests for Accommodations: Individuals requiring special accommodation at this hearing, including wheelchair access or hearing impaired accommodations, should contact the Hearing Clerk by e-mail, *noggle.william@epa.gov,* or telephone, (703) 347–8769, at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, such as CBI or other information, which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. 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 RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: William Noggle, Office of Solid Waste, Hazardous Waste Identification Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 347–8769; e-mail: *noggle.william@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is granting a request from the public to hold an informal public hearing to receive oral comments on the proposed regulation described in the **SUMMARY** above. As required by 40 CFR 750.18(a), the hearing will begin no sooner than seven (7) days after the close of the comment period.

The procedures for rulemaking under section 6 of the Toxic Substances Control Act (TSCA) are found at 40 CFR part 750. Specific procedures for manufacturing (import) exemptions are identified in 40 CFR part 750, subpart B, and the procedures for participation in and the conduct of informal hearings are found at 40 CFR 750.18–750.21. The remainder of this **Federal Register** publication summarizes the procedures and logistics for this informal hearing, which is being held pursuant to the regulations cited above. Participants and/or commenters are advised to see 40 CFR part 750 for additional details.

Each person or organization desiring to participate in the informal hearing must file a written request to participate with the Hearing Clerk identified above. (Participation in this context means providing oral comments or a presentation at the hearing.) This request must be received on or before June 12, 2008. The request must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a nonbinding list of the persons to take part in the presentation. An organization that has not filed comments on the rulemaking will not be allowed to participate in the hearing, unless a waiver of this requirement is granted by the Hearing Clerk. Persons or organizations requesting a waiver must submit this request to the Hearing Clerk at the address listed above. The Hearing Clerk must receive the waiver request no later than June 12, 2008.

No later than three days prior to the hearing (June 16), the Hearing Clerk will make a hearing schedule publicly available on our Web site at *http://www.epa.gov/pcb/pubs/veolia.htm* and mail or deliver it to each of the persons who requested to appear at the hearing. We believe the most efficient and reliable means of delivery is by electronic mail, so we encourage all participants to provide their e-mail address. If correspondence through regular mail is requested, the Hearing Clerk will mail the hearing schedule at least three days prior to the hearing, although due to delivery time, we can not be sure that the schedule will reach the participant prior to the hearing date. The schedule is subject to change during the hearing.

A panel of EPA employees will be present at the hearing, and one panel member will act as the Hearing Officer, who will conduct the hearing. Hearing participants may be asked to answer questions submitted by the audience (in writing, at the hearing), at EPA's discretion (40 CFR 750.19). Participants in the hearing may also submit additional material for the record. EPA will provide a verbatim transcript of the hearing.

After the close of the hearing, any participant in the hearing may submit written comments and questions concerning the factual nature of another hearing participant's presentation and/or ask questions of the participants. The submission should include information detailed under 40 CFR 750.8(1). The request must be provided to the Hearing Clerk using one of the methods identified in the **ADDRESSES** section for submitting requests to participate in the hearing. The request must be received by EPA no later than one week after a full transcript of the hearing is posted to the docket. EPA estimates that within two weeks of the hearing date, the transcript will be posted to the docket (around July 3, 2008). After the Hearing Clerk compiles all of the written questions, the Hearing Panel will review and decide which questions will be forwarded for the requested participants to answer. Any participant receiving question(s) will have one week to provide the Hearing Clerk with an answer.

Interested persons may file reply comments. Reply comments must be received no later than one week after the close of all informal hearings, which includes the question and answer procedure described in the previous paragraph. Reply comments should be restricted to comments on: (1) Other comments; (2) material in the hearing record; and (3) material which was not and could not reasonably have been available to the commenting party a sufficient time before comments were due on June 5, 2008 (40 CFR 750.4, as modified by 750.15).

TIMELINE OF RULEMAKING ACTIONS

Proposed Rule published	March 6, 2008.
Original main comment period ending	April 21, 2008.
Extended main comment period ending	June 5, 2008.

TIMELINE OF RULEMAKING ACTIONS—Continued

Requests to participate in hearing due	June 12, 2008.
Hearing Clerk distributes hearing schedule	June 16, 2008.
Informal hearing date	June 19, 2008.
Hearing transcript posted to the docket	July 3, 2008 (estimated).
Comments and questions on hearing presentations due to Hearing Clerk.	*July 10, 2008 (one week after hearing transcript is posted to the docket).
Hearing Clerk sends out questions to appropriate participants	*July 24, 2008 (two weeks after questions are due).
Answers received by Hearing Clerk from participants	*July 31, 2008 (one week after questions are sent).
Reply comments to Hearing Clerk due	*, **August 14, 2008 (two weeks after answers are due by participants).

* Estimated date for posting the hearing transcript will determine the timeline for the remaining actions. All dates are subject to change.

** Reply comments are due two weeks after participants' answers are received. If no questions on the hearing are received, then reply comments on the hearing testimony will be due on July 24, 2008 (giving EPA time to post a revised schedule and notice that no questions on the hearing testimony had been received by the Hearing Clerk).

This schedule will be posted on *http://www.epa.gov/pcb/pubs/veolia.htm* and revised, if necessary, to reflect the actual date that the hearing transcript has been posted to the docket.

Extensions of time for filing reply comments may be granted pursuant to 40 CFR 750.15, which references 40 CFR 750.4(c). Reply comments and requests for an extension of time for filing reply comments must be sent to the Hearing Clerk using one of the methods identified in the **ADDRESSES** section for submitting requests to participate in the hearing. Reply comments and a transcript of the hearing will be placed in the docket for the proposed rule (Docket ID No. EPA–HQ–RCRA–2008–0123). A full list of these materials is available for inspection and copying during the posted hours in the RCRA Docket as identified under **ADDRESSES**.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: May 13, 2008.

Susan Parker Bodine,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. E8–11177 Filed 5–16–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2008–DARS–0006; 0790–AI05]

48 CFR Part 5432

Transporter Proof of Delivery

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposes to provide an additional method for documenting customer receipt of DLA supplies and services in support of the contract acceptance and payment process by allowing contractor input of receipt documentation into the Department of Defense Wide Area Workflow system.

DATES: Consideration will be given to all comments received July 18, 2008.

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Charlene Baez, (703) 767–1316, *charlene.baez@dla.mil.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 48 CFR part 5432 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

The implementation of this rule will facilitate the receipt documentation process and enhance the accountability of DLA-provided goods, as well as provide a basis for more efficient and expeditious payments to affected contractors. In this process, contractors input copies of signed delivery documents provided by the transporter of the supplies into the Wide Area Workflow system. Contractor use of the Wide Area Workflow (WAWF) system is being implemented throughout the Department of Defense for submission of invoices. Approximately 1 hour is needed to learn the new system. Use of the WAWF system does not require any additional reporting, recordkeeping, or compliance records from small entities. Therefore no additional capability or resource expenditure will be required and no significant impact is anticipated.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 48 CFR Part 5432

Contract delivery receipt process.

Accordingly, title 48 CFR Chapter 54, is proposed to be amended to add part 5432 to read as follows:

PART 5432—TRANSPORTER PROOF OF DELIVERY

Sec.
5432.1 Payment documentation process.
5432.2 Transporter proof of delivery.

Authority: 41 U.S.C. 401 *et seq.*

§ 5432.1 Payment documentation process.

(a) Transporter Proof of Delivery (TPD) is a commercial document generated by the contractor and/or the transporter of supplies and completed by the Government customer. The TPD process is used as a supplement to the customer receiving report and provides information necessary to show receipt of the supplies by the customer. The fully-completed TPD process demonstrates receipt and, coupled with acceptance, allows the Government to pay the contractor. It is not a substitute for any other requested receipt and acceptance documentation, such as DD 250, ''Material Inspection and Receiving Report'', but is a supplement to such documentation.

(b) The Defense Logistics Agency (DLA) may accept supplies based on satisfactory TPD.

(c) The Contracting Officer may authorize the use of the TPD process when, based on historical receipt and payment metrics, Finance and Procurement Customer Liaisons (FCLs) recommend and the Contracting Officer determines the application of the TPD process necessary to ensure timely payment under the particular circumstances of a procurement. The recommendations made by the FCLs will be given on an individual basis based on analysis of the historical contract data, invoicing history, and customer receipting history. All of the following conditions must be present for using the TPD process:

(1) It is a Business Systems Modernization (BSM)/Enterprise Business System (EBS) procurement.

(2) Contract/order is awarded on a fixed price basis.

(3) Contract/order is customer direct.

(4) Fast pay is not authorized.

(5) Procurement is not origin acceptance.

(6) Procurement does not require overseas shipments or shipments to consolidation and containerization points.

(7) A joint finance team and acquisition team decide when implementing the TPD process is necessary to ensure prompt payment processing.

(d) Suppliers with existing contracts must agree to use the clause by the execution of a bilateral contract modification. If a vendor has an existing contract that has been modified to include the TPD process, that vendor's follow-on contract will normally include the TPD process.

(e) When authorized in accordance with paragraph (b) of this section, the Contracting Officer will include the clause at § 5432.2 in the contract, order, solicitation, request for quotation (RFQ), or purchase order.

§ 5432.2 Transporter proof of delivery.

As prescribed in paragraph (d) of this section, insert the following clause:

TRANSPORTER PROOF OF DELIVERY (AUG 2006)

(a) As used in this clause, Transporter Proof of Delivery (TPD) are commercial documents generated by the contractor and/or the contractor's transporter of supplies, and completed by the Government customer in order to document delivery of supplies under this contract/order. The TPD must contain all information necessary to demonstrate customer receipt of specified supplies under a specific contract or order, including a customer signature demonstrating receipt of supplies. This documentation, when completed and submitted as prescribed herein, satisfies the receipt report requirement and, coupled with acceptance, allows the Government to issue payment if other applicable payment conditions are satisfied.

(b) *Submitted TPD.* (1) The submitted TPD must include all of the following information:

(i) Contract number/order number.

(ii) Unit price.

(iii) Extended price.

(iv) Detailed description of supplies.

(v) Delivery date.

(vi) Recipient organization's name and address.

(vii) Location of delivery.

(viii) Receiving individual's printed name.

(ix) Receiving individual's signature.

(2) A combination of contractor and transporter documents may be needed to provide all of the required information. Examples are contractor packing lists and UPS or FEDEX delivery tracking reports. If a combination of documents is used, they must include cross-reference information, such as shipment number, that demonstrates that both sets of documents refer to the same supplies.

(c) *Use of the transporter proof of delivery.* (1) *Payment.* When this clause is used, the Government may use the TPD receipt as a basis for accepting the supplies, thereby enabling payment based on the contract/order, contractor's invoice, contractor-submitted TPD, and Government acceptance.

(2) *TPD Process.* (i) The Contractor shall self-register at the Wide Area Workflow (WAWF) Web site: *https://wawf.eb.mil.* (See *https://wawf.eb.mil* for WAWF registration and *http://www.wawftraining.com* for detailed training instructions. Additional WAWF support can be accessed by calling DISA WESTHEM Customer Support at (866) 618–5988. For more information on WAWF please go to the DLA WAWF Site: *http://www.dla.mil/j-3/wawf.*).

(ii) The Contractor shall enter the Receiving Report (RR) data. Contractors shall ensure the ''pack later'' box under the Pack Tab is checked prior to the submission of the RR.

(iii) The Contractor's transporter presents TPD documents to the customer for receipt signature or the transporter otherwise secures a customer signature demonstrating receipt, such as through an electronic signature recording device.

(iv) The Contractor obtains the TPD from the transporter, either in hardcopy provided by the transporter or through other means, such as a printout from the transporter's Internet tracking site.

(v) When the Contractor receives the TPD documents from the transporter, he or she will return to WAWF using ''*view documents*,'' enter the appropriate contract data, and recall the RR.

(vi) On the first page provided, the Contractor will uncheck the ''*pack later*'' box.

(vii) The Contractor shall then go to the last entry and click on ''attachment.'' This will allow the Contractor to attach the TPD documents. When the TPD document is attached, the Contractor shall return to the Header Tab and submit the TPD document(s).

(viii) WAWF will notify the BSM FCL via email that a WAWF RR document is ready for review.

(ix) The information provided in the chart below is provided to assist the Contractor in the creation of the RR in WAWF:

WAWF fields	*Data to enter*
WAWF Document Type	Invoice and Receiving Report (COMBO).
Inspection/Destination Points	Other/Other.

WAWF fields	*Data to enter*
Issue By Department of Defense Activity Address Code (DODAAC)	DODAAC of activity that issued the contract.
Admin DODAAC	DODAAC of activity that administers the contract.
Inspect By DODAAC (if applicable)	N/A—leave blank.
Ship To Code	DODAAC of the Ship To activity.
Acceptor at Other DODAAC	Refer to Issue By DODAAC: If Issue By is SPM1, use SP1001. If Issue By is SPM4, use SP4001. If Issue By is SPM5, use SP5001. If Issue By is SPM7, use SP7001.
PAY DODAAC	DODAAC of the activity that pays the contract.
Attachment	Attach customer delivery documentation.[1] (Attachments created in any Microsoft Office Product or in PDF format are acceptable.)

[1] Contractors are required to attach TPD complying with subparagraphs (a) and (b) of this clause to their WAWF document. To add attachments, enter contract information and then click on '*Create Document.*' Then click on the '*Misc Info*' tab. Attachment specific buttons will appear on the right side of the page. Select document to attach and click '*Open.*' Then click '*Continue.*' Your attachment will appear in the dropdown box. Click on the '*Header*' tab to return to your original document and click '*Submit.*'

(d) *Responsibility for supplies.* (1) Title to the supplies passes to the Government after delivery to the point of first receipt by the Government and subsequent acceptance.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall:

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

End of Clause

Dated: May 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer. Department of Defense.

[FR Doc. E8–11124 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 605

[Docket No. FTA–2008–0015]

Notice of Proposed Policy Statement on FTA's School Bus Operations Regulations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Proposed policy statement; request for comments.

SUMMARY: Through this notice, the Federal Transit Administration (FTA) proposes to revise its policy with respect to ''tripper service'' and ''school bus operations'' under 49 CFR Part 605. FTA seeks comment on this notice from interested parties. After consideration of the comments, FTA will issue a second **Federal Register** notice responding to comments received and noting any changes made to the policy statement as a result of comments received.

DATES: FTA must receive all comments by June 18, 2008. FTA will consider late filed comments to the extent practicable.

ADDRESSES: To ensure your comments are not entered more than once into the Docket, please identify your submissions with the following Docket No. FTA–2008–0015. Please make your submissions by only one of the following means:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *U.S. Post or Express Mail:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* The West Building of the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Transit Administration) and the Docket number (FTA–2008–0015) at the beginning of your comment. You should include two copies of your comment if you submit it by mail. If you wish to receive confirmation that FTA received your comment, you must include a self-addressed stamped postcard. Note that FTA will post all comments that it receives, including any personal information provided therein, without change to *http://www.regulations.gov.*

Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. A party that submits a comment responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

FOR FURTHER INFORMATION CONTACT: Linda Lasley, Assistant Chief Counsel, Legislation and Regulations Division, Office of Chief Counsel, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., 5th Floor—East Building, Washington, DC 20590. E-mail: *Linda.Lasley@dot.gov.* Telephone: (202) 366–1674.

SUPPLEMENTARY INFORMATION:

Background

Introduction

FTA issues this Notice of Policy Statement and Request for Comments to provide guidance in the context of the recent decision of the United States District Court for the Western District of New York in *Rochester-Genesee Regional Transportation Authority* v. *Hynes-Cherin.*[1] The Court's decision in *Rochester-Genesee Regional Transportation Authority* set aside FTA's interpretation of its school bus operations regulations under 49 CFR Part 605.[2] In the proposed policy set forth below, FTA clarifies its guidance regarding FTA's interpretation of its school bus operations regulations. FTA intends to construe the term ''tripper service'' to include only existing routes with modified fare collection or subsidy systems, frequency of service, and *de minimis* route deviations from existing route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools. Consistent with that construction, FTA would interpret the definition of ''school bus operations'' in 49 CFR 605.3(b) to include service that a reasonable person would conclude primarily was designed

[1] No. 07–CV–6378L 1 (W.D.N.Y. Jan. 24, 2008).

[2] *Id.* at 20.

to accommodate students and school personnel and only incidentally to serve the nonstudent general public.

FTA expects to issue expeditiously a notice of proposed rulemaking to provide clearer definitions of ''tripper service'' and ''school bus operations,'' as well as generally to update the existing school bus regulation.

Statutory and Regulatory Framework

In 1973, Congress passed the Federal-Aid Highway Act, which requires FTA to provide financial assistance to a grantee under 49 U.S.C. Chapter 53 only if the grantee agrees ''not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.'' [3] Congress's intent in enacting this provision was to prevent unfair competition between federally funded public transportation systems and private school bus operators.[4]

In 1976, the Urban Mass Transportation Administration, now FTA, codified regulations under 49 CFR Part 605 which implemented the above statutory provision.[5] Under 49 CFR 605.14, FTA may not provide financial assistance to a grantee ''unless the applicant and the Administrator shall have first entered into a written agreement that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators.'' [6] The regulation defines ''school bus operations'' as ''transportation by bus exclusively for school students, personnel and equipment * * *.'' [7]

The regulation exempts ''tripper service'' from the prohibition against school bus operations.[8] ''Tripper service'' is ''regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems.'' [9]

Rochester-Genesee Regional Transportation Authority v. Hynes-Cherin

On January 24, 2008, the United States District Court for the Western District of New York issued a decision in *Rochester-Genesee Regional Transportation Authority* which set aside FTA's interpretation of its school bus operations regulations under 49 CFR part 605.[10] The Court allowed the Rochester-Genesee Regional Transportation Authority (RGRTA) to restructure its public transportation operation through the addition of 240 new express school bus routes proposed to serve the Rochester City School District (RCSD) and its students.[11]

In its decision, the Court narrowly interpreted the word ''exclusively'' in FTA's definition of ''school bus operations'' and concluded that, because a member of the general public could, hypothetically, board a bus along one of RGRTA's proposed new 240 express routes, RGRTA's service would not ''exclusively'' transport students. The Court therefore concluded that RGRTA's proposed express bus service did not constitute impermissible school bus operations.[12]

FTA believes that, following the Court's broad interpretation of ''tripper service,'' a grantee could conclude that it would be permitted to restructure its public transportation operation dramatically to accommodate the needs of a local school district and its students, thereby displacing private school bus operators and their employees, provided the system keeps the service technically open to the public.[13]

Prior FTA Policy

Tripper Service

Under its tripper service definition, FTA originally allowed grantees to accommodate students only with respect to ''different fare collections and subsidy systems.'' However, through administrative decisions over the years, FTA broadened its interpretation of its tripper service definition to allow grantees to make accommodations beyond subsidies and fare collection systems. Specifically, FTA began to allow its grantees to make minor modifications to its route paths and frequency of service. As FTA stated in one matter concerning the Erie Metropolitan Transit Authority:

Read narrowly, ''modification of regularly scheduled mass transportation service to accommodate the needs of school students and personnel'' means using different fare collections and subsidy systems. In practice, ''modification of mass transportation service'' has been broadened to include minor modifications in route or frequency of scheduling to accommodate the extra passengers that may be expected to use particular routes at particular times of day.[14]

For example, in *Travelways, Inc.* v. *Broome County Department of Transportation*, FTA stated that, ''A familiar type of modification would be where the route deviates from its regular path and makes a loop to a school returning back to the point of deviation to complete the path unaltered.'' [15] FTA reaffirmed this particular interpretation of tripper service in its October 12, 2007, RGRTA determination by permitting RGRTA to operate four loop-like route extensions, each only several blocks in length, to accommodate the needs of school students.[16]

FTA has not, however, allowed a grantee such as RGRTA to restructure its public transportation operation solely to accommodate the needs of school students—such a modification would be a major modification. Thus, in its October 12, 2007 letter to RGRTA, FTA rejected RGRTA's proposed addition of 240 new routes because it would have constituted a major overhaul of RGRTA's public transportation system solely to accommodate the needs of school students.[17]

In addition to minor modifications to route paths, FTA previously has allowed grantees to modify route schedules and the frequency of service. For example, in *Travelways*, FTA stated, ''Other common modifications include operating the service only during school months, on school days, and during school and opening and closing periods.'' [18]

Jurisprudence in United States courts has broadened the scope of FTA's tripper service definition to include essentially any modification. In *United States ex rel. Lamers* v. *City of Green Bay*, the Seventh Circuit stated (arguably in dicta), ''[T]he City may completely redesign its transit system to

[3] Federal Aid Highway Act of 1973, Pub. L. 93–87, *section* 164(b), 87 Stat. 250, 281–82 (1973) (codified as amended at 49 U.S.C. 5323(f) (2006)).

[4] *Chicago Transit Auth.* v. *Adams,* 607 F.2d 1284, 1292–93 (7th Cir. 1979) (citing H.R. Rep. No. 93–410, at 87 (1973) (Conf. Rep.); S. Rep. No. 93–355, at 87 (1973) (Conf. Rep.)).

[5] *See* Codification of Charter Bus Operations Regulations, 41 FR 14,122 (Apr. 1, 1976).

[6] 49 CFR 605.14 (2007).

[7] 49 CFR 605.3(b).

[8] 49 CFR 605.13.

[9] 49 CFR 605.3(b).

[10] *See Rochester-Genesee Reg'l Transp. Auth.,* No. 07–CV–6378L 1.

[11] *Id.* at 20–36.

[12] *Id.* at 20–24.

[13] *Id.* at 24–36.

[14] *See In re* Erie Metropolitan Transit Authority 1, 4 (1989).

[15] *Travelways, Inc.* v. *Broome County Dep't of Transp.* 1, 7 (1985) (allowing a grantee to run a bus to a point and express to a school from that point if the grantee ran a second bus along the regular route path from the point at which the first bus expressed to the school).

[16] Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority at 6 (Oct. 12, 2007).

[17] *Id.* at 2–6.

[18] *Travelways* at 7.

accommodate school children as long as all routes are accessible to the public and the public is kept informed of route changes.'' [19] Citing *Lamers*, the Court in *Rochester-Genesee Regional Transportation Authority* allowed RGRTA to restructure its public transportation system by adding 240 new routes to accommodate the needs of RCSD and its students.[20]

''Exclusive'' School Bus Operations

FTA has had little prior formal policy regarding ''exclusive'' school bus operations under 49 CFR Part 605. In 1982, FTA attempted to clarify the meaning of ''exclusive'' school bus service through a rulemaking.[21] However, in 1990, FTA withdrew the rulemaking because it believed that the regulations were ''functioning adequately.'' [22]

In school bus adjudications, parties did not directly address the issue of ''exclusive'' school bus operations until *United Food and Commercial Workers District Union Local One* v. *Rochester-Genesee Regional Transportation Authority.*[23] In resolving that issue, FTA examined the Federal-Aid Highway Act of 1973, and finding that the language of the Act's school bus provision was ambiguous, FTA looked to the legislative history of Act for some guidance.

In an early version of the Federal-Aid Highway Act, Congress did not use the word ''exclusively'' in the school bus provision, but rather, focused the language of the Act on preventing unfair competition between federally funded grantees and private school bus operators. That language is as follows:

> [N]o financial assistance is to be provided to an applicant which engages, directly or indirectly in transporting school children and personnel to and from school and school authorized functions or which proposes to expand present routes, schedules, or facilities for that purpose *in competition with or supplementary to service criteria provided by a private transportation company* or other person so engaged in so transporting such children and personnel.[24]

After the bill passed the House and the Senate, the conference modified the above provision in an effort to further protect private school bus operators from unfair competition with federally funded grantees, but the conferees still did not use the word ''exclusively.'' The conferees used the following language:

> [N]o federal financial assistance is to be provided under those provisions of law for the purchase of buses to any applicant who has not first entered into an agreement with the Secretary of Transportation that *the applicant will not engage in school bus operations in competition with private school bus operators.*[25]

As evinced by the above language, Congress intended to prevent unfair competition between federally funded grantees and private school bus operators. Therefore, in *District Union Local One*, FTA concluded that it would defeat the purpose of the Federal-Aid Highway Act and eviscerate 49 U.S.C. 5323(f) if it accepted a grantee's argument that its service was technically nonexclusive and open to the public, but where: (1) The grantee had designed the service specifically for students, without regard to demand from the nonstudent public; (2) the vast majority of passengers were students; and (3) as a result, the routes would displace the private school bus industry and its workers.[26] In efforts to prevent the unfair competition which Congress sought to prevent, FTA rejected RGRTA's arguments and prohibited RGRTA from providing its ''exclusive'' school bus service. FTA utilized this same policy and analysis when it struck down RGRTA's proposed service in its October 12, 2007 letter [27] and again in *Laidlaw Transit, Inc.* v. *Rochester-Genesee Regional Transportation Authority.*[28]

The Court in *Rochester-Genesee Regional Transportation Authority*, however, applied a narrower, more restrictive analysis when it interpreted the word ''exclusively'' in the context of ''school bus operations.'' Notwithstanding the fact that RGRTA designed its 240 express school bus routes exclusively for the benefit of RCSD and its students, without regard for demand from the nonstudent public, the Court held that, because a member of the general public could board a bus along one of RGRTA's proposed 240 routes, RGRTA's proposed service was not ''exclusive'' and therefore did not constitute impermissible ''school bus operations.'' [29]

Proposed FTA Policy

Purpose of Proposed FTA Policy

In the proposed policy set forth below, FTA clarifies its guidance regarding FTA's interpretation of its school bus operations regulations under 49 CFR Part 605 in light of the Court's decision in *Rochester-Genesee Regional Transportation Authority.* FTA respects the Court's decision in the Western District of New York. However, FTA finds that the Court's decision is problematic because, if applied elsewhere in the United States, it could obstruct FTA's ability to execute and implement Congress' school bus prohibition and Congress' express intent regarding that prohibition. Therefore, FTA issues this Notice of Policy Statement and Request for Comment to clarify the status of FTA's guidance regarding its interpretation of its school bus operations regulations under 49 CFR part 605, and to resolve, for jurisdictions outside of the Western District of New York, conflicting issues between FTA's school bus operations policy and the Court's decision in *Rochester-Genesee Regional Transportation Authority.*

In addition, FTA intends to issue expeditiously a notice of proposed rulemaking to provide clearer definitions of ''tripper service'' and ''school bus operations'' as well as generally to update the existing school bus regulation.

Tripper Service

With respect to a grantee's regularly scheduled public transportation service, FTA narrowly would interpret the definition of ''tripper service'' under 49 CFR 605.3(b) to allow a grantee to (1) utilize ''various fare collections or subsidy systems,'' (2) modify the frequency of service, and (3) make de minimus route deviations from existing route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools. For example, a grantee would be permitted to provide more frequent service on an existing route to accommodate increased student ridership before and after school. FTA would allow a grantee to alter existing route paths to accommodate the needs of school students by making truly de minimus route deviations from existing

[19] *United States ex rel. Lamers* v. *City of Green Bay*, 168 F.3d 1013, 1019 (7th Cir. 1999).

[20] *Rochester-Genesee Reg'l Transp. Auth.*, No. 07–CV–6378L at 30.

[21] Advance Notice of Proposed Rulemaking, 47 FR 44,795, 44,803–04 (Oct. 12, 1982).

[22] Notice of Proposed Rulemaking: Withdrawal, 55 FR 334 (Jan. 4, 1990).

[23] FTA School Bus Docket Number 2006–02 1 (2007).

[24] S. Rep. No. 93–355, at 86 (1973) (emphasis added).

[25] S. Rep. No. 93–355, at 87 (emphasis added).

[26] *District Union Local One*, FTA School Bus Docket Number 2006–02 at 10–11 (holding the Rochester-Genesee Regional Transportation Authority's (RGRTA) school bus service was designed and modified ''exclusively'' for the Rochester City School District and its students because students constituted a significant proportion of passengers on the school bus routes and RGRTA designed the routes without regard to demand from the nonstudent public).

[27] *See* Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority at 3–4 (Oct. 12, 2007).

[28] *See Laidlaw Transit, Inc.* v. *Rochester-Genesee Reg'l Transp. Auth.*, FTA School Bus Docket Number 2007–01 1, 4 (2007).

[29] *Rochester-Genesee Reg'l Transp. Auth.*, No. 07–CV–6378L at 20–24.

route paths to drop off and pickup students at stops located on school grounds or in close proximity to the schools. FTA believes that its proposed policy regarding its interpretation of the definition of ''tripper service'' is consistent with both the statutory language and the language of 49 CFR 605.3(b). The policy permits only the type of design or modification accommodations that FTA historically has allowed.

''Exclusive'' School Bus Operations

To effectuate the intent of Congress when it enacted its school bus operations prohibition now codified at 49 U.S.C. 5323(f), FTA narrowly would interpret the definition of ''school bus operations'' under 49 CFR 605.3(b) to encompass any service that a reasonable person would conclude primarily was designed to accommodate students and school personnel, and only incidentally to serve the nonstudent general public. FTA believes that returning to this interpretation of the definition of ''school bus operations'' is consistent with the legislative history on the issue and would allow FTA to effectively implement the express intent of Congress, which is, to prevent unfair competition between federally funded grantees and private school bus operators.

Issued in Washington, DC, on this 14th day of May 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–11151 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–57–P

Notices

Federal Register
Vol. 73, No. 97
Monday, May 19, 2008

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

DEPARTMENT OF AGRICULTURE

Forest Service

Lassen National Forest, Almanor Ranger District, CA, Creeks II Forest Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service proposes to address fuels and firefighter safety, forest health issues, and focus on the specific concerns of wildlife habitat and habitat connectivity by developing a network of defensible fuel profile zones (DFPZ's), establish group selection harvest units, and conduct area thinnings on the Almanor Ranger District in the Lassen National Forest. These management activities were developed to implement and be consistent with the Lassen National Forest (LNF) Land and Resource Management Plan (LRMP, 1993), as amended by the Herger-Feinstein Quincy Library Group Forest Recovery Act FEIS, FSEIS, and RODs (1999, 2003), and the Sierra Nevada Forest Plan Amendment FEIS, FSEIS, and RODs (2001, 2004).

DATES: Comments concerning the scope of the analysis should be received in writing within 30 days of the date of publication of this Notice of Intent in the **Federal Register**. The expected filing date with the Environmental Protection Agency for the draft EIS is October 8, 2008. The expected filing date for the final EIS is February 11, 2009.

ADDRESSES: Comments may be submitted to: Alfred Vazquez, District Ranger, Almanor Ranger District, at P.O. Box 767, Chester, CA 96020 or (530) 258–5194 (fax) during normal business hours. The Almanor Ranger District business hours are from 8 a.m. to 4:30 p.m. Monday through Friday. Electronic comments, in acceptable plain text (.txt), rich text (.rtf), or Word (.doc) formats, may be submitted to: *comments-pacificsouthwest-lassenalmanor@fs.fed.us* using Subject: Creeks II Forest Restoration Project.

FOR FURTHER INFORMATION CONTACT: Al Vazquez, District Ranger, or John Zarlengo, Interdisciplinary Team Leader, may be contacted by phone at (530) 258–2141 for more information about the proposed action and the environmental impact statement or at the Almanor Ranger District, P.O. Box 767, Chester, CA 96020.

SUPPLEMENTARY INFORMATION:

Background

A proposal to address forest health conditions throughout the Creeks Forest Health Recovery Project (Creeks) area of the Lassen National Forest (LNF) was placed on the LNF Schedule of Proposed Actions in February 2004. The project was sent to the public for scoping in 2004 and the Responsible Official, Forest Supervisor Laurie Tippin, signed the Record of Decision (ROD) for the Creeks Forest Health Recovery Project in September 2005. A lawsuit was filed and in August 2006, the Decision was remanded to Forest Supervisor Tippin. On May 30, 2007, the Forest Supervisor agreed to cancel the original Creeks project. A Cancellation of the Notice of Intent to prepare a Supplement to the Environmental Impact Statement for this project was published in the **Federal Register** on June 14, 2007. A new project was placed on the LNF Schedule of Proposed Actions on July 1, 2007, and a public meeting to discuss the project was held on February 28, 2008. A new purpose and need statement was developed and a new proposed action was crafted to address the specific concerns of wildlife habitat and habitat connectivity, taking action to improve the overall forest health, and reducing the risk of large, intense wildfires highlighted within the original Creeks analysis area. The new project is known as the Creeks II Forest Restoration Project (Creeks II).

Purpose and Need for Action

Conditions fostered by past fire suppression, a climate favorable for conifer regeneration and growth, and past management activities have contributed to current dense stands conditions in the Creeks II project area. Existing high stand densities in the Creeks II project area place the large tree component of late-seral stands at increased risk of mortality from insects and disease, especially during times of prolonged drought. Dense stand conditions also increase the likelihood that wildfire will move into the forest canopy and result in a high-intensity fire that destroys large areas of forest. The existing habitat considered suitable for both California spotted owl and American marten is composed of densely forested stands and is at increased risk of loss to wildfire.

Modification of the fire regime has also affected the health of the area's aspen communities. In the Sierra Nevada, aspen communities are rare on the landscape, increasing their value in a vastly conifer dominated ecosystem. There is also a need in the Creeks II project area to protect aquatic habitats and their adjacent areas, specifically to recruit large trees, improve vegetative diversity, and reduce ladder fuels in riparian habitat conservation areas (RHCAs).

Proposed Action

Creeks II proposes to utilize site-specific prescriptions to meet the objectives of maintaining and developing long-term sustainable late-seral attributes that provide habitat connectivity and vegetation heterogeneity across the landscape; reducing conifer density to better withstand the rigors of extended periods of low soil moisture; reducing the potential for large, intense wildfire; providing firefighters a safe area from which to attack fire; reducing stand density to lower individual large tree mortality during fires; promoting desired future conditions for vegetation diversity in aspen stands; moving toward desired conditions for water quality by reducing sediment delivery from area roads; and, improving vegetative conditions in RHCAs to protect aquatic habitats and adjacent areas. Work in the project area includes DFPZs (4,092 acres), group selection harvest units (708 acres), aspen enhancement (688 acres), area thinning (3,003 acres), and work in riparian habitat conservation areas (400 acres) to total an estimated 8,891 acres of treatment and would be spread over a 33,000 acre project area. Included in this proposal are the use of National

Forest system roads, the use of temporary roads, and the decommissioning of some system and temporary roads. The project would be implemented through a combination of commercial timber sales, service contracts, and agency crews.

Alternatives

Alternatives proposed to date are the Proposed Action as described above and the No Action.

Responsible Official and Mailing Address: Kathleen Morse, Forest Supervisor, 2550 S. Riverside Drive, Susanville, CA 96130 is the responsible official.

Nature of Decision to Be Made: The decision to be made is whether to implement the proposed action as described above, to meet the purpose and need for action through some other combination of activities, or to take no action at this time.

Scoping Process

The environmental analysis will be documented in an environmental impact statement. This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The scoping process will be used to identify issues regarding the proposed action. An issue is defined as a point of dispute, debate, or disagreement related to a specific proposed action based on its anticipated effects. Significant issues brought to our attention are used during an environmental analysis to develop alternatives to the proposed action. Some issues raised in scoping may be considered non-significant because they are: (1) Beyond the scope of the proposed action and its purpose and need; (2) already decided by law, regulation, or the Land and Resource Management Plan; (3) irrelevant to the decision to be made; or (4) conjectural and not supported by scientific or factual evidence.

Reviewer's Obligation to Comment

On December 27, 2007, the Herger-Feinstein Quincy Library Group (HFQLG) Forest Recovery Act was amended by H.R. 2764 to utilize the analysis and appeal process identified under H.R. 1904, known as the Healthy Forests Restoration Act of 2003 (HFRA). Provisions 104–106 of the HFRA apply to HFQLG projects with a fuels reduction component. The Creeks II Forest Restoration Project is authorized under the HFRA and is subject to the use of notice, comment, and objection process as described under 36 CFR 218. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register**. To be eligible to object to an EIS, an individual or organization must submit specific written comments related to a project during the comment period for the draft EIS. A 30-day objection period prior to a decision being made will be provided for this project, rather than an appeal process after decision. Objections will receive administrative review and will be responded to within 30 days and before a decision is made.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Jack T. Walton,

Acting Lassen National Forest Supervisor.

[FR Doc. E8–11063 Filed 5–16–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 080512652–8653–01]

Request for Public Comments on Deemed Export Advisory Committee Recommendations: Narrowing the Scope of Technologies on the Commerce Control List Subject to Deemed Export Licensing Requirements and Implementing a More Comprehensive Set of Criteria for Assessing Probable Country Affiliation for Foreign Nationals

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing a notice of inquiry in order to elicit comments regarding two specific recommendations made by the Deemed Export Advisory Committee (DEAC) with respect to BIS's deemed export licensing policy. BIS is requesting comments on whether the scope of technologies on the Commerce Control List that are subject to deemed export licensing requirements should be narrowed, and if so, which technologies should be subject to deemed export licensing requirements. Additionally, BIS is seeking comments on whether a more comprehensive set of criteria should be used to assess country affiliation for foreign nationals with respect to deemed exports.

DATES: Comments must be received no later August 18, 2008.

FOR FURTHER INFORMATION CONTACT: Alex Lopes, Director, Deemed Exports and Electronics Division, 202–482–4875, *alopes@bis.doc.gov.* Ilona Shtrom, Senior Export Policy Analyst, Deemed Exports and Electronics Division, 202–482–3235, *ishtrom@bis.doc.gov.* The DEAC report may be accessed at *http://tac.bis.doc.gov/2007/deacreport.pdf.*

ADDRESSES: You may submit comments, identified by ''DEAC Report comments,'' by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *rpd2@bis.doc.gov.* Include ''DEAC Report comments'' in the subject line of the message.

- Fax: 202–482–3355
- Hand Delivery/Courier: Steven Emme, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: DEAC Report comments.

SUPPLEMENTARY INFORMATION:

Background

Under the Export Administration Regulations (EAR), 15 CFR parts 730–774 (2008), which implement the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401–2420 (2000), and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)), the Bureau of Industry and Security (BIS) administers licensing for deemed exports, which are the ''release of technology or source code subject to the EAR to a foreign national'' (§ 734.2(b)(ii) of the EAR). When technology or source code is released to a foreign national, it is deemed to be an export to the home country or home countries of the foreign national. For purposes of the EAR's deemed export rule, foreign nationals do not include U.S. citizens, U.S. permanent residents, and protected individuals under the Immigration and Naturalization Act ((8 U.S.C. 1324b(a)(3)).

To determine a foreign national's home country for purposes of deemed export licensing, BIS uses a foreign national's most recently established legal permanent residency or most recently established citizenship. For example, in the deemed exports context, an Iranian foreign national who establishes legal permanent residency in Canada and subsequently immigrates to the United States would be treated as a Canadian. Similarly, an Iranian foreign national who establishes citizenship in the United Kingdom (U.K.) and subsequently immigrates to the United States would be treated as a U.K. citizen for deemed export licensing purposes. In implementing this policy, BIS relies on exporters to self-determine a foreign national's home country with additional guidance provided on the BIS Web site at *http://www.bis.doc.gov.*

The existing guidance provided on the BIS Web site emphasizes that there will be deemed export licensing scenarios where an exporter will have difficulty determining where a foreign national's ties lie. Some of these difficulties may include the following scenarios: prior or current employment at a prohibited end-user (such as employment at an entity on the Entity List in Supplement No. 4 to part 744), expiration of the foreign national's permanent residency status while that foreign national continues to receive technology or source code subject to deemed export licensing requirements, and the possibility of a foreign national not being able to comply with a country's permanent residency requirements. In these instances, exporters are advised to submit a license application or to seek guidance from BIS before proceeding with the release of controlled technology or source code subject to the EAR to the foreign national.

The issue of home country determinations was highlighted in a report issued by the Office of the Inspector General (OIG) of the Department of Commerce in March of 2004. The OIG report concluded that BIS policies could enable foreign nationals from countries and entities of concern to access controlled technology and source code without a license. Among its findings, the OIG recommended that the foreign national's country of birth should be used to determine deemed export license requirements rather than the foreign national's most recent citizenship or legal permanent residency.

In response to this and other recommendations made by the OIG, BIS published an advance notice of proposed rulemaking on March 28, 2005 (70 FR 15607), seeking comments on how the OIG's recommendations would affect industry, the academic community, and government agencies involved in research. On May 22, 2006, BIS published a notice (71 FR 29301) that announced the creation of the Deemed Export Advisory Committee (DEAC), a federal advisory committee established under the terms of the Federal Advisory Committee Act (FACA), 5 U.S.C., app. 2 (2005), the EAA, and IEEPA to provide recommendations to the Secretary on BIS's deemed export policy. The DEAC was formed to help ensure that the deemed export licensing policy most effectively protects U.S. national security while ensuring U.S. technological innovation.

After reviewing comments submitted in response to the advance notice of proposed rulemaking, BIS published a withdrawal of advance notice of proposed rulemaking on May 31, 2006 (71 FR 30840). In that notice, BIS stated that it would maintain the current policy of using a foreign national's most recent country of citizenship or legal permanent residency when determining licensing requirements. BIS reasoned that a declarative assertion of affiliation was more significant than the geographical circumstances of birth when determining the home country of the foreign national.

Comments submitted in response to the advanced notice of proposed rulemaking were reviewed by the DEAC. Following six public meetings held in Washington, DC and in cities around the country at which the committee heard from interested stakeholders in academia, industry, and government, the DEAC submitted its final report, ''The Deemed Export Rule in the Era of Globalization,'' to the Secretary of Commerce on December 20, 2007. The report contained several recommendations to improve and streamline BIS's deemed export rule. This notice of inquiry focuses on two of those recommendations.

DEAC Recommendations

Narrowing the Scope of Technologies on the Commerce Control List Subject to Deemed Export Licensing Requirements and Conducting an Outside Review of Technologies

Among its recommendations, the DEAC urged that BIS narrow the scope of technologies on the Commerce Control List (CCL) and involve an outside panel of experts to conduct an annual ''zero-based'' review of which technologies should be on the CCL, with an eye toward determining which technologies should be subject to deemed export licensing requirements. In its report, the DEAC recommended narrowing the scope of technologies on the CCL because it believed that BIS should concentrate on those technologies having the greatest national security concerns and should eliminate from the CCL those technologies having little national security concerns. By building higher walls around fewer technologies, the DEAC believed that BIS could more effectively protect U.S. national security interests while maintaining U.S. innovation.

Partly in response to the DEAC's recommendation regarding the scope of technologies on the CCL, BIS announced the formation of the Emerging Technologies and Research Advisory Committee (ETRAC), a technical advisory committee that will be established under the terms of the EAA, IEEPA, and FACA, and will comprise representatives from research universities, government research labs, and industry. The ETRAC will make recommendations to BIS regarding emerging technologies on a regular basis as well as advise BIS on the conduct of a ''zero-based'' technology review envisioned by the DEAC. A zero-based review means determining what should

be controlled without reference to what is currently controlled, rather than reviewing current controls and identifying what should be decontrolled. While BIS is already conducting a systematic review of the CCL to assess what controls should be retained or revised, many technologies on the CCL are subject to multilateral controls and thus cannot be changed unilaterally by the United States. However, deemed export licensing requirements are not multilateral and thus may be changed by the United States without agreement by other countries. Therefore, BIS is focusing this recommendation for a zero-based review only on those technologies that should be subject to deemed export licensing requirements.

With this notice of inquiry, BIS is seeking comments from the public on the DEAC's recommendation to narrow the scope of technologies on the CCL in the specific context of BIS's deemed export licensing requirements.

Comprehensive Assessment of Foreign National Affiliation

Within the recommended environment of narrowing technologies subject to deemed export licensing requirements, the DEAC also recommended that BIS expand its analysis of determining the home country of the foreign national, for deemed export licensing purposes, in favor of a more comprehensive assessment of a foreign national's country of affiliation. Specifically, the DEAC recommended expanding the determination of national affiliation to include country of birth, prior countries of residence, current citizenship, and character of individual's prior and present activities to provide an increased level of assurance that technology subject to deemed export licensing requirements would not be diverted to unauthorized end-users or activities. The DEAC reasoned that using the most recent citizenship or legal permanent residency may not take into account the actual risk of diversion of export-controlled technology by the foreign national. For instance, the DEAC noted that most criminal cases of export control violations of which it had been made aware involve U.S. citizens and U.S. legal permanent residents, who are not even subject to deemed export licensing requirements under current BIS policy. Further, the DEAC stated that an adequate distinction has not been made for a foreign national residing in a specific country for the majority of his or her lifetime. For example, the risk of diversion posed by an individual recently attaining U.K. citizenship who was born and raised in Iran may be different from that of a native Iranian who became a citizen of the U.K. shortly after birth.

BIS intends to consider the DEAC's recommendation of an expanded set of criteria in determining home country/national affiliation in the context of the DEAC's other recommendation that BIS narrow the scope of technologies on the CCL, in the context of deemed exports, to a few critical technologies. With this notice of inquiry, BIS is seeking comments on the DEAC's recommendation to expand the criteria for determining national affiliation of foreign nationals for deemed export licensing purposes.

Requests for Comments

To assist in developing a response to these two recommendations made by the DEAC, BIS is interested in comments from the public. BIS encourages all interested parties to submit comments in response to this notice of inquiry.

With respect to the first recommendation for an outside, zero-based review of technologies, BIS is seeking comments on whether technologies on the CCL that are subject to deemed export licensing requirements should be narrowed to a few critical technologies (i.e., a narrower set of technologies than those on the current CCL). If so, BIS would like comments to address which technologies the commenter believes should be subject to deemed export licensing requirements and what criteria should be used to make that determination. Comments providing a description of the technology as well as the use of the technology would be particularly helpful. Moreover, comments identifying the Export Control Classification Number (ECCN) of the technology would aid BIS in assessing whether the technology would rise to a level warranting deemed export control under the ''higher walls, fewer fences'' construct outlined by the DEAC. Comments made in response to this first DEAC recommendation will also be shared with the ETRAC for its analysis.

Additionally, BIS is seeking comments with respect to the DEAC recommendation that a more comprehensive assessment of foreign national affiliation should be used in the context of making home country determinations in the deemed export licensing process. BIS is interested in public comments addressing the issue of making foreign national affiliation determinations in situations where a foreign national's ties may be easily established and in situations where it may be difficult to determine where a foreign national's ties lie (such as for a foreign national employed at a prohibited entity). Comments submitted in favor of a more comprehensive assessment will be particularly helpful if they address what information should be taken into account for such a comprehensive assessment. Comments submitted in opposition to a more comprehensive assessment will be particularly helpful if they suggest what parameter(s) should be used in determining the home country for foreign nationals.

Parties submitting comments are asked to be as specific as possible. Comments including detailed statements of support will likely be more useful than comments that state a position without providing any support. BIS encourages interested persons who wish to comment to do so at the earliest possible date. The period for submission of comments will close August 18, 2008. BIS will consider all comments received before the close of the comment period in responding to the DEAC recommendations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of a response. All public comments on this notice of inquiry must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–0953 for assistance.

Dated: May 14, 2008.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E8–11169 Filed 5–16–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–809

Certain Forged Stainless Steel Flanges from India; Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On March 20, 2008, the Department of Commerce (the Department) published a notice of initiation of changed circumstances review of the antidumping duty order on certain forged stainless steel flanges (flanges) from India to determine whether India Steel Works, Ltd. (India Steel) is the successor–in-interest to Isibars, Ltd (Isibars). *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India*, 73 FR 14959 (March 20, 2008). We have preliminarily determined that India Steel is the successor–in-interest to Isibars for purposes of determining antidumping liability in this proceeding. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 19, 2008.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2008, India Steel requested that the Department conduct a changed circumstances review of the antidumping duty order on flanges from India pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 351.216. India Steel claims to be the successor–in-interest to Isibars, and, as such, argues that it is entitled to receive the same antidumping treatment as Isibars. On April 16, 2008, at the request of the Department, India Steel submitted additional information and documentation pertaining to its changed circumstances request.

Scope of the Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Preliminary Results of Review

In antidumping duty changed circumstances reviews involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) and *Certain Cut–to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005) (unchanged in final, 70 FR 35624 (June 21, 2005)) (*Plate from Romania*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are ''essentially similar'' to those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and Plate from Romania, 70 FR 22847. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

In its February 26, 2008, submission India Steel stated it is the successor company to Isibars. The Department now has on the record various documents that support this claim, including: (1) the minutes of a September 29, 2007, stockholders meeting showing the name change was voted upon and approved; (2) a certified copy of a ''Fresh Certificate of Incorporation Consequent upon Change of Name,'' dated October 22, 2007, issued by the government of India; (3) a list of the stockholders and board of directors before and after the name change, showing that they are identical; (4) an organizational chart before and after the name change showing India Steel has the same organization structure as did Isibars; (5) a list of suppliers and customers before and after the name change showing they are identical; (6) sample copies of letters and e–mail sent to customers announcing the name change; (7) documentation demonstrating that India Steel has the same taxpayer identification number (called the ''permanent account number'' in India) as did Isibars; (8) documentation demonstrating that India Steel maintains the same bank account as did Isibars; and (9) a certificate of importer and exporter codes for Isibars and India Steel issued by the government of India showing that the codes are identical.

In sum, India Steel has presented evidence to establish a prima facie case of its successorship status. Isibars's name change to India Steel has not changed the operations of the company in a meaningful way. India Steel's management, production facilities, supplier relationships, and customer base are substantially unchanged from those of Isibars. Therefore, the record evidence demonstrates that the new entity essentially operates in the same manner as the predecessor company. Consequently, we preliminarily determine that India Steel should be assigned the same antidumping duty treatment as Isibars, *i.e.*, a 0.00 percent antidumping duty cash deposit rate. *See Certain Forged Stainless Steel Flanges from India; Final Results of Antidumping Duty Administrative Review*, 69 FR 10409 (March 5, 2004).

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn

from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which India Steel is reviewed.

Public Comment

Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments in these proceedings are requested to submit with their arguments: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. Further, parties submitting written comments should provide the Department an additional copy of the public version of any such comments on diskette. Any interested party may request a hearing within 30 days of publication of this notice. *See* CFR 351.310(c). Any hearing, if requested, will be held no later than two days after the scheduled due date for submission of rebuttal briefs, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d).

Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated.

The current requirements for cash deposits of estimated antidumping duties on all subject merchandise shall remain in effect unless and until they are modified pursuant to the final results of changed circumstances review.

We are issuing and publishing this notice in accordance with sections 751(b) and 777(i)(1) of the Tariff Act, and section 351.221(c)(3)(i) of the Department's regulations.

Dated: May 12, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–11147 Filed 5–16–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Board of Visitors Meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at Defense Acquisition University, Fort Belvoir, VA. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: May 22, 2008 from 9 a.m. to 3 p.m.

ADDRESSES: Packard Conference Center, Defense Acquisition University, Bldg. 184, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Ms. Christen Goulding at 703–805–5134.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Christen Goulding at 703–805–5134.

Dated: May 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–11159 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Closed Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Nuclear Weapons Surety will meet in closed session.

DATES: June 19–20, 2008.

ADDRESSES: Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Mr. David McDarby, HQ DTRA/OP–CSNS, 8725 John J. Kingman Road, Stop 6201, Ft. Belvoir, VA 22060; via e-mail at *david.mcdarby@dtra.mil;* or via phone at (703) 767–4364.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will: Assess all aspects of nuclear weapons surety; continue to build on the work of the former Joint Advisory Committee on Nuclear Weapons Surety, the Nuclear C2 System End-to-End Review and the Drell Panel; and review and recommend methods and strategies to maintain a safe, secure and viable nuclear deterrent.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decisionmaker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the June 19–20, 2008, meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed above, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: May 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–11122 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Medicare-Eligible Retiree Health Care Board of Actuaries Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the DoD Medicare-Eligible Retiree Health Care Board of Actuaries.

DATES: Friday, July 11, 2008 (1–5 p.m.).

ADDRESSES: 4040 N. Fairfax Drive, Suite 270, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Margot Kaplan, DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203; telephone: 703–696–7404.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to execute the provisions of Chapter 56, Title 10, United States Code (10 U.S.C. 1114 *et seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda:

Meeting objective (Board):

Approve actuarial assumptions and methods needed for calculating:

FY 2010 per capita full-time and part-time normal cost amounts.

September 30, 2007 unfunded liability (UFL).

October 1, 2008 Treasury UFL amortization payment and normal cost payment.

Trust Fund Update (DFAS).

Medicare Eligible Retiree Health Care Fund Update (TRICARE Management Activity).

September 30, 2006 Actuarial Valuation Results (DoD Office of the Actuary).

September 30, 2007 Actuarial Valuation (DoD Office of the Actuary).

Decisions (Board).

Approve actuarial assumptions and methods needed for calculating:

FY 2010 per-capita full-time and part-time normal cost amounts.

September 30, 2007 UFL.

October 1, 2008 Treasury UFL amortization payment and normal cost payment.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Designated Federal Officer or Point of Contact: Persons desiring to attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting, must notify Margot Kaplan at 703–696–7404 by June 24, 2008.

Dated: May 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–11119 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Missile Defense Advisory Committee Closed Meeting

AGENCY: Department of Defense; Missile Defense Agency (MDA).

ACTION: Meeting notice; correction.

SUMMARY: The Department of Defense, Missile Defense Advisory Committee announced a closed meeting for May 13 and 14, from 8 a.m. to 5 p.m., in the **Federal Register** on March 24, 2008 (73 FR 15496). This notice is being published to announce a change in the meeting dates and agenda topics. There are no other changes to the original notice.

DATES: Wednesday, May 14, 2008 (8 a.m. to 5 p.m.). Security clearance and visit requests are required for access.

FOR FURTHER INFORMATION CONTACT: Mr. Al Bready, Designated Federal Officer at *mdac@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION:

Agenda: Topics tentatively scheduled for discussion include, but are not limited to administrative work; Background Information on the Virtual Warfare Center; MDA Engineering Capabilities and Responsibilities; the National Capital Region's Operations Center; and development of final outbrief to the Director, Missile Defense Agency.

May 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–11121 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[Docket ID: DoD–2008–OS–0056]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on June 18, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 2, 2008, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals,'' dated December 12, 2000, 65 FR 239.

Dated: May 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

T–7340d

SYSTEM NAME:

Defense Military Pay Office Input and Reporting System.

SYSTEM LOCATION:

Defense Accounting and Finance Service—Denver, 6760 East Irvington Place, Denver, CO 80279–3000.

Defense Finance and Accounting Service—Indianapolis, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–2055.

For a list of other sites, contact the systems manager at Defense Finance and Accounting Service, Defense Military Pay Project Office, System Manager, DFAS/DDMP—Cleveland, 1240 East Ninth Street, Cleveland, Ohio 44199–2055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army, Navy and Air Force, active duty, reserve, National Guard, military members, military academy cadets, and Armed Forces Health Professions Scholarship Program (AFHPSP) students.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name; Social Security Number (SSN); Master Military Pay Account records for Army, Navy, Air Force, active duty, reserve and National Guard military members; military academy cadets, and Armed Forces Health Professions Scholarship Program (AFHPSP) students; wage and tax summaries; leave and earnings statements; Basic Military Training (BMT) master record; and other records generated substantiating or authorizing active component military pay and allowance entitlement, deduction, or collection actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 37 U.S.C. 37 U.S.C. 101–310, Pay and Allowances of the Uniformed Services; and E.O. 9397 (SSN).

PURPOSE(S):

To establish a user-friendly computer application that will provide input and reporting capabilities for the Defense Joint Military Pay Account Systems, Active, and Reserve Component. DFAS and the military Finance Offices will use this new system to input transactions, and pull report data from the Master Military Pay Account (MMPA) record that is maintained for each military member.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' published at the beginning of the DoD compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, computer disks, and computer output products.

RETRIEVABILITY:

Name and Social Security number (SSN).

SAFEGUARDS:

Records are located in office buildings on military installations, and Navy ships that are protected by guards controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties.

Passwords and digital signatures are used to control access to the systems data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the record system.

RETENTION AND DISPOSAL:

Records may be temporary in nature and destroyed when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year or fiscal year, and destroyed 6 years and 3 months after cutoff. The records are destroyed by tearing, shredding, pulping, macerating, burning, or degaussing the electronic storage media.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service, Defense Military Pay Project Office, System Manager, DFAS/DDMP–Cleveland, 1240 East Ninth Street, Cleveland, Ohio 44199–2055.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about them is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

Individual military members; Army, Navy, and Air Force military pay Finance Offices; Reserve and National Guard Finance Offices, military academies, and Armed Forces Health Professions Scholarship Program (AFHPSP) administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–11115 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0055]

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice; Add a System of Records.

SUMMARY: The National Reconnaissance Office (NRO) proposes to add a system of records to its inventory of system of records notice systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 18, 2008 unless comments are received, which result in a contrary determination.

ADDRESSES: Send comments to the FOIA/Privacy Official, National

Reconnaissance Office, Information Access and Release, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Contact the FOIA/NRO Privacy Official at (703) 227–9128.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 28, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I, 'Federal Agency Responsibilities for Maintaining Records About Individuals', to OMB Circular No. A–130, dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

QNRO–30

SYSTEM NAME:

Technology Fellowship and Enrichment Programs and Events.

SYSTEM LOCATION:

National Reconnaissance Office (NRO), Advanced Systems and Technology Directorate, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government civilian, military, contractors, and other invited participants (from industry and/or academia).

CATEGORIES OF RECORDS IN THE SYSTEM:

Technology Fellowship Program record categories include: Individual's name, Social Security Number (SSN), parent organization, work telephone number, NMIS e-mail address, abstracts, room numbers, documents, orders, career biographical information, educational background information, employee photograph, clearance level, Single Scope Background Investigation (SSBI) date, polygraph date, and briefing date.

Technology Seminars record categories include: Name (speaker), title, topic, organization address, Social Security Number (SSN), requests for information (organizations and addresses), abstracts, room numbers, documents, orders, career biographical information, educational background information, employee photograph, clearance level, Single Scope Background Investigation (SSBI) date, polygraph date and briefing date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 Departmental Regulations; National Security Act of 1947, as amended, 50 U.S.C. 401 et seq.; E.O. 12333; DoDD 5240.1, Intelligence Activities; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a historical database of Technology Fellowship Program participants, projects and seminars. To organize and inform, record and administer organizational enrichment programs and events. As a management tool, this system will track dates, requests for information, presentation arrangements, event details and speaker's career biographical information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Individual's name, company, parent organization, organizational affiliation, work telephone number, dates, speaker's name and topic and/or title.

SAFEGUARDS:

Records are stored in a secure, gated facility with guard. Facility requires a badge and computer terminal access is password protected. Access to and use of these records is limited to staff whose official duties require such access.

Privileged user records have restricted access.

RETENTION AND DISPOSAL:

Earlier disposal is authorized if records are superseded, obsolete, or no longer needed. Hold files in current file area for 1 year before transferring to the Records Center. Cut off files at the end of the Calendar Year (CY).

SYSTEM MANAGER(S) AND ADDRESS:

The National Reconnaissance Office (NRO), Advanced Systems and Technology Directorate, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Requests should include full name and any aliases or nicknames, address, Social Security Number (SSN), current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Requests should include full name and any aliases or nicknames, address, Social Security Number (SSN), current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3b and NRO Instruction 110–3–1; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

From the individual, documents, or from persons other than the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under Executive Order 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. E8–11125 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0054]

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The National Reconnaissance Office is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 18, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the FOIA/Privacy Official, National Reconnaissance Office, Information Access and Release, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Contact the FOIA/NRO Privacy Official at (703) 227–9128.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 28, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I, 'Federal Agency Responsibilities for Maintaining Records About Individuals', to OMB Circular No. A–130, dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

QNRO–24

SYSTEM NAME:

Administrative Personnel Management Systems (October 3, 2006, 71 FR 58379).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In the first paragraph, add ''grade or equivalent, employee photo, personal e-mail address, military status, biometric data (to include hair color, eye color, weight, height, blood type, race), mother's maiden name and birth data, father's name and birth data, dependent names and birth data, and employee relationship.''

In the fourth paragraph, add ''loan data.''

* * * * *

PURPOSE(S):

After emergency recall rosters and contact information, add ''to support records and information management programs;''.

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are stored in a secure, gated facility with guard and badge controls. Computer terminal access is password protected. Access to and use of these records are limited to staff whose official duties require such access.''

* * * * *

QNRO–24

SYSTEM NAME:

Administrative Personnel Management Systems.

SYSTEM LOCATION:

The National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NRO civilian, military, and contract personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal Information such as name, aliases or nicknames, Social Security Number (SSN), date of birth, place of birth, home address, home telephone number, cell phone number, pager, education, spouse name, emergency contact information, vehicle and tag information, gender, nationality, citizenship, marital status, age, annual salary, grade or equivalent, wage type, ethnicity, disability, personal assignment code, employee photo, personal email address, military status, biometric data (to include hair color, eye color, weight, height, blood type, race), mother's maiden name and birth data, father's name and birth data, dependent names and birth data, and employee relationship.

Work related information such as work e-mail address, accesses, parent organization, work telephone number, employee number, company, company address, position number and title, rank and date, agency/organization/office arrival and departure dates, assignment history, labor type, pay grade, network logon, location, career service, employee status (active/inactive), duty title, last assignment, badge numbers, personal classification number, space professional codes; employee timecards and leave records; and military specialty codes (job identifier).

Performance related information such as awards, performance report due dates, raters, training history (course name, date, hours, course provider, certificate, program call), Contracting Officers Technical Representative (COTR) certifications and date, and Individual Development Plan (IDP) courses.

Travel related information such as government credit card number and expiration date, airline/hotel/rental car information and frequent flyer/club numbers, airline seating preference, miles from home to office, miles from home to airport, and loan data.

Safety related information such as workplace violence protection issues and reports.

Other information such as property checked out to individual, report closeout dates, and any other information deemed necessary to manage personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; National Security Act of 1947, as amended, 50 U.S.C. 401, et seq.; and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer NRO personnel support programs relating to personnel management, official travel, timecards and leave records, awards, training, loan of property, security, emergency recall rosters and contact information; to support records and information management programs; to support organizational and personnel reporting requirements; to support organizational and strategic planning and workforce modeling; to support workplace violence protection programs; to support diversity initiatives; and to respond to personnel or related taskings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the National Reconnaissance Office as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routines Uses' published at the beginning of the National Reconnaissance Office's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Information may be retrieved by an individual's name, Social Security Number (SSN), employee number, home or work telephone number, parent organization, company, and/or position number.

SAFEGUARDS:

Records are stored in a secure, gated facility with guards, badges and password access. Computer terminal access is password protected. Access to and use of these records are limited to personnel whose official duties require access on a need-to-know basis.

RETENTION AND DISPOSAL:

Office administrative files, tracking and control files, and property inventory records are temporary; they are kept for 2 years from the date of the list or date of the report.

Training administrative files are temporary; they are kept for 3 years.

Supervisory files are temporary; they are kept for 1 year.

Security reports generated from information systems are temporary; they are kept for 5 years. Data files created consisting of summarized information are temporary; they are kept until no longer needed.

Reports created in response to any tasking from Congress, Community Management Staff, DoD and other external agencies are temporary; they are kept until superseded or when no longer needed.

Award related files such as recommendations, decisions, and announcements are temporary; they are kept for 25 years. Electronic documentation used to create the award related files is destroyed 180 days after the record copy has been produced.

Timecard and leave records are destroyed after 6 years or GAO audit. Employee personal safety and violence protection records are destroyed after 3 years old unless retention is authorized for official purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, The National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Requests should include full name and any aliases or nicknames, address, Social Security Number (SSN), current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Requests should include full name and any aliases or nicknames, address, Social Security Number (SSN), current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The National Reconnaissance Office rules for accessing records, for contesting contents and appealing initial agency determinations are published in National Reconnaissance Office Directive 110–3b and National Reconnaissance Office Instruction 110–3–1; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by documentation gathered in the background investigation, and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–11138 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[Docket ID: DoD–2008–OS–0051]

Privacy Act of 1974; System of Records

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The National Security Agency/Central Security Service is proposing to add an exempt system of records to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The exemptions enhance the importance of the system of records for law enforcement purposes.

DATES: This proposed action would be effective without further notice on June 18, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency/ Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 4, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

GNSA 23

SYSTEM NAME:

NSA/CSS Operations Security Support Program and Training Files.

SYSTEM LOCATION:

National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian employees, military personnel, government contractor personnel, and private individuals involved in activities relating to the National Operations Security Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), home and work address, home and work telephone numbers, fax number, security clearance information, conference material, training roster, training material, published articles, public source data and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Agency Act of 1959, as amended; National Security Agency Act of 1959, as amended; E.O. 12333, United States Intelligence Activities; E.O. 12958, Classified National Security Information; DoD Directive 5100.20, The National Security Agency and the Central Security Service; DoD Directive 5200.39, Security, Intelligence, and Counterintelligence Support to Acquisition Program Protection; DoD Directive 5205.2, DoD Operations Security Program; National Security Decision Directive 298, National Operations Security Program; NSA Policy Number 5–12, NSA/CSS Operations Security Program; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain records relating to the operations of the National Operations Security Program and the Interagency Operations Security Support Staff. This system will provide logistical support to conferences, symposia, training and is also used as a management tool for statistical research and program evaluations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the NSA/CSS's compilation of record systems also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in files folders and electronic storage media.

RETRIEVABILITY:

Individual's name, Social Security Number (SSN), address, organization and/or affiliation, dates of visit, type of badge issued, and conference name and date.

SAFEGUARDS:

Secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security cleared personnel and escorted visitors only. With the facilities themselves, access to paper and computer printouts are controlled by limited access facilities and lockable containers. Access to electronic means is controlled by computer password protection.

RETENTION AND DISPOSAL:

Records are periodically reviewed for retention. Records having no evidential, informational, or historical value or not required to be permanently retained are destroyed. Visitor passes and campus access files are destroyed when 15 years old. Training conference administrative materials are destroyed 5 years after conference. Training material is destroyed when no longer needed. Destruction is by pulping, burning, shredding, or erasure or destruction of magnetic media.

SYSTEM MANAGER AND ADDRESS:

Deputy Associate Director of Policy and Records, National Security Agency/ Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if records about themselves are contained in this record system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquires should include individual's full name, address, and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquires should include individual's full name, address, and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the Deputy Associate Director for Policy and Records, National Security Agency/

Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

From individuals, U.S. agencies and organizations, media including periodicals, newspapers, and broadcast transcripts, public and classified reporting and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. E8–11157 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Threat Reduction Advisory Committee (hereafter referred to as the Committee).

The Committee is a discretionary federal advisory committee established by the Secretary of Defense to provide the Department of Defense and the Director of the Defense Threat Reduction Agency independent advice and recommendations on reducing the threat to the United States, its military forces, and its allies and partners posed by nuclear, biological, chemical, conventional and special weapons. The Committee, in accomplishing its mission: (a) Maintains a focus on broad S&T issues affecting DTRA; (b) recommends DoD strategic posture, to include issues and considerations regarding possible resumption of nuclear testing; (c) evaluating DoD's responsive infrastructure for strategic strike and a thorough analysis of mainstreaming of new triad nuclear capabilities into the DoD acquisition process; and (d) made recommendation on the impact of nuclear weapons effects.

The Committee shall be composed of not more than 25 members, who are distinguished authorities in the fields of national defense, geopolitical and national security affairs, or weapons of mass destruction. Committee members appointed by the Secretary of Defense, who are not federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and with the exception of travel and per diem for official travel, shall serve without compensation, unless otherwise authorized by the Secretary of Defense. The Secretary of Defense shall renew the appointments of these Special Government Employees on an annual basis. The Under Secretary of Defense (Acquisition, Technology & Logistics) or designed representative shall select the Committee's Chairperson from the total Committee membership.

The Committee shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, and other appropriate federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Committee nor can they report directly to the Department of Defense or any federal officers or employees who are not Committee members.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Committee shall meet at the call of the Committee's Designated Federal Officer, in consultation with the Committee's chairperson. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Threat Reduction Advisory Committee membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Threat Reduction Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Threat Reduction Advisory Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Threat Reduction Advisory Committee's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Threat Reduction Advisory Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: May 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–11117 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Assessment for Disposal and Reuse of Buckley Annex, Colorado

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice.

SUMMARY: The United States Air Force is issuing this notice to advise the public that the Air Force intends to prepare an Environmental Assessment (EA) in accordance with the National Environmental Policy Act of 1969 (NEPA) to assess the potential environmental impacts of the disposal and reuse of Buckley Annex, Colorado. This notice signifies the beginning of the Air Force's NEPA ''scoping'' and invites interested members of the public to participate in the NEPA process.

The Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.7 require an early and open

process for determining the scope of issues to be addressed in the environmental analysis and for identifying the significant issues related to the proposed action. The scope identifies the range of actions, alternatives, and impacts to be considered in detail in the environmental analysis. This process of soliciting public input is called ''scoping.'' Scoping ensures that any significant issues are identified early and studied properly, and that minor issues do not consume the agency's time and effort.

Site Description. The Buckley Annex property consists of about 72 acres located just west of the former Lowry Air Force Base in Denver, CO. The land is improved with 6 buildings containing nearly 640,000 square feet. Environmental information about this site can be found in the environmental condition of property documents at the following Web sites:

http://www.airforcebrac2005.org/Buckley%20Docs2.htm.

http://www.afcee.brooks.af.mil/products/ecp/default.asp.

Need for the Proposed Action. In accordance with the Base Closure and Realignment Act amendments contained in Title XXX of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107), the Secretary of Defense submitted a consolidated Department of Defense (DoD) list of recommended actions to an independent commission appointed by the President and confirmed by the Senate. The 2005 Defense Base Closure and Realignment Commission (Commission) evaluated the recommendations and sent its findings to the President, who forwarded the recommendations to Congress on September 23, 2005. The Base Closure Act provides that, unless disapproved by Congress within a specified period, the recommendations are to be implemented. In the absence of Congressional disapproval, the Commission's recommendations became binding on November 9, 2005. Action with respect to Buckley Annex is being implemented as required by the Base Closure Act.

In its 2005 report to the President, the Commission recommended closure of the Buckley Annex. Pursuant to that recommendation, all Air Force missions at Buckley Annex must cease or be relocated. Following closure, the property will be excess to the Air Force needs. Accordingly, the Air Force proposes to dispose of its real property interests at the Buckley Annex.

The Base Closure Act requires the Air Force to treat the reuse plan of the local redevelopment authority as the Proposed Action for purposes of the environmental analysis if the plan is approved by the Secretary of Housing and Urban Development (HUD) as meeting the requirements of the Base Closure Act. The redevelopment authority for the Buckley Annex property is the Lowry Redevelopment Authority. After conducting considerable public outreach, the redevelopment authority developed a proposed reuse plan and has submitted the plan to HUD for review and approval. HUD has not issued a final decision on whether the plan fulfills the requirements in the Base Closure Act.

Proposed Action. As explained above, if the redevelopment authority's reuse plan is approved by HUD, the Air Force Proposed Action for purposes of NEPA environmental assessment will be the reuse plan. The redevelopment authority's reuse plan, dated February 2008, can be found at the following Web site: *http://www.lowry.org.* The reuse plan involves the demolition of all installation facilities to allow construction of mixed use commercial/residential (800 low- and medium-density residential units) with components involving a boulevard, open space, park, and storm water detention.

Alternatives to the Proposed Action. The Higher Density Residential Alternative involves the demolition of all installation facilities to allow construction of a higher density residential use with commercial development and associated outdoor recreation areas and roadways.

The Lower Density Residential Alternative involves the demolition of all installation facilities to allow construction of a lower density residential use with commercial development and associated outdoor recreation areas and roadways.

The Facility Reuse Alternative involves the retention of Building 444 and associated Building 445 for reuse as an office complex. Other facilities on the property would be demolished to allow for recreation and open space uses.

The No-Action Alternative involves the Air Force retaining the Buckley Annex property and maintaining it in caretaker status.

Scope of the EA. The EA will address the potential environmental impacts of disposal of the property to public or private entities. In analyzing the environmental impacts of property disposal, the Air Force will consider the reasonably foreseeable environmental impacts associated with the likely reuse of the property, as well as the potential environmental impacts of reasonable reuse alternatives. Although NEPA does not require publication of a notice-of-intent (NOI) to prepare an EA or formal scoping process, it encourages public input opportunities. The Air Force invites full public participation in the NEPA process to promote open communication and better decision-making. All persons and organizations that have a potential interest in the Proposed Action, including minority, low-income, disadvantaged, and Native American groups are urged to participate in the NEPA environmental analysis process. To ensure sufficient time to adequately consider public comments concerning environmental issues and disposal alternatives to be included in the EA, the Air Force recommends that comments and reuse proposals be forwarded to the address listed below at the earliest possible date.

NEPA and Scoping Process. Public participation opportunities with respect to the Proposed Action and this EA are guided by the provisions of 32 Code of Federal Regulations (CFR) Part 989, *Environmental Impact Analysis Process (EIAP)* for Air Force actions. If during the environmental review process the Air Force finds that no significant adverse environmental impacts are associated with the Proposed Action, then a Finding of No Significant Impact (FONSI) would be issued.

The draft EA and a draft Finding of No Significant Impact, if appropriate, will be made available for a 30-day comment period. During this time, the Air Force will consider any comments submitted by agencies, organizations, or members of the public on the Proposed Action, the draft EA, or the draft FONSI. The Air Force is issuing this NOI to facilitate the environmental review process by soliciting scoping comments in advance of the 30-day period for submission of written comments on the EA. At the conclusion of the comment period, the Air Force may, if appropriate, execute the FONSI and proceed with the Proposed Action.

However, if the Air Force finds that significant adverse environmental impacts would be associated with the proposed redevelopment, an Environmental Impact Statement (EIS) would be prepared. In that event, the Air Force would provide a forum for public officials and the community to provide information and comments; a scoping meeting would be held in Denver, Colorado, probably during the months of October or November 2008. Notice of the time and location of this meeting would be provided at a later date, and publicized in the community. The purpose of this meeting would be

to help identify issues that need to be assessed and discussed in the EIS. During this meeting, the Air Force would discuss the proposal to close and dispose of Buckley Annex, describe the process involved in preparing an EIS, and ask your help in identifying alternative uses for Buckley Annex and any significant environmental impacts that may result from its closure and disposal. In soliciting disposal and reuse alternatives, the Air Force would consider reasonable alternatives offered by any federal, state, or local government agency, and any federally sponsored or private entity or individual. The resulting EIS would be considered in making disposal decisions documented in the Air Force's Final Disposal Plan and Record of Decision.

FOR FURTHER INFORMATION CONTACT: Direct written comments or requests for further information concerning the Buckley Annex disposal and reuse EA to: Robert L. Lopez, HQ AFCEE/BC, 3300 Sidney Brooks, Brooks City-Base, Texas 78235–5112, 210–536–4508. e-mail: *Robert.lopez@brooks.af.mil*.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–11114 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board Notice of Meeting

AGENCY: Department of the Air Force, U.S. Air Force Scientific Advisory Board.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board meeting will take place on Wednesday, Thursday and Friday, June 25th, 26th and 27th, 2008 at the Arnold and Mabel Beckman Conference Center, 100 Academy, Irvine, CA 92617. The meeting on Wednesday, June 25th, will be from 8 a.m.–12 p.m. The meeting on Thursday, June 26th, will be from 3:30–4:45 p.m., and the meeting on Friday, June 27th, will be from 8 a.m.–12 p.m.

The purpose of this meeting will be for the United States Air Force Scientific Advisory Board to reach a consensus and vote on the findings for the FY08 studies directed by the SECAF. The results will also be briefed to USAF senior leadership during the last two days of the meeting. This year's studies were: Airborne Tactical Laser Feasibility for Gunship Operations, Kinetic Precision Effects, Implications of Spectrum Management for the Air Force, and Defending and Operating in a Contested Cyber Domain.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that all sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will be concerned with classified information and matters covered by sections 5 U.S.C. 552b(c)(1), (4), and (9)(B).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt. Col. David J. Lucia, 703–697–8288, United States Air Force Scientific Advisory Board, 1080 Air Force Pentagon, Room 4C759, Washington, DC 20330–1080, *david.lucia@pentagon.af.mil*.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–11108 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2008–0044]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of Navy is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 18, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

N04066–2

SYSTEM NAME:

Commercial Fidelity Bond Insurance Claims (March 30, 2006, 71 FR 16130).

REASON:

Program discontinued. All responsive records now fall under N04066–7, NEXCOM Employee Benefit Records.

[FR Doc. E8–11158 Filed 5–16–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 18, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 13, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Federal Stafford Loan Master Promissory Note (MPN) and School Certification.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 3,123,451.

Burden Hours: 2,297,415.

Abstract: The Federal Stafford Loan MPN serves as the means by which an individual agrees to repay a Federal Stafford Loan. The School Certification form serves as the means by which a school that participates in the FFEL Program certifies a borrower's eligibility for a Federal Stafford Loan if the school does not certify eligibility electronically.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3551. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–11127 Filed 5–16–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 18, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 14, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Weekly, monthly, annually.

Affected Public: Individuals or household; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 16,787,640.
Burden Hours: 8,054,467.

Abstract: The Free Application for Federal Student Aid (FAFSA) collects the data necessary to determine a student's eligibility for participation in the following federal student assistance programs identified in the Higher Education Act (HEA): the Federal Pell Grant Program; the Campus-Based Programs; the William D. Ford Federal Direct Loan Program; the Federal Family Education Loan Program; the Academic Competitiveness Grant; and the National Science and Mathematics Access to Retain Talent (SMART) Grant.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3585. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–11128 Filed 5–16–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 18, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 14, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Family Educational Rights and Privacy Act Regulatory Requirements.

Frequency: On occasion; annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,666,013.
Burden Hours: 1,666,013.

Abstract: The Family Educational Rights and Privacy Act (FERPA) requires that subject educational agencies and institutions notify parents and students of their rights under FERPA and requires that they record disclosures of personally identifiable information from education records, with certain exceptions.

Additional Information: A Notice of Proposed Rulemaking (NPRM) for the Family Educational Rights and Privacy Act was published on March 24, 2008. The NPRM (Vol. 73, No. 57, page 15574) did not provide a comment period for the information collection activity; therefore, this notice provides the public with the appropriate comment period on the collection activity.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3693. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–11129 Filed 5–16–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13136–000]

MARMC Enterprises, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

May 12, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–13136–000.

c. *Date Filed:* March 5, 2008.

d. *Applicant:* MARMC Enterprises, LLC.

e. *Name of the Project:* Point A La Hache Project.

f. *Location:* The project would be located on the Mississippi River in Plaquemines Parish, Louisiana. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Ms. Nicoline Marinovich, 722 Oak Lane, Thibodaux, LA 70301, (986) 705–2940.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13136–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) Up to 40 proposed Underwater Electric Kite generating units having a total installed capacity of 16-megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The project would have an average annual generation of 137.3-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11097 Filed 5–16–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13160–000]

Red River Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

May 12, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–13160–000.

c. *Date Filed:* April 2, 2008.

d. *Applicant:* Red River Hydro, LLC.

e. *Name of the Project:* Overton Lock and Dam Hydroelectric Project.

f. *Location:* The project would be located on the Red River in Rapides Parish, Louisiana. The Overton Lock and Dam is owned and maintained by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Brent Smith, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, Phone (208) 745–0834.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and. the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13160–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Overton Lock and Dam and would consist of: (1) A proposed powerhouse containing four generating units with an installed capacity of 86-megawatts; (2) a switchyard; (3) a proposed 1-mile 69-kV transmission line; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 276 gigawatts and would be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned

address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11098 Filed 5–16–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12961–000]

AER NY-Kinetics, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 12, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12961–000.

c. *Date Filed:* August 13, 2007.

d. *Applicant:* AER NY-Kinetics, LLC.

e. *Name of Project:* Ogdensburg Kinetic Energy Project.

f. *Location:* The project would be located in the St. Lawrence River in St. Lawrence County, New York. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Joseph Klimaszewski, Jr., Regional Director, Alliance Energy Renewables, P.O. Box 585, Ogdensburg, NY 13669, (315) 393–9048, and Mr. Fred Springer, Hydropower Policy Advisor, Troutman Sanders LLP, 401 9th St., NW., Suite 1000, Washington, DC 20004, (202) 274–2836.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12961–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 11 arrays, each consisting of ten, 1 megawatt hydrokinetic turbine units, for a total installed capacity of 110 megawatts, (2) a proposed underwater cable approximately 9 to 10 miles in length, which would transport the power generated from each array to shore, (3) a 500-foot-long transmission line, which would connect the underwater cable to a substation, (4) a cable anchoring system to anchor the turbine units to either a fixed structure or the riverbed, and (5) appurtenant facilities. The project would have an average annual generation of 944.328 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-Filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11095 Filed 5–16–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13115–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 12, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13115–000.

c. *Date Filed:* February 15, 2008.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Mississippi River Lock and Dam No. 14 Hydroelectric Project.

f. *Location:* The proposed project would be located on the Mississippi River in Scott County, Iowa. It would use the U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 14.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2821.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13115–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Mississippi River Lock and Dam No. 14 would consist of: (1) A new powerhouse; (2) five turbine/generator units with a combined installed capacity of 26 megawatts; (3) a new 13,100-foot-long 34 to 230-kilovolt transmission line; and (4) appurtenant facilities. The proposed Mississippi River Lock and Dam No. 14 Hydroelectric Project would have an average annual generation of 145-gigawatt-hours, and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis,

preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11096 Filed 5–16–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2582–027]

Rochester Gas and Electric Corporation; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

May 12, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 2582–027.

c. *Date Filed:* April 3, 2008.

d. *Applicant:* Rochester Gas and Electric Corporation.

e. *Name of Project:* Station No. 2.

f. *Location:* The project is located on the Genesee River in the City of Rochester, Monroe County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contacts:* Cindy D. Witt, Hydro License Coordinator, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, New York 14649. Tel: (585) 771–2263 and Elizabeth W. Whittle, Nixon Peabody, LLC, 401 Ninth Street, Suite 900, Washington, DC 20004. Tel: (202) 585–8338.

i. *FERC Contact:* Mr. Vedula Sarma, Telephone (202) 502–6190, and e-mail *vedula.sarma@ferc.gov.*

j. Deadline for filing comments, protests, motions to intervene, recommendations, preliminary terms and conditions, and fishway prescriptions is due 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2582–027) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee proposes to upgrade the existing 6.5 MW unit to 8.5 MW, and install a new 6.3 MW unit in a new powerhouse adjacent to the existing powerhouse. The hydraulic capacity of the project would increase from 1,250 cfs to 2,400 cfs. The project will continue to operate as run-of-river with no change to impoundment elevation. Proposed modifications include: (a) Increasing the height of the needle dam, (b) deepening of intake structure forebay and trashracks, (c) new penstock with low-level bifurcation, (d) modification to fish bypass, and (e) new electric substation.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests, interventions, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filing.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' '' TERMS AND CONDITIONS,'' or '' FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works, which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11092 Filed 5–16–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–45–002; CP06–401–002]

TransColorado Gas Transmission Company, LLC; Notice of Application for Amendment

May 12, 2008.

Take notice that on May 8, 2008, TransColorado Gas Transmission Company, LLC (TransColorado), P.O. Box 281394, Lakewood, Colorado 80228–8304, filed an application pursuant to section 7(c) of the Natural Gas Act and the Commission's regulations to amend its application for certificates of public convenience and necessity requested in Docket Nos. CP05–45–001 and CP06–401–001. TransColorado seeks to substitute a new site for that one identified in the original application in which to relocate two compressor units.

These filings are available for review at the Commission's Washington, DC offices or may be viewed on the Commission's Web site at *http://www.ferc.gov/* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *ferconlinesupport@ferc.gov* or Telephone: 202–502–6652; Toll-free: 1–866–208–3676; or for TTY, contact (202) 502–8659.

Any questions regarding these applications should be directed to Skip George, Manager of Certificates, TransColorado Gas Transmission Company, LLC, P.O. Box 281304, Lakewood, Colorado 80228–8304, phone (303) 914–4969.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this Project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project and/or associated pipeline. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 285.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: June 2, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11093 Filed 5–16–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 13, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP07–690–003.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Co submits Substitute Fifth Revised Sheet 123 to FERC Gas Tariff, Seventh Revised Volume 1, as an errata to its 4/30/08 compliance filing.

Filed Date: 05/08/2008.

Accession Number: 20080509–0013.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Docket Numbers: RP08–335–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Maritimes & Northeast Pipeline, LLC submits Third Revised Sheet 5 to FERC Gas Tariff, First Revised Volume 1, to become effective on June 1, 2008.

Filed Date: 04/30/2008.

Accession Number: 20080501–0027.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Docket Numbers: RP08–371–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Fourth Revised Sheet 1 et al., that will implement two new rate schedules, Rate Schedule NNL and Rate Schedule SGL, etc.

Filed Date: 05/09/2008.

Accession Number: 20080512–0267.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–11090 Filed 5–16–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD08–9–000]

Review of Wholesale Electricity Markets; Notice of Conference

May 12, 2008.

The Federal Energy Regulatory Commission (Commission) will hold a conference on July 1, 2008. The Commission has invited senior management and market monitors from the jurisdictional regional transmission organizations (RTOs) and independent system operators (ISOs) to provide a review of the current and future state of regional wholesale electricity markets. Members of the Commission's staff will provide an overview of the wholesale electricity markets outside of RTOs and ISOs. A future notice will provide greater detail.

The conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room (2–C) from 9:30 a.m. until 4 p.m. (EST). All interested persons are invited, and there is no registration fee to attend.

This conference will be transcribed. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. It will also be Web-cast. Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone, or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Questions about the conference should be directed to Saida Shaalan by e-mail at *Saida.Shaalan@FERC.gov* or by phone at 202–502–8278.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11099 Filed 5–16–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–65–000]

Tennessee Gas Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Concord Lateral Expansion Project

May 12, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or

Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Tennessee Gas Pipeline Company (Tennessee) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of Tennessee's proposed Concord Lateral Expansion Project (Project). The Project would involve construction of a new 6,130 horsepower compressor station in Pelham, New Hampshire and modifications to the station piping at the Laconia Meter Station in Concord, New Hampshire.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies, public interest groups; interested individuals and affected landowners; newspapers and libraries; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the link to ''Documents and Filings'' and ''eFiling.'' eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your hard drive. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' In addition, there is a ''*Quick Comment*'' option available, which is an easy method for interested persons to submit text only comments on a project. The Quick-Comment User Guide can be viewed at *http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf.* Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket.

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP08–65–000;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ–11.1; and
- Mail your comments so that they will be received in Washington, DC, on or before June 11, 2008.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11094 Filed 5–16–08; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0299; FRL–8567–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Worker Protection Standard Training and Notification; EPA ICR No. 1759.05, OMB Control No. 2070–0148

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 18, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2007–0299, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *opp.ncic@epa.gov*, or by mail to: OPP Regulatory Public Docket (7502P), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Joseph Hogue, Field and External Affairs Division, Office of Pesticide

Programs, (7506P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9072; fax number: 703–305–5884; e-mail address: *hogue.joe@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 16, 2007 (72 FR 64611), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2007–0299, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Worker Protection Standard Training and Notification.

ICR numbers: EPA ICR No. 1759.05, OMB Control No. 2070–0148.

ICR Status: This ICR is scheduled to expire on May 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Worker Protection Standard (WPS), codified at 40 Code of Federal Regulations (CFR) part 170, established requirements to protect agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries and in greenhouses. 40 CFR part 170 contains the standard and workplace practices, which are designed to reduce or eliminate exposure to pesticides and establish procedures for responding to exposure-related emergencies. The practices include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides (restricted entry interval); basic safety training (and voluntary training verification) and posting of information about pesticide hazards, as well as pesticide application information; arrangements for the supply of soap, water, and towels in case of pesticide exposure; and provisions for emergency assistance. The training verification program facilitates compliance with the training requirements by providing a voluntary method for employers to verify that the required safety information has been provided to workers and handlers.

This renewal ICR estimates the third party response burden from complying with the Worker Protection Standard requirements. Information is exchanged between agricultural employers and employees at farm, forest, nursery and greenhouse establishments to ensure worker safety. No information is collected by the Agency under this ICR. Responses to this ICR are mandatory. The authority for this information collection is provided under section 25 of FIFRA and 40 CFR part 170.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.15 hours (about 9 minutes) per response, ranging from two minutes to 45 minutes for the various types of responses. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Agricultural employers, including employers in farms as well as nursery, forestry, and greenhouse establishments.

Estimated Number of Respondents: 3,245,393.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 1,776,131

Estimated Total Annual Cost: $76,574,607, includes $0 annualized capital or O&M costs.

Changes in the Estimates: The total estimated annual respondent burden for this ICR renewal is 1,776,131 hours, a reduction of 517,233 from the 2,293,364 total estimated burden hours in the currently-approved ICR. This change is an adjustment and is the result of a correction to the estimated annual number of treatment-specific worker and handler notification events, both oral and posted. Although EPA had correctly explained the method of calculating the number of notifications in previous versions of this ICR, the figures presented in the supporting statement's corresponding tables that were used to tally the overall burden were inconsistent with EPA's explanation. EPA has clarified its explanation in the supporting statement.

Dated: May 9, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–11154 Filed 5–16–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8567–8]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Reference Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of a new reference method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, on a new reference method for measuring concentrations of nitrogen dioxide (NO_2) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–3737, e-mail: *Hunike.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of a new reference method for measuring concentrations of NO_2 in the ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on December 18, 2006 (71 FR 61271).

The new reference method for NO_2 is an automated method (analyzer) that utilizes the measurement principle (gas phase chemiluminescence) and the calibration procedure specified in Appendix F of 40 CFR part 50. The newly designated NO_2 reference method is identified as follows:

RFNA–0508–171, ''DKK–TOA Corporation Model GLN–314E Nitrogen Oxides Analyzer,'' operated at any temperature in the range of 20 °C to 30 °C, on any of the following measurement ranges: 0–0.100 ppm, 0–0.200 ppm, 0–0.500 ppm.

An application for a reference method determination for the candidate method was received by the EPA on December 13, 2007. The sampler is commercially available from the applicant, DKK–TOA Corporation, 29–10, 1-Chome, Takadanobaba, Shinjuku-ku, Tokyo 169–8648, Japan (*http://www.toadkk.co.jp*).

A test analyzer representative of this method has been tested in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on December 18, 2006). After reviewing the results of those tests and other information submitted by the applicant in the application, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant in the application will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.,* configuration or operational settings) specified in the applicable designation method description (see the identifications of the method above).

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, part 1,'' EPA–454/R–98–004 (available at *http://www.epa.gov/ttn/amtic/qabook.html*). Vendor modifications of a designated reference method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR part 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or

equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new reference method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E8–11155 Filed 5–16–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8567–3]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee (LGAC) and the Small Community Advisory Subcommittee (SCAS) will meet on June 11–12th, 2008 in Seattle, Washington. The Committee and Subcommittee will be meet at The Red Lion Hotel, located at 1415 5th Avenue, Seattle, WA. The focus areas of the meeting(s) will be: climate change, green buildings, watersheds and coastline issues, small communities issues, military issues, and other environmental issues potentially affecting local governments.

This is an open meeting and all interested persons are invited to attend. The Committee will hear comments from the public between 11:30 a.m. and 12 p.m. on Wednesday, June 11, 2008. Each individual or organization wishing to address the LGAC meeting will be allowed a maximum of five minutes to present their point of view. Also, written comments may be submitted electronically to *Eargle.Frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis, and the total period for comments may be extended, if the number of requests for appearances require it.

ADDRESSES: The LGAC meeting will be held at The Red Lions Hotel, located at 1415 5th Avenue, June 11–12.

The Committee's and Subcommittee's Meeting Summaries will be available after the meeting online at *http://www.epa.gov/ocir/scas* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Frances Eargle, DFO for the Local Government Advisory Committee (LGAC), at (202) 564–3115 or e-mail at *Eargle.Frances@epa.gov.* For those interested in participating in the Small Community Subcommittee meeting, contact Javier Araujo at (202) 564–2642 or by e-mail at *Araujo.Javier@epa.gov.*

Information on Services for Those With Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *Eargle.Frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 8, 2008.

M. Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. E8–11175 Filed 5–16–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8567–6]

Meeting of the National Drinking Water Advisory Council—Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given of a meeting of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will consider various issues associated with drinking water and adaptation to climate change, including information about the EPA Office of Water's draft National Water Program Strategy: Response to Climate Change. The Council will receive updates about several on-going projects including the third Contaminant Candidate List, the Aircraft Drinking Water Rule, and the Total Coliform Rule/Distribution System Federal Advisory Committee. EPA will also consult with the Council on the upcoming rule-making for the geologic sequestration of carbon dioxide.

DATES: The Council meeting will be held on June 3, 2008, from 8:30 a.m. to 5:30 p.m., and June 4, 2008, from 8:30 a.m. to noon, Mountain time.

ADDRESSES: The meeting will be held in Tucson, Arizona. Information about the location will be made available in the near future on EPA's Web site at *http://www.epa.gov/safewater/ndwac/.*

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to attend the meeting, present an oral statement, or submit a written statement, should contact Veronica Blette, by e-mail at: *blette.veronica@epa.gov*, by phone, 202–564–4094, or by regular mail at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Council encourages the public's input and will allocate one hour (3:30 p.m.–4:30 p.m.) on June 3, 2008, for this purpose. Oral statements will be limited to five minutes. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Veronica Blette by telephone at 202–564–4094 no later than May 23, 2008. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received by May 23, 2008, will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after May 23, 2008, will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Special Accommodations

For information on access or services for individuals with disabilities, please contact Veronica Blette at 202–564–4094 or by e-mail at *blette.veronica@epa.gov*. To request accommodation of a disability, please contact Veronica Blette, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: May 14, 2008.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E8–11133 Filed 5–16–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8566–3]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Lockformer Site

AGENCY: U.S. Environmental Protection Agency (''EPA'').

ACTION: Notice; Request for public comment on proposed CERCLA 122(h)(1) agreement with Honeywell International, Inc. for the Lockformer Superfund Site.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (''CERCLA''), notification is hereby given of a proposed administrative agreement concerning the Lockformer hazardous waste site in Lisle, Illinois (the ''Site''). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by Honeywell International, Inc. (the ''Settling Party'').

Under the proposed agreement, the Settling Party will pay $775,000 to the Hazardous Substances Superfund to resolve EPA's claims against it for response costs incurred by EPA at the Site. EPA has incurred response costs investigating, and overseeing the response actions conducted by other potentially responsible parties under cleanup orders issued by EPA to investigate and mitigate, potential imminent and substantial endangerments to human health or the environment presented or threatened by hazardous substances present at the Site.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before June 18, 2008.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of Lockformer Site, Chicago, Illinois, U.S. EPA Docket No. V–W–08C–894.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dated: May 7, 2008.

Richard C. Karl,

Director, Superfund Division, Region 5.

[FR Doc. E8–11173 Filed 5–16–08; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Wednesday, May 28, 2008 from 9:30 a.m. to 12 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include a focus on the congressionally mandated Competitiveness Report, which focuses on how Ex-Im Bank's programs compare with their major G–7 ECA counterparts during 2007.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Susan Houser to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 22, 2008, Susan Houser, Room 1273, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3232 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Susan Houser, Room 1273, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3232.

Howard A. Schweitzer,

General Counsel.

[FR Doc. E8–11068 Filed 5–16–08; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

May 12, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency 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 Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 18, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1094.

Title: Licensing, Operation, and Transition of the 2495–2690 MHz Band.

Form Nos.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 2,500 respondents; 12,726 responses.

Estimated Time per Response: 3.334 hours (average burden per response) and adds .50 hours for the new requirement for wireless service providers (see paragraph one of the supporting statement that will be submitted to OMB after this 60-day comment period).

Frequency of Response: On occasion and one time reporting requirement, recordkeeping requirement, third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 8,457 hours.

Total Annual Cost: $266,666.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: In a Fourth Memorandum Opinion and Order, FCC 08–83, adopted on March 20, 2008, the Commission adopted Wireless Communications Association International, Inc's. (WCA) modified proposal regarding the formula used to calculate height benchmarking and clarifying how non-contiguous licensees calculate their height benchmark. Because licensees are now required under 47 CFR 27.1221(f) to provide the geographic coordinates, the height above ground level of the center of radiation for each transmit and receive antenna, and the date transmissions commenced for each of the base stations in its geographic service area (GSA) within 30 days of receipt of a request from a co-channel, neighboring Broadband Radio Service/Educational Broadband Service (BRS/EBS) licensee(s).

The Commission is revising this information collection to add the requirement referenced above from the 4th MO&O and to eliminate the requirement for Multichannel Video Programming Distributors (MVPD) Opt-Out (Waiver Requests) that sunset on April 30, 2007. That option is no longer available and is being removed from this information collection.

The information will be used to notify third parties and to prevent harmful interference to licensees' BRS/EBS operations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–11008 Filed 5–16–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

May 13, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency 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 Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) 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; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 18, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith-B.Herman@fcc.gov, Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: International Special Projects (ISP) Petitions for Declaratory Ruling.

Form Nos.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 18 respondents; 18 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 18 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: The Federal Communications Commission (''FCC'') proposes to establish a new information collection (IC) titled ''International Special Projects (ISP) Petitions for Declaratory Ruling.'' The purpose of this information collection is to facilitate the public's voluntary filing of miscellaneous requests with the FCC, such as a waiver of the Commission's rules or foreign ownership matters, in an electronic module in the International Bureau's Filing System (IBFS). Filers have the option to upload paper copies of documents in IBFS in lieu of mailing documents to the FCC Secretary's Office. However, they may file documents in the FCC Secretary's Office by postal mail instead of filing them electronically in IBFS. The filing of documents in IBFS saves time and costs for the general public since they would save the cost of postage to mail the documents to the FCC. It also guarantees that when the respondents ''submit'' their documents in IBFS, those documents are received at the FCC on the same day.

Furthermore, FCC staff and members of the public can track the receipt and status of documents received electronically in the IBFS.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–11018 Filed 5–16–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Item From May 14, 2008, Open Meeting

May 13, 2008.

The following has been deleted from the list of Agenda items scheduled for consideration at the May 14, 2008, Open Meeting and previously listed in the Commission's Notice of May 7, 2008, 73 FR 26991, May 12, 2008. This item has been adopted by the Commission.

Item No.	Bureau	Subject
1	Wireless Telecommunications	*Title:* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended (WT Docket No. 99–87); Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies (RM–9332). *Summary:* The Commission will consider a Fourth Memorandum Opinion and Order addressing a petition for reconsiderations and a request for clarification of the Third Report and Order.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 08–1273 Filed 5–15–08; 12:34 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed new collection of information, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The collection is related to a mandate under section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (''Reform Act'') (Pub. L. 109–173), which calls for the FDIC to conduct ongoing surveys ''on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the 'unbanked') into the conventional finance system.'' Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including: (1) ''What cultural, language and identification issues as well as transaction costs appear to most prevent 'unbanked' individuals from establishing conventional accounts''; and (2) ''what is a fair estimate of the size and worth of the 'unbanked' market in the United States.'' To satisfy the Congressional mandate, the FDIC intends to conduct two complementary surveys. One is a survey of FDIC-insured depository institutions on their efforts to serve underbanked, as well as unbanked, populations (underbanked populations include individuals who have an account with an insured depository but also rely on non-bank alternative financial service providers for transaction services or high-cost credit products). The FDIC has already obtained OMB approval for this survey and the survey effort is currently in process. The other is a survey of U.S. households to estimate the size and worth of the unbanked and underbanked markets and to identify the factors that inhibit their participation in the mainstream banking system. The household survey would be conducted for the FDIC by the U.S. Bureau of the Census, as a supplement to its monthly Current Population Survey (CPS) in January 2009. This notice addresses the household survey.

DATES: Comments must be submitted on or before July 18, 2008.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to ''National Unbanked and Underbanked Household Survey'':

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta Gregorie (202–898–3719), Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Interested members of the public may obtain a copy of the survey and related instructions by clicking on the link for the *National Unbanked and*

Underbanked Household Survey on the following Web page: *http://www.fdic.gov/regulations/laws/federal/index.html.* Interested members of the public may also obtain additional information about the collection, including a paper copy of the proposed collection and related instructions, without charge, by contacting Leneta Gregorie at the address identified above, or by calling (202) 898–3719.

SUPPLEMENTARY INFORMATION: The FDIC proposes to establish the following collection of information:

Title: National Unbanked and Underbanked Household Survey.

OMB Number: New collection.

Frequency of Response: Once.

Affected Public: U.S. households.

Estimated Number of Respondents: 54,000.

Average Time per Response: 10 minutes (0.166 hours) per respondent.

Estimated Total Annual Burden: 0.166 hours ×54,000 respondents = 8,964 hours.

General Description of Collection

This collection is related to a mandate under section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (''Reform Act'') (Pub. L. 109–173), which calls for the FDIC to conduct ongoing surveys ''on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the 'unbanked') into the conventional finance system.'' The Congressional mandate further requires the FDIC to conduct ongoing surveys to, among other things, estimate the size and worth of the unbanked market in the United States and to identify the cultural, language and identification issues as well as transaction costs that appear to most prevent unbanked individuals from establishing accounts with insured depository institutions. To satisfy the Congressional mandate, the FDIC has proposed conducting two complementary surveys related to unbanked and underbanked consumers (underbanked consumers include individuals who have an account with an insured depository institution, but also rely on non-bank alternative financial service providers for transaction services or high-cost credit products). The first survey effort, which has already obtained OMB approval and is currently underway, is a survey of FDIC-insured depository institutions on their efforts to serve unbanked and underbanked consumers.

The second survey effort, which is the subject of this notice, would be a national survey of U.S. households to estimate the size and worth of the unbanked and underbanked markets and to identify the barriers households perceive when deciding how and where to conduct financial transactions.

To obtain the information required by the Reform Act related to unbanked and underbanked households, for this survey effort the FDIC proposes to partner with the U.S. Census Bureau to conduct a survey of U.S. households as a supplement to Census' CPS in January 2009. The supplement would be administered to households that participate in the CPS and would be 10 minutes in length, on average.

The FDIC supplement to the Census survey is designed to yield significant new data on the numbers and demographic characteristics of unbanked and underbanked households, as well as the barriers they perceive when deciding how and where to conduct financial transactions. Currently, there is a lack of basic data on the number of unbanked and underbanked households in the U.S. and on the factors that may promote or hinder access to the mainstream financial system . This will be the first survey of its kind on this topic to be conducted at the national level and results will also be reportable at the state level. The results will help policymakers and the industry better understand the extent to which U.S. households are financially underserved, the reasons why U.S. households may be financially underserved, and the opportunities that exist to better serve them.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The FDIC will consider all comments to determine the extent to which the proposed information collection should be modified prior to submission to OMB for review and approval. After the comment period closes, comments will be summarized or included in the FDIC's request to OMB for approval of the collection. All comments will become a matter of public record.

Dated at Washington, DC, this 13th day of May, 2008.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E8–11072 Filed 5–16–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 2008.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Murph M. Compton, Murph M. Compton, Jr. (individually and as trustee of the Alexander Marie Compton Trust and the Barrett Wesley Compton Trust), both of Menard, Texas, and Mary Margaret McDonald (individually and as trustee of the Elizabeth Ann McDonald Trust and the Wade Compton McDonald Trust), Plano, Texas; to acquire voting shares of Menard Bancshares, Inc., and thereby indirectly acquire voting shares of Menard National Bank, both of Menard, Texas.

Board of Governors of the Federal Reserve System, May 14, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–11134 Filed 5–16–08; 8:45 am]

BILLING CODE 6210–01–S

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 also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. High Trust Bancorp, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of High Trust Bank, both of Stockbridge, Georgia.

Board of Governors of the Federal Reserve System, May 14, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–11135 Filed 5–16–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: May 21, 2008—9 a.m.–3 p.m., May 22, 2008—10 a.m.–2 p.m.

Place: Renaissance Washington DC Hotel, 999 9th Street, NW., Washington, DC 20001, Tel: (202) 898–9000.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the first day the Committee will hear updates from the Department by the Data Council and the HHS Office of the National Coordinator (ONC). They will also discuss letters to the HHS Secretary on hospital surge capacity and e-prescribing standards and long term care. Later in the afternoon there will be an update on classification issues in healthcare terminology.

On the morning of the second day the Committee will continue the discussions on the letters on surge capacity and e-prescribing standards. The remainder of the time will be spent discussing future agenda items and Committee administrative operations.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: May 13, 2008.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (SDP), Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. E8–11070 Filed 5–16–08; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public.

DATES: The meeting will be held on June 3, 2008, from 9 a.m. to 5 p.m., and on June 4, 2008, from 9 a.m. to 4 p.m.

ADDRESSES: Residence Inn Capitol Hotel, 333 E Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Moreno, National Vaccine Program Office, Department of Health and Human Services, Room 443–H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; (202) 690–5566, *nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program, on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

Topics to be discussed at the meeting include Departmental vaccine priorities, vaccine safety, vaccine financing issues, and adolescent and adult immunization. A tentative agenda is currently available on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac*.

Public attendance at the meeting 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 designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Any members of

the public who wish to have printed material distributed to NVAC members should submit materials to the Executive Secretary, NVAC, through the contact person listed above prior to close of business May 30, 2008. Pre-registration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should e-mail *nvpo@hhs.gov* or call 202–690–5566.

Dated: May 12, 2008.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. E8–11065 Filed 5–16–08; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Third Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice of meeting.

Authority: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provision of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the third meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020. All Committee meetings are open to the public. The Committee will review the nation's health promotion and disease prevention objectives and efforts to develop goals and objectives to improve the health status and reduce health risks for Americans by the year 2020. The Committee will provide to the Secretary of Health and Human Services advice and consultation to facilitate the process for developing and implementing the next iteration of national health promotion and disease prevention goals and objectives and provide advice for initiatives to occur during the initial implementation phase of the goals and objectives. HHS will use the advice that is provided to develop recommendations to form the national health promotion and disease prevention objectives for 2020 and the process for implementing the objectives. The intent is to develop and launch objectives designed to improve the health status and reduce health risks for Americans by the year 2020.

DATES: The Committee will meet on Thursday, June 5, 2008 from 9 a.m. until 5:30 p.m., and Friday, June 6, 2008 from 9 a.m. until 4:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Crystal City at Reagan National Airport, located at 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Carter Blakey, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, U.S. Department of Health and Human Services, Office of Public Health and Science, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8254 (telephone), (240) 453–8281 (fax). Additional information is available on the Internet at *http://www.healthypeople.gov.* Registration questions may be directed to Hilary Scherer at *HP2020@norc.org* (e-mail), (301) 634–9374 (phone), or (301) 634–9301 (fax).

SUPPLEMENTARY INFORMATION: The names of the 13 members of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 are available at *http://www.healthypeople.gov.*

Purpose of Meeting: The Committee will consider the work of its various subcommittees, hear presentations on select topics, and deliberate next steps. The Committee will also hear oral comments from the public to help inform them as they prepare their recommendations to the Secretary. Every 10 years, through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with the new knowledge of current data, trends, and innovations to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Healthy People 2020 will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging technologies related to our nation's health preparedness and prevention.

Public Participation at Meeting: Members of the public are invited to observe the Committee meeting. A portion of the meeting agenda will be allocated for committee members to hear public comments. All individuals wishing to observe and/or make comments must pre-register at *http://www.healthypeople.gov*. Due to time constraints, a limited number of scheduled time slots for public comments will be available on a first-come-first-served basis through pre-registration. Comments will also be limited to 1–2 minutes per individual. Attendees that do not pre-register to make comments cannot be guaranteed an opportunity to have his or her comments heard during the meeting. Individuals are encouraged to submit their comments in writing in advance of the meeting through the pre-registration process. Written comments are also welcome throughout the development process of the national health promotion and disease prevention objectives for 2020. They can be submitted through the Healthy People Web site at: *http://www.healthypeople.gov/hp2020/comments/* or they can be e-mailed to *HP2020@hhs.gov*.

Registrations must be completed by 5:30 p.m. EST on Monday, June 2, 2008. Space for the meeting is limited. Registrations will be accepted until maximum room capacity is reached. A waiting list will be maintained should registrations exceed room capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person.

Dated: May 13, 2008.

Penelope Slade Royall,

RADM, USPHS, Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Office of Disease Prevention and Health Promotion.

[FR Doc. E8–11071 Filed 5–16–08; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation for Public Comments

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is hereby giving notice that the National Vaccine Program Office (NVPO) is seeking comments on a draft document that has been prepared for presentation to the National Vaccine Advisory Committee (NVAC).

SUPPLEMENTARY INFORMATION: NVPO is organizationally located within the Office of Public Health and Science within the Office of the Secretary of the Department of Health and Human Services. NVPO has responsibility for coordinating and ensuring collaboration among the many Federal agencies involved in vaccine and immunization activities.

NVAC is a statutory Federal advisory committee. Establishment of the Committee was authorized under Section 2105 of the Public Health Service Act, as amended (42 U.S.C. Section 300aa–5). NVAC provides advice and makes recommendations to the Director of the National Vaccine Program on matters related to the Program. The Assistant Secretary for Health serves as Director of the National Vaccine Program. Management support for the Committee's activities is provided by the NVPO.

The NVAC charter stipulates that the Committee can utilize subcommittees and working groups to provide assistance in carrying out its function. NVAC has established four working groups for this purpose.

The Adolescent Immunization Working Group was established and has been charged to develop a series of recommendations for the programmatic and financial implementation of adolescent immunization recommendations. To comply with its charge, this Working Group has developed draft recommendations for adolescent immunization that are to be presented to NVAC for discussion in an open public session. To enhance public involvement in development of the recommendations, an opportunity is being given for the public to provide comment. The draft document can be viewed and downloaded from the NVAC Web site at *http://www.hhs.gov/nvpo/nvac/index.html.* Consideration will be given to the comments received for changes to be made to the draft recommendations. The draft recommendations will be presented to NVAC for discussion in an open public session.

All comments on the draft recommendations should be received no later than 5 p.m. on May 29, 2008. Comments should be sent to Shannon Stokley, MPH; Health Services Research and Evaluation Branch, Immunization Services Division; Centers for Disease Control and Prevention. Comments should be sent by e-mail to *sstokley@cdc.gov* or fax at (404) 639–8614.

FOR FURTHER INFORMATION CONTACT: Shannon Stokley, MPH; Health Services Research and Evaluation Branch, Immunization Services Division; National Center for Immunization and Respiratory Diseases; Centers for Disease Control; (404) 639–8734.

Dated: May 12, 2008.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. E8–11067 Filed 5–16–08; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: June 9–11, 2008.

Time: June 9, 2008, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: June 10, 2008, 8:30 a.m. to 11:50 a.m.

Agenda: To review and evaluate the Section on Molecular Neurobiology, Unit on Neural Function, and Section on Functional Neuroanatomy.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: June 10, 2008, 12 p.m. to 1 p.m.

Agenda: To review and evaluate the Training Fellows and Staff Scientists.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: June 10, 2008, 1 p.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: June 10, 2008, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: June 11, 2008, 8:30 a.m. to 11:40 a.m.

Agenda: To review and evaluate the Section on Neuroadaptation and Protein Metabolism, Unit on Affective Psychophysiology, and Unit on Genetics of Mood and Anxiety Disorders.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Time: June 11, 2008, 11:50 a.m. to 12:50 p.m.

Agenda: To review and evaluate the Training Fellows and Staff Scientists.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Time: June 11, 2008, 1:20 p.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Contact Person: Emily E. Gross, Program Assistant, Office of the Scientific Director, National Institute of Mental Health, NIH, 9000 Rockville Pike, Building 10, Room 4N222, Bethesda, MD 20892, 301–402–4137, *grosse@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–11088 Filed 5–16–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research.

Committee Date: June 12, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 N. Michigan Avenue, The Venetian Room, 23rd Floor, Chicago, IL 60611.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, Rm. 3126, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10949 Filed 5–16–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Mental Health Council, May 22, 2008, 10:30 a.m. to May 23, 2008, 12:30 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on April 23, 2008, 73FR21967.

The Closed Grant Review session of the National Advisory Mental Health Council will start at 11 a.m. instead of 10:30 a.m. This Closed session on May 22, 2008, will be at the Neuroscience Center, 6001 Executive Boulevard, Rockville, MD. The meeting is partially Closed to the public.

Dated: May 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–11087 Filed 5–16–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke, Council Clinical Trials Subcommittee.

Date: May 29, 2008.

Closed: 8 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Open: 9 a.m. to 10 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah G Hirtz, MD, Acting Director, Clinical Trials Cluster, National Institute of Neurological Disorders and Stroke, National Institute of Health, 6001 Executive Blvd., Suite 2212, Bethesda, MD 20892, (301) 496–5821, *hirtz@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Advisory Neurological Disorders and Stroke Council Basic and Preclinical Programs Subcommittee.

Date: May 29, 2008.

Closed: 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 7, Bethesda, MD 20892.

Open: 8:30 a.m. to 10 a.m.

Agenda: To discuss basic and preclinical programs policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 7, Bethesda, MD 20892.

Contact Person: Jill E. Heemskerk, PhD, Acting Chief, Technology Development, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Boulevard, Suite 2229, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779, *jh440o@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–11089 Filed 5–16–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 CC–12 Member Conflict.

Date: June 26–27, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Beata Buzas, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3041, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10951 Filed 5–16–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Alcohol Tolerance: Contribution to Consumption (RFA–08–009/010).

Date: July 21, 2008.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, 5635 Fishers Lane RM 3041, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Beata Buzas, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3041, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10952 Filed 5–16–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences, Special Emphasis Panel, Identification of Single Nucleotide Polymorphisms (SNPs), in Disease Susceptibility Genes.

Date: June 10, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences, Special Emphasis Panel, Review of Nanotechnology for Bioremediation.

Date: June 11, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Durham/Southpoint, 7007 Fayetteville Road, Durham, NC 27713.

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–11061 Filed 5–16–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health, Special Emphasis Panel Neurocognition and Emotion in Schizophrenia.

Date: June 11, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Allan F. Mirsky, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Boulevard, Rm. 6157, MSC 9609, Bethesda, MD 20892–9609, 301–496–2551, *afmirsky@mail.nih.gov.*

Name of Committee: National Institute of Mental Health, Special Emphasis Panel Rapid Assessment Post-Impact of Disaster.

Date: June 18, 2008.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892, 301–443–0004, *sechu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–11085 Filed 5–16–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for type I diabetes. The outcome of the evaluation will be a decision whether NIDDK should support the request and make available contract resources for development of the potential therapeutic to improve the treatment or prevent the development of type I diabetes and its complications. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Type I Diabetes—Rapid Access to Intervention Development, Special Emphasis Panel, National Institute of Diabetes and Digestive and Kidney Diseases.

Date: June 3, 2008.

Time: 12 p.m.–1 p.m.

Agenda: To evaluate requests for preclinical development resources for potential new therapeutics for type I diabetes and its complications.

Place: 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dr. Kristin Abraham, Director, Cell Signaling and Diabetes Centers Program, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, NIH, 6707 Democracy Boulevard, Bethesda, MD 20892–5460, 301 451–8048.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 98.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10950 Filed 5–16–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0048]

Science and Technology Directorate; Submission for Review; Information Collection Request for the DHS S&T Tech Clearinghouse Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on new data collection forms for the Tech Clearinghouse program: Consent Form, Entrance Form, Structured Assessment Case #1, Structured Assessment Case #2, Structured Assessment Case #3, Structured Assessment Case #4, and Exit Form. The Homeland Security Act of 2002 requires the Department of Homeland Security (DHS) Science and Technology Directorate (S&T) to establish a Technology Clearinghouse to encourage and support innovative technical solutions to enhance homeland security and the mission of the Department (Pub. L. 107–296, Section 313). This requirement responds to long-standing requests by the first responder community to create a resource for information and technology that would assist them in support of their mission. In order to assess the current version of the DHS Tech Clearinghouse, a National Online Electronic Assessment (NOEA) will be administered. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until July 18, 2008.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer for the Department of Homeland Security, Science & Technology Directorate, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Please include docket number [DHS–2008–0048] in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Michael Bowerbank (202) 254–6895 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Tech Clearinghouse National On-line Assessment (NOEA) will collect information via a secure Web site. The data will be used by DHS S&T to: (1) Assess the overall usability of the Tech Clearinghouse, (2) Assess the specific functions of the Tech Clearinghouse, (3) Assess the relevancy and usefulness of the content of the Tech Clearinghouse to first responders, (4) Assess the ease with which users navigate the Tech Clearinghouse, and (5) Provide general feedback on the Tech Clearinghouse.

Information technology will be used in the collection of this information to reduce the data gathering and records management burden. The National Online Electronic Assessment will be conducted with approximately 100 currently employed or recently retired individuals from the first responder disciplines. An invitation to participate in the National Online Electronic Assessment will be distributed through sources such as the First Responder Technologies (R-Tech) User Working Group (UWG), the R-Tech Newsletter, and national and state-level associations representing all first responder disciplines. The sources will announce the opportunity for participation in the NOEA.

The assessment will be completely Web-based. DHS S&T will provide a secure Web site, through which individuals can participate in the assessment. DHS has opted to conduct this collection electronically in order to minimize the burden on participants.

Individuals that choose to participate will take part in the assessment over a 4-week period, at locations of their choice where an Internet connection is available. The assessment will require a total of two and a half (2.5) hours of the respondent's time, thus presenting a minimal burden to each respondent.

Participants will be asked to read and sign an electronic consent form granting their consent to participate in the assessment. Participants will then complete an online Entrance Form, which addresses their familiarity with computers, computer use in employment and leisure, common Web sites they visit and/or use, and expectations of the Tech Clearinghouse. They will then utilize and assess the Tech Clearinghouse by conducting specified and general searches and providing feedback through online assessment instruments (Structured Assessment Cases). After completing the Structured Assessment Cases, participants will complete an online Exit Form, which addresses the participant's satisfaction with and the overall usability of the Tech Clearinghouse and specific functions included in the Tech Clearinghouse. The electronic data collection forms will standardize the collection of information that is both necessary and sufficient for assessing the Tech Clearinghouse. All online assessment instruments were created using *mrInterview™ 4.0* software, which works in conjunction with the Statistical Package for the Social Sciences (SPSS™). Data collected from online assessment instruments will be analyzed using SPSS™ 15.0.

Data will be stored in password-protected computers accessible only to authorized personnel, and no data will be associated in any way with personally identifiable information (PII).

Overview of this Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Tech Clearinghouse.

Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: DHS Science & Technology Directorate.

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals; the data will be gathered from individuals who receive an invitation to participate in the National Online Electronic Assessment through sources such as the First Responder Technologies (R-Tech) User Working Group (UWG), the R-Tech Newsletter, and national and state-level associations representing all first responder disciplines.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 100.

b. *An estimate of the time for an average respondent to respond:* 2.5 burden hours.

Dated: May 8, 2008.

Kenneth D. Rogers,

Chief Information Officer, Science and Technology Directorate.

[FR Doc. E8–11083 Filed 5–16–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Law Enforcement Training Center

[Docket No. FLETC–2008–0002]

State and Local Training Advisory Committee

ACTION: Committee Management; Notice of Federal Advisory Committee Charter Renewal.

SUMMARY: The Secretary of Homeland Security has determined that the renewal of the charter of the State and Local Training Advisory Committee (SALTAC) is necessary and in the public interest in connection with the Federal Law Enforcement Training Center's performance of its duties in providing law enforcement training to state, local and tribal law professionals. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: State and Local Training Advisory Committee.

ADDRESSES: If you desire to submit comments on this action, they must be submitted by July 1, 2008. Comments must be identified by FLETC–2008–0002 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *Reba.fischer@dhs.gov*. Include the docket number in the subject line of the message.
- Fax: 912–267–3531.
- Mail: Reba Fischer, Federal Law Enforcement Training Center, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524.
- Instructions: All submissions received must include the words ''Department of Homeland Security'' and FLETC–2008–XXXX, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov* including any personal information provided.
- Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Reba Fischer, Designated Federal Officer, Federal Law Enforcement Training Center, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524; 912–267–2343 (telephone); 912–267–3531 (fax), *reba.fischer@dhs.gov*.

Purpose and Objective: The SALTAC advises and makes recommendations to the Federal Law Enforcement Training Center (FLETC), Department of Homeland Security, on matters relating to the selection, development, content and delivery of training services by the Office of State and Local Training, FLETC, to its state, local, campus, and tribal law enforcement customers.

Duration: The committee's charter is effective March 24, 2008, and expires March 24, 2010.

Responsible DHS Official: Reba Fischer, Designated Federal Officer, Federal Law Enforcement Training Center, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524; 912–267–2343 (telephone); 912–267–3531 (fax), *reba.fischer@dhs.gov*.

Dated: May 5, 2008.

Seymour Jones,

Deputy Assistant Director, Office of State and Local Training.

[FR Doc. E8–11079 Filed 5–16–08; 8:45 am]

BILLING CODE 4810–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–14]

Notice of Proposed Information Collection: Comment Request; Request for Credit Approval of Substitute Mortgagor

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: July 18, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Leslie Bromer, Office of Single Family Asset Management and Disposition Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2309 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Credit Approval of Substitute Mortgagor.

OMB Control Number, if applicable: 2502–0036.

Description of the need for the information and proposed use: A buyer may assume an FHA-insured mortgage by becoming the substitute mortgagor through the credit approval process. Prior to releasing a seller from liability on the mortgage note or for mortgages after December 15, 1989, HUD or a Direct Endorsement (DE) lender must review the credit of the assumer and record the approval.

Agency form numbers, if applicable: HUD–92210 and HUD–92210.1.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 4,800. The number of respondents is 600, the number of responses is 4, the frequency of response is on occasion, and the burden hour per response is .50–1.00.

Status of the proposed information collection: This is an extension to a previous collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 12, 2008.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–11075 Filed 5–16–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–13]

Notice of Proposed Information Collection: Comment Request; Section 8 Renewal Policy Guide

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. The Guide represents contract renewal policy which is consistent with current statutes and existing regulations.

DATES: *Comments Due Date: July 18, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Gail Williamson, Director, Housing Assistance and Policy Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000, extension 2473, for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 8 Renewal Policy Guide.

OMB Control Number, if applicable: 2502–New.

Description of the need for the information and proposed use: The modifications of the Section 8 renewal policy and recent legislation are implemented to address the essential requirement to preserving low income rental housing affordability and availability. The Section 8 Renewal Policy Guide will include recent legislation modifications for renewing of expiring Section 8 policy(ies) Guidebook, as authorized by the Code of Federal Regulations 24 CFR Part 401 and 24 CFR Part 402.

The Multifamily Housing Reform and Affordability Act of 1997 (MAHRA) for fiscal year 1998 (Public Law 105–65, enacted on October 27, 1997), required that expiring Section 8 project-based assistance contracts be renewed under MAHRA. Established in the MAHRA policies renewal of Section 8 project-based contracts rents are based on market rents instead of the Fair Market Rent (FMR) standard.

MAHRA renewals submission should include a Rent Comparability Study (RCS). If the RCS indicated rents were at or below comparable market rents, the contract was renewed at current rents adjusted by Operating Cost Adjustment Factor (OCAF), unless the Owner submitted documentation justifying a budget-based rent increase or participation in Mark-Up-To-Market. The case is that no renewal rents could exceed comparable market rents. If the

RCS indicated rents were above comparable market rents, the contract was referred to the Office of Affordable Housing Preservation (OAHP) for debt restructuring and/or rent reduction.

The Preserving Affordable Housing for Senior Citizens and Families Into the 21st Century Act of 1999 (Pub. L. 106–74, enacted on October 20, 1999), modified MAHRA.

The Section 8 Renewal Policy Guide sets forth six renewal options from which a project owner may choose when renewing their expiring Section 8 contract: Option One—Mark-Up-To-Market, Option Two—Other Contract Renewal with Current Rents at or Below Comparable Market Rents, Option Three—Referral to the Office of Affordable Housing Preservation (OAHP), Option Four—Renewal of Projects Exempted From OMHAR, Option Five—Renewal of Portfolio Reengineering Demonstration or Preservation Projects, and Option Six—Opt Outs.

Owners should select one of six options which are applicable to their project and should submit contract renewal on an annual basis to renew contract.

The Section 8 Renewal Guide sets forth six renewal options from which a project owner may choose when renewing their expiring Section 8 contracts.

Option One (Mark-Up-To-Market)
Option Two (Other Contract Renewals with Current Rents at or Below Comparable Market Rents
Option Three (Referral to the Office of Multifamily Housing Assistance Restructuring—OHAP)
Option Four (Renewal of Projects Exempted from OHAP)
Option Five (Renewal of Portfolio Reengineering Demonstration or Preservation Projects)
Option Six (Opt-Outs)

Agency form numbers, if applicable:

Contract Renewal Request Form (HUD–9624)
OCAF Rent Adjustment Worksheet (HUD–9625)
Initial Eligibility Worksheet Comparability Study Comparison Worksheet (HUD–9626)
Section 236, Section 515 and Section 221(d)(3) BMIR Worksheet (HUD–9627)
Other New Construction and Sub-Rehab Worksheet (HUD–9628)
Appraiser Certification (HUD–9629)
Rent Comparability Grid (HUD–9630)
One Year Notification Owner Does Not Intend to Renew (HUD–9631)
One Year Notification Letter Owner Intends to Renew (HUD–9632)
Use Agreement (HUD–9633)
Addendum to Agreement to Enter Into Housing Assistance Payments Contract (HUD–9634)
Appendix 15–3 Project Capital Needs Assessments and Replacement Reserve Escrow (HUD–9635)
Projects Preparing a Budget-Based Rent Increase (HUD–9636)
Basic Renewal Contract—One Year Term (HUD–9637)
Basic Renewal Contract—Multi-Year Term (HUD–9638)
Renewal Contract for Mark-Up-To-Market Project (HUD–9639)
Housing Assistance Payments Preservation Renewal Contract (HUD–9640)
Interim (Full) Mark-To-Market Renewal Contract (HUD–9641)
Interim (Lite) Mark-To-Market Renewal Contract (HUD–9642)
Full Mark-To-Market Renewal Contract (HUD–9643)
Watch List Renewal Contract (HUD–9644)
Project Based Assistance Payments Amendment Contract Moderate Rehabilitation (HUD–9645)
Project Based Section Housing Assistance Payments Extension of Renewal Contract (HUD–9646)
Extension Amendment to Old Regulation State Agency Housing Payment Contract (HUD–9647)
Consent to Assignment of HAP Contract as Security for Freddie MAC Financing (HUD–9648)
Consent to Assignment of HAP Contract as Security for Financing (HUD–9649)
Consent to Assignment of HAP Contract as Security for FNMA Financing (HUD–9651)
Request to Renew Using Non-Section 8 Units in the Section 8 Project as a Market Rent Ceiling (HUD–9652)
Request to Renew Using FMR's as Market Ceiling (HUD–9653)
Addendum to Renewal Contract (HUD–9654)
Rent Comparability Study (HUD–9655)
Rent Comparability Grid (HUD–9656)
Completing the Rent Comparability Grid (HUD–9657)
Required Contents for Rent Comparability Study (HUD–9658)

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 46,040. The number of respondents is 46,040, the number of responses is 46,040, the frequency of response is on occasion, and the burden hour per response is 1.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 12, 2008.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–11076 Filed 5–16–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–20]

Notice of Proposed Information Collection: Comment Request; Energy Efficient Mortgages

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: July 18, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Margaret E. Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 the use of appropriate automated collection techniques or other forms of

information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Energy Efficient Mortgages.

OMB Control Number, if applicable: 2502–0561.

Description of the need for the information and proposed use: The information is being collected to determine the eligibility for FHA mortgage insurance under the Energy Efficient Mortgage program.

Agency form numbers, if applicable: HUD–92903.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 2,100. The number of respondents is 600, the number of responses is 600, the frequency of response is on occasion, and the burden hour per response is 3.5.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 12, 2008.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E8–11078 Filed 5–16–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–17]

Notice of Proposed Information Collection: Comment Request; Land Survey Report/Multifamily Housing Development

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: July 18, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202)402–8048.

FOR FURTHER INFORMATION CONTACT: Joe Sealey, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 471 7th Street, SW., Washington, DC 20410, telephone (202) 708–2559 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Land Survey Report for Insured MF Projects.

OMB Control Number, if applicable: 2502–0010.

Description of the need for the information and proposed use:

Agency form numbers, if applicable: HUD–2457.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 800. The number of respondents is 800, the number of responses is 1600, the frequency of response is on occasion, and the burden hour per response is .50.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 12, 2008.

Frank L. Davis

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–11081 Filed 5–16–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–15]

Notice of Proposed Information Collection: Comment Request; Requirements for Single Family Mortgage Instruments

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: July 18, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202)402–8048.

FOR FURTHER INFORMATION CONTACT: Margaret E. Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Requirements For Single Family Mortgage Instruments.

OMB Control Number, if applicable: 2502–0404.

Description of the need for the information and proposed use:

FHA insures single-family mortgages and stipulates the specific provisions needed for mortgage instruments as required by statute and regulation. The regulations are found at 24 CFR 203.255(b)(3)—implement statutory and regulatory requirements. Accompanying documents required by the Secretary—states the requirements for applications for insurance involving mortgages originated under the Direct Endorsement program under 24 CFR 203.5. One requirement is for the mortgagee to submit to the Secretary, within 60 days after the date of closing of the loan or such additional time as permitted by the Secretary, properly completed documentation and certifications, including a certified copy of the mortgage and note executed upon forms which meet the requirements of the Secretary.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 4,500. The number of respondents is 9,000, the number of responses is 9,000, the frequency of response is on occasion, and the burden hour per response is 0.5.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 12, 2008.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–11082 Filed 5–16–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Renewal of Information Collection; OMB Control Number 1085–0001, Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses

AGENCY: Indian Arts and Crafts Board, Interior.

ACTION: Notice; request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Indian Arts and Crafts Board announces the proposed extension of a public information collection and seeks public comments on the provisions thereof.

DATES: Consideration will be given to all comments received by *July 18, 2008*.

ADDRESSES: Send your written comments to Attention: Indian Arts and Crafts Board, U.S. Department of the Interior, 1849 C Street, NW., MS–2528 MIB, Washington, DC 20240. If you wish to submit comments by facsimile, the number is (202) 208–5196, or you may send them by e-mail to *iacb@ios.doi.gov*. Please mention that your comments concern the *Source Directory*, OMB Control #1085–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the *Source Directory* application or renewal forms, i.e., the information collection instruments, should be directed to Meridith Z. Stanton, Director, Indian Arts and Crafts Board, 1849 C Street, NW., MS–2528 MIB, Washington, DC 20240. You may also call (202) 208–3773 (not a toll free call), or send your request by e-mail to *iacb@ios.doi.gov* or by facsimile to (202) 208–5196.

SUPPLEMENTARY INFORMATION:

I. Abstract

The *Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses (Source Directory)* is a program of the Indian Arts and Crafts Board that promotes American Indian and Alaska Native arts and crafts. The *Source Directory* is a listing of American Indian and Alaska Native-owned and -operated arts and crafts businesses that may be accessed by the public on the Indian Arts and Crafts Board's Web site *http://www.iacb.doi.gov*.

The service of being listed in this directory is provided free-of-charge to members of federally recognized tribes. Businesses listed in the *Source Directory* include American Indian and Alaska Native artists and craftspeople, cooperatives, tribal arts and crafts enterprises, businesses privately-owned and -operated by American Indian and Alaska Native artists, designers, and craftspeople, and businesses privately-owned and -operated by American Indian and Alaska Native merchants who retail and/or wholesale authentic Indian and Alaska Native arts and crafts. Business listings in the *Source Directory* are arranged alphabetically by State.

The Director of the Indian Arts and Crafts Board uses this information collected in information collection 1085–0001 to determine whether an individual or business applying to be listed in the *Source Directory* meets the requirements for listing. If approved, the application will be included in the *Source Directory*. The *Source Directory* is updated annually to include new businesses and to update existing information.

II. Method of Collection

To be listed in the *Source Directory*, interested individuals and businesses must submit: (1) A draft of their business information in a format like the other *Source Directory* listings, (2) a copy of the individual's or business owner's tribal enrollment card; and for businesses, proof that the business is organized under tribal, state, or federal law; and (3) a certification that the business is an American Indian or Alaska Native-owned and -operated cooperative, tribal enterprise, or nonprofit organization, or that the owner of the enterprise is an enrolled member of a federally recognized American Indian Tribe or Alaska Native group.

The following information is collected in a single-page form that is distributed by the Indian Arts and Crafts Board. Although listing in the *Source Directory* is voluntary, submission of this information is required for inclusion in the Directory.

Information collected	Reason for collection
Name of business, mailing address, city, zip code (highway location, Indian reservation, etc.), telephone number and e-mail address.	To identify the business to be listed in the *Source Directory*, and method of contact.
Type of organization	To identify the nature of the business entity.
Hours/season of operation	To identify those days and times when customers may contact the business.
Internet Web site address	To identify whether the business advertises and/or sells inventory online.
Main categories of products	To identify the products that the business produces.
Retail or wholesale products	To identify whether the business is a retail or wholesale business.
Mail order and/or catalog.	To identify whether the business has a mail order and/or catalog.
Price list information, if applicable	To identify the cost of the listed products.
For a cooperative or tribal enterprise, a copy of documents showing that the organization is formally organized under tribal, state or federal law.	To determine whether the business meets the eligibility requirement for listing in the *Source Directory*.
Signed certification that the business is an American Indian or Alaska Native-owned and -operated cooperative, tribal enterprise, or nonprofit organization.	To obtain verification that the business is an American Indian or Alaska Native-owned and -operated business.
Copy of the business owner's tribal enrollment card	To determine whether the business owner is an enrolled member of a federally recognized tribe.
Signed certification that the owner of the business is a member of a federally recognized tribe.	To obtain verification that the business owner is an enrolled member of a federally recognized tribe.

The proposed use of the information: The information collected will be used by the Indian Arts and Crafts Board:

(a) To determine whether an individual or business meets the eligibility requirements for inclusion in the *Source Directory*, i.e., whether they are either an American Indian or Alaska Native-owned and -operated cooperative, tribal enterprise, or nonprofit organization, or an enrolled member of a federally recognized American Indian Tribe or Alaska Native group;

(b) To identify the applicant's business information to be printed in the *Source Directory*.

III. Data

(1) *Title:* Department of the Interior, Indian Arts and Crafts Board, *Source Directory* of American Indian and Alaska Native-owned and -operated arts and crafts businesses.

OMB Control Number: 1085–0001.

Type of Review: Renewal of an existing collection.

Affected Entities: Business or other for-profit; tribes.

Estimated annual number of respondents: 100.

Frequency of response: Annual.

(2) Annual reporting and record keeping burden.

Total annual reporting per respondent: 15 minutes.

Total annual reporting: 25 hours.

(3) *Description of the need and use of the information:* Submission of this information is required to receive the benefit of being listed in the Indian Arts and Crafts Board *Source Directory*. The information is collected to determine the applicant's eligibility for the service and to obtain the applicant's name and business address to be added to the online directory.

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection in Room 2528 of the Main Interior Building, 1849 C Street, NW., Washington, DC from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. A valid picture identification is required for entry into the Department of the Interior. The comments, with names and addresses, will be available for public view during regular business hours. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law.

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 Office of Management and Budget control number.

Dated: May 12, 2008.

Meridith Z. Stanton,

Director, Indian Arts and Crafts Board.

[FR Doc. E8–11160 Filed 5–16–08; 8:45 am]

BILLING CODE 4310–4H–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2008–N0126; 80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before June 18, 2008.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist, see **ADDRESSES**, (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit No. TE–839891

Applicant: Jack Levy, Pasadena, California.

The applicant requests an amendment to take (survey by pursuit) the El Segundo Blue butterfly (*Euphilotes battoides allyni*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–181715

Applicant: Jared Bond, Riverside, California.

The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing their survival.

Permit No. TE–181713

Applicant: Cynthia A. Hartley, Ventura, California.

The applicant requests a permit to take (locate/monitor nests) the California least tern (*Sterna Antillarum browni*) in conjunction with population monitoring studies within Ventura County, California, for the purpose of enhancing its survival.

Permit No. TE–051248

Applicant: Paul M. Lemmons, San Diego, California.

The applicant requests an amendment to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*); and take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of each species, for the purpose of enhancing their survival.

Permit No. TE–093591

Applicant: Linda M. Robb, Dana Point, California.

The applicant requests an amendment to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California, for the purpose of enhancing their survival.

Permit No. TE–082546

Applicant: Elkhorn Slough National Estuarine Research, Watsonville, California.

The applicant requests an amendment to take (survey, capture, collect biological samples, and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in conjunction with biological and genetic research in Santa Cruz and Monterey Counties, California, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Dated: May 13, 2008.

Michael Fris,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. E8–11113 Filed 5–16–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0084; 40136–1265–0000–S3]

Savannah Coastal Refuges' Complex

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act (NEPA) documents for the Savannah Coastal Refuges' Complex. The Complex consists of the following refuges: Pinckney Island; Savannah; Tybee; Wassaw; Harris Neck; Blackbeard Island; and Wolf Island. A separate CCP is being prepared for the Wolf Island National Wildlife Refuge. We provide this notice in compliance with our CCP policy to advise other agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by July 3, 2008. An open house meeting will be held during the scoping phase of the Draft CCP development process. The date, time, and place for the meeting will be announced in the local media.

ADDRESSES: Comments, questions, and requests for information should be sent to: Jane Griess, Project Leader, Savannah Coastal Refuges' Complex, 1000 Business Center Drive, Suite 10, Savannah, GA 31405.

FOR FURTHER INFORMATION CONTACT: Jane Griess; Telephone: 912/652–4415; Fax: 912/652–4385; E-mail: *savannahcoastalccp@fws.gov*. You may find additional information concerning these refuges at the following Internet site: *http://www.fws.gov/savannah.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate the process for developing a CCP for the Savannah Coastal Refuges' Complex, including the following: Pinckney Island National Wildlife Refuge in Beaufort County, South Carolina; Savannah National Wildlife Refuge in Chatham and Effingham Counties, Georgia and Jasper County, South Carolina; Tybee National Wildlife Refuge in Jasper County, South Carolina; Wassaw National Wildlife Refuge in Chatham County, Georgia; Harris Neck National Wildlife Refuge in McIntosh County, Georgia; and Blackbeard Island National Wildlife Refuge off the coast of McIntosh County, Georgia.

This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System is established for specific purposes. We use these purposes as a foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's established purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of the Savannah Coastal Refuges' Complex. Special mailings, newspaper articles, and other media outlets will be used to announce opportunities for input throughout the planning process.

We will conduct the environmental assessment in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

The Complex is comprised of a chain of national wildlife refuges extending from Pinckney Island Refuge near Hilton Head Island, South Carolina, to Wolf Island Refuge near Darien, Georgia. Between these lie Savannah, Wassaw, Tybee, Harris Neck, and Blackbeard Island Refuges. Together they span a 100-mile coastline and total more than 56,000 acres. The refuges are administered from headquarters in Savannah, Georgia.

Pinckney Island Refuge includes the following islands: Pinckney; Corn; Big Harry; Little Harry; and Buzzard, as well as numerous small hammocks. Pinckney Island Refuge was established in 1975 and is comprised of 4,053 acres of salt marsh, tidal creeks, grassland, fallow fields, and freshwater ponds. The refuge provides habitat and protection for migratory and wading birds, raptors, alligators, and fish. Federally listed threatened and endangered species found on the refuge include American alligators, flatwoods salamanders, and wood storks. The refuge offers 14 miles of trails for wildlife-dependent public use opportunities and environmental education.

Savannah Refuge, near Savannah, Georgia, was established in 1927 and is comprised of 29,175 acres of freshwater marshes, tidal rivers and creeks, and bottomland hardwoods. The refuge contains 3,000 acres of freshwater impoundments built during the 1700s for rice production and now used to manage for migratory waterfowl. Many of the dikes are used for foot travel and provide opportunities for wildlife observation. Savannah Refuge also administers fall and winter hunts for deer, feral hog, squirrel, and turkey. Fishing is permitted in freshwater pools for much of the year. Several federally listed threatened and endangered species are found on the refuge, including American alligators, flatwoods salamanders, shortnose sturgeon, West Indian manatees, and wood storks.

Tybee Refuge, along the north side of the Savannah River in South Carolina, was established in 1938 as a breeding area for migratory birds. The majority of the 100-acre refuge is covered by sand deposits from U.S. Army Corps of Engineers' harbor maintenance dredging activities. Federally listed threatened and endangered species found on the refuge include American alligators and wood storks. Due to difficult access, the sensitive nature of the site, and occasional dredging activities, the refuge is closed to the public.

Wassaw Refuge, off the Georgia coast, is comprised of 10,053 acres of marsh, uplands, mudflats, and tidal creeks, including approximately seven miles of undeveloped beaches. The refuge, established in 1969, has kept its primitive character. Wassaw Refuge is accessible only by boat, and provides habitat and protection for migratory shore and wading birds, reptiles, raptors, and fish. Several federally listed threatened and endangered species are found on the refuge, including American alligators, West Indian manatees, piping plovers, wood storks, and leatherback and loggerhead sea turtles. Refuge management activities focus on habitat monitoring and protection. Opportunities for wildlife-dependent public use include 20 miles of dirt roads used for hiking, wildlife observation, and environmental education. Wassaw Refuge provides some opportunity for deer hunting, during the fall and winter months, and fishing.

Harris Neck Refuge, five miles north of Eulonia, Georgia, is comprised of 2,824 acres of saltwater marsh, grassland, mixed deciduous woods, moist-soil impoundments, and cropland. The refuge was established in 1962 by transfer of Federal lands formerly managed by the Federal Aviation Administration as a WWII Army airfield. Portions of the paved airfield are used as a wildlife drive, while other parts are used as walking trails. Federally listed threatened and

endangered species found on the refuge include wood storks, flatwoods salamanders, and American alligators. Refuge management activities primarily focus on habitat management for marsh and wading birds, endangered wood storks, waterfowl, and resident wildlife, along with wildlife-dependent public recreation. Fishing is allowed in the tidal creek and piers have been constructed for public use. Deer hunting is allowed during fall and winter.

Blackbeard Island Refuge was acquired in 1800 by the Navy Department and was established as a national wildlife refuge in 1940. Situated off the Georgia coast and accessible by boat only, Blackbeard Island Refuge is comprised of 5,618 acres of maritime forest, salt marsh, freshwater marsh, and beach habitat, with 3,000 acres designated as Wilderness. These areas provide nesting and feeding areas for threatened loggerhead and leatherback sea turtles and American alligators; endangered piping plovers and wood storks; and species such as shorebirds, gulls, and terns. Refuge management activities focus on habitat monitoring and protection, along with wildlife-dependent public use opportunities and environmental education. Saltwater fishing is allowed. Two archery hunts for deer are scheduled during fall and winter.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you may ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: April 17, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8–11110 Filed 5–16–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Cancellation of the Environmental Impact Statement for the Greenville Rancheria's Trust Acquisition and Casino Project, Tehama County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) intends to cancel work on the Environmental Impact Statement (EIS) for the Greenville Rancheria's proposed Trust Acquisition and Casino Project, to have been located in Tehama County, California. The EIS is no longer needed because the Greenville Rancheria has not submitted a complete land acquisition application per 25 CFR 151 and has ceased pursuing activity on the EIS.

DATES: This cancellation is effective June 20, 2008. Any written comments must arrive by June 19, 2008.

ADDRESSES: You may mail or hand carry written comments to Amy Dutschke, Acting Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The BIA published its Notice of Intent to prepare the EIS on August 22, 2005, in the **Federal Register**(70 FR 48972). The notice included project details.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: May 2, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–11149 Filed 5–16–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Cancellation of the Environmental Impact Statement for the Lower Lake Rancheria Casino-Hotel Project, Oakland, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) intends to cancel work on the Environmental Impact Statement (EIS) for the Lower Lake Rancheria's proposed casino and hotel project, to have been located in Oakland, California. The EIS is no longer needed because the Lower Lake Rancheria Koi Nation has not submitted a complete land acquisition application per 25 CFR 151 and has ceased pursuing activity on the EIS.

DATES: This cancellation is effective June 20, 2008. Any written comments must arrive by June 19, 2008.

ADDRESSES: You may mail or hand carry written comments to Amy Dutschke, Acting Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The BIA published its Notice of Intent to prepare the EIS on November 26, 2004, in the **Federal Register** (69 FR 68970). The notice included project details.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before

including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: May 2, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–11150 Filed 5–16–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Cancellation of the Environmental Impact Statement for the Proposed Hannahville Tribe of Potawatomi Indians' Hotel and Casino Project, Romulus, MI

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to cancel work on the Environmental Impact Statement (EIS) for the Proposed Hannahville Tribe of Potawatomi Indians' Hotel and Casino Project in Romulus, Michigan. The EIS is no longer needed because the Department of the Interior has decided not to accept the land into trust, on the basis that the proposed action did not adequately meet criteria for trust acquisition in 25 CFR 151.3; 151.10(b); 151.10(c); and 151.11(b).

DATES: This cancellation is effective June 20, 2008. Any written comments must arrive by June 19, 2008.

ADDRESSES: You may mail, hand carry or fax written comments to Terrance L. Virden, Regional Director, Midwest Region, Bureau of Indian Affairs, Bishop Henry Whipple Federal Building, One Federal Drive, Room 550, Ft. Snelling, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Scott Doig, (612) 725–4514.

SUPPLEMENTARY INFORMATION: The BIA published its Notice of Intent to prepare the EIS on February 14, 2007, in the **Federal Register** (72 FR 7068). The notice included project details.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: May 2, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–11152 Filed 5–16–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Cancellation of the Environmental Impact Statement for the Proposed Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria's Fee-to-Trust Transfer and Casino-Hotel Project, San Bernardino County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) intends to cancel work on the Environmental Impact Statement (EIS) for the Proposed Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria's Fee-to-Trust Transfer and Casino-Hotel Project, to have been located in San Bernardino County, California. The EIS is no longer needed because the Department of the Interior has decided not to accept the land into trust, on the basis that the proposed action did not adequately meet criteria in 25 CFR 151.3; 151.10(b); 151.10(c); and 151.11(b) for trust acquisition.

DATES: This cancellation is effective June 20, 2008. Any written comments must arrive by June 19, 2008.

ADDRESSES: You may mail or hand carry written comments to Amy Dutschke, Acting Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The BIA published its Notice of Intent to prepare the EIS on April 19, 2006, in the **Federal Register** (71 FR 20126). The notice included project details.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant

Secretary—Indian Affairs by 209 DM 8.1.

Dated: May 2, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–11153 Filed 5–16–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–08–1060–XQ–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday June 30, 2008, from 8 a.m. to 5 p.m., local time. This will be a one day meeting.

ADDRESSES: The Advisory Board will meet in Reno, Nevada at the Silver Legacy Resort Casino, 407 North Virginia Street, Reno, Nevada 89501. The Silver Legacy's phone number is 775–329–4777.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business June 25, 2008. See the **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. DeLorme* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, June 30, 2008 (8 a.m.–5 p.m.)

8 a.m. Call to Order & Introductions:
8:15 a.m. Old Business:
Approval of February 2008 Minutes
Update Pending Litigation
8:45 a.m. Program Updates:
Gathers
Adoptions
Facilities
Forest Service Update
Break (9:30 a.m.–9:45 a.m.)
9:45 a.m. Program Updates (continued):
Program Accomplishments
BLM Response to Advisory Board Recommendations
Lunch (11:45 a.m.–1 p.m.)
1 p.m. New Business:
Break (2:45 p.m.–3 p.m.)
3 p.m. Public Comments
4 p.m. Board Recommendations
4:45 p.m. Recap/Summary/Next Meeting/Date/Site
5 p.m. Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on June 30, 2008 at the appropriate point in the agenda. This opportunity is anticipated to occur at 3 p.m., local time. Persons wishing to make statements should register with the BLM by noon on June 30, 2008 at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *ramona_delorme@blm.gov*. Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: May 14, 2008.

Ed Roberson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. E8–11143 Filed 5–16–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–200–1120–DD–241A]

Notice of Public Meeting, Twin Falls District Resource Advisory Council Meeting, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District and Elko District Resource Advisory Councils (RAC) will meet as indicated below.

DATES: June 19 and 20, 2008. The first day of the two-day meeting will consist of an information gathering tour of the proposed China Mountain Wind Project. The tour will begin with a one-hour presentation at 10 a.m. (MST) at Cactus Pete's Resort Casino in Jackpot, Nevada. Following the tour, there will be a brief business meeting for the Twin Falls District RAC at Cactus Pete's Resort Casino. On June 20, there will be a joint business meeting for the Twin Falls and Elko District RACs for one hour beginning at 8 a.m. and ending at 9 a.m. (MST). Each RAC will then meet separately to conduct individual District business. The Twin Falls District RAC's meeting will end no later than 4 p.m. The public comment period for the Twin Falls District RAC meeting will be from 9:15 a.m. to 9:45 a.m. The meeting will also be held at Cactus Pete's Resort Casino in Jackpot, Nevada.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The Twin Falls District RAC business meeting agenda will include the following topics: Discussion of China Mountain Wind Energy Project tour, Jarbidge Resource Management Plan update, and Twin Falls District energy projects. Additional topics may be added and will be included in local media announcements. More information is available at *http://www.blm.gov/id/st/en/res/resource_advisory.3.html*. The Elko District RAC notice of this meeting was previously published.

All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: May 12, 2008.

Bill Baker,

District Manager.

[FR Doc. E8–11120 Filed 5–16–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Scoping for Preparing an Environmental Impact Analysis of a Proposed Pilot Project at Everglades National Park

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Scoping for preparing an environmental impact analysis of a proposed pilot project at Everglades National Park.

SUMMARY: Notice is hereby given, in accordance with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), that public scoping is being initiated for an environmental impact analysis process to evaluate the use of swales placed downstream of existing culverts for improving water flows under Tamiami Trail (U.S. 41) into Northeast Shark Slough, Everglades National Park (Park). The purpose of this scoping effort is to identify environmental issues and potential alternatives to be addressed in the environmental impact analysis. The NEPA analysis will begin with the preparation of the Environmental Assessment (EA). As the project moves forward and if the National Park Service (NPS) determines that this project is likely to result in significant impacts to the human environment, the EA will be converted to an Environmental Impact Statement.

SUPPLEMENTARY INFORMATION: The Everglades National Park Protection and Expansion Act of 1989, 16 U.S.C. 410r–5 *et seq.*, (Expansion Act) expanded the boundaries of the Park to include approximately 109,000 acres (Expansion Area) south of the Tamiami Trail in Miami-Dade County, Florida. The Expansion Act directs the NPS to preserve the Park's outstanding natural features, and enhance and restore its ecological values and natural hydrologic conditions. The Expansion Act also authorized the Modified Water Deliveries (MWD) Project, whose purpose is to improve water deliveries within the Park and restore the natural hydrologic conditions to the extent practicable.

One of the objectives of the MWD Project is to improve the conveyance of water to the Expansion Area, which will require modifications to Tamiami Trail and associated culverts under the roadway. In this regard, the U.S. Army Corps of Engineers (USACOE) is preparing the 2008 Limited Reevaluation Report to assess potential roadway modifications, including alternatives such as constructing bridges, adding culverts, and installing swales downstream of existing culverts.

Recent modeling done by the USACOE suggests that constructing bridges and adding culverts may improve water flow to the Expansion Area. However, the efficacy of placing swales downstream of existing culverts as a measure to improve hydrologic conveyance remains questionable. In addition, the potential environmental impacts caused by swale construction must be addressed. Therefore, the Park believes it is appropriate to assess the potential effects of swale construction in a comprehensive manner by means of a pilot project.

The purpose of the pilot project is to test whether constructing spreader swales downstream of two existing culverts will improve water flow into the Northeast Shark Slough. Test results should enable a realistic assessment of the degree of improved hydrologic conveyance provided by the swales when compared to the conveyance capacity of the existing culverts. In addition, test results are expected to assist in determining the relative ecological benefits of swales and the environmental impacts associated with their construction and use.

DATES: Written comments regarding the proposed project must be postmarked no later than 30 days from the publication of this notice. As part of this scoping effort, a public workshop will be held in Miami-Dade County to solicit public input about the proposed project. Notification of the workshop will be announced in the newspaper Miami Herald and through the NPS Planning

Environment and Public Comment (PEPC) Web site: *http://parkplanning.nps.gov*.

ADDRESSES: Written comments should be addressed to National Park Service, Attention Pat Kenney, Denver Service Center, Planning Division, P.O. Box 25287, Denver, Colorado 80225–0287. Comments may also be submitted via the PEPC Web site using the links provided below. General information about the proposed project is available at the office of the Superintendent, Everglades National Park, 40001 State Road 9336, Homestead, Florida 33034. Additionally, interested persons may view the PEPC Web site: *http://parkplanning.nps.gov*, then select ''Everglades NP'' from the drop down box, then ''Proposed Spreader Swales Pilot Test,'' and ''Open for Public Comment.''

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Superintendent's Office, at 305–242–7707, or *EVER_superintendent@nps.gov*.

Authority: The authority for publishing this notice is contained in 40 CFR 1506.6.

The responsible official for this notice is the Acting Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: May 8, 2008.

Art Frederick,

Acting Regional Director, Southeast Region.

[FR Doc. E8–11111 Filed 5–16–08; 8:45 am]

BILLING CODE 4310–XH–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Modification of Consent Decree Under the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act

Notice is hereby given that on May 13, 2008, a proposed ''Agreement And Order Regarding Modification Of The August 10, 2006 Consent Decree'' (''Agreement and Order'') in *United States of America* v. *Rohm and Haas Texas Inc.*, Civil Action No. 4:06–cv–01622, was lodged with the United States District Court for the Southern District of Texas.

In its Complaint filed May 11, 2006, the United States alleged that Rohm and Haas Texas Inc. (''Rohm and Haas'') violated Clean Water Act section 301, 33 U.S.C. 1311, by discharging pollutants in excess of permit effluent limits; violated Clean Air Act section 112(d), 42 U.S.C. 7412(d), by failing to comply with the requirements of the national emission standards for hazardous air pollutants (''NESHAPS''), 40 CFR Part 63; and violated the Resource Conservation and Recovery Act section 3008(a) and (g), 42 U.S.C. 6928(a) and (g), by failing to comply with the provisions of the federally approved Texas hazardous waste management program. The alleged violations occurred at a chemical manufacturing complex owned and operated by Rohm and Haas located in Deer Park, Texas (''the facility''). The United States sought injunctive relief and civil penalties to address these violations.

On August 10, 2006, the court entered a Consent Decree in the matter (''the 2006 Consent Decree'') which required Rohm and Haas to pay a civil penalty of $485,000 and implement a supplemental environmental project (''SEP''). The SEP required by the 2006 Consent Decree involved the purchase of at least 300 acres of coastal wetlands and associated upland prairie in the Texas Galveston Bay Watershed (''the Conservation Property'') and the transfer of the Conservation Property to a non-profit for conservation. The Consent Decree also required monitoring of CWA compliance. If Rohm and Haas violates the effluent limits in its permit, the Consent Decree requires the company to take action to prevent future violations.

Under the 2006 Consent Decree, Rohm and Haas paid the civil penalty of $485,000 and began implementing a SEP. The 2006 Consent Decree provided for implementation of the SEP by transfer of the Conservation Property to a private non-profit organization. The proposed Agreement and Order would modify the SEP requirements of the 2006 Consent Decree to add the option of allowing Rohm and Haas to transfer the Conservation Property to a government agency and by allowing some additional time for completion of the SEP. The proposed Agreement and Order would also modify the termination provisions of the 2006 Consent Decree.

The United States Department of Justice will receive for a period of five (5) days from the date of this publication comments relating to the Agreement and Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. *Department of Justice*, Washington, DC 20044–7611, and should reference *United States* v. *Rohm and Haas Texas, Inc.*, Civil Action No. 4:06-cv-01622, D.J. Ref. No. 90–5–1–1–06926.

The Agreement and Order may be examined at the Office of the United States Attorney, 919 Milam St., Suite 1500, Houston, TX 77002. During the public comment period, the Agreement and Order may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Agreement and Order may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–11073 Filed 5–16–08; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 13, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is

not a toll-free number)/e-mail: *king.darrin@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Design of Cave-in Protection Systems.

OMB Control Number: 1218–0137.

Agency Form Number: None.

Affected Public: Private sector—business or other for-profit.

Estimated Number of Respondents: 10,000.

Estimated Total Annual Burden Hours: 20,022.

Estimated Total Annual Costs Burden: $815,400.

Description: Design of cave-in protection systems are needed by employers in the construction industry and OSHA compliance officers to ensure that cave-in protection systems are designed, installed, and used in a manner to protect employees adequately. See 29 CFR 1926.552. For additional information, see related notice published at 73 FR 8374 on February 13, 2008.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Subpart R Steel Erection (29 CFR 1926.750 through 1926.761).

OMB Control Number: 1218–0241.

Agency Form Number: None.

Affected Public: Private sector—business or other for-profit.

Estimated Number of Respondents: 20,787.

Estimated Total Annual Burden Hours: 30,339.

Estimated Total Annual Costs Burden: $0.

Description: 29 CFR Subpart R requires that employees exposed to fall hazards receive specified training in the recognition and control of fall hazards and that employees are notified that building materials, components, steel structures, and fall protection equipment are safe for specific uses. For additional information, see related notice published at 73 FR 8712 on February 14, 2008.

Darrin A. King,

Acting Departmental Clearance Office.

[FR Doc. E8–11126 Filed 5–16–08; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on May 27, 2008 via conference call. The meeting will begin at 2 p.m. (EST), and continue until conclusion of the Board's agenda.

LOCATION: 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

STATUS OF MEETING: Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location indicated above. Members of the public wishing to listen to the meeting by telephone should call toll-free 1–877–319–7301 and enter 9368278 on the key pad when prompted. To enhance the quality of your listening experience as well as that of others and to eliminate background noises that interfere with the audio recording of the proceeding, please mute your telephone during the meeting.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on Board of Directors' response to the Inspector General's Semiannual Report to Congress for the period of October 1, 2007 through March 31, 2008.
3. Consider and act on adoption of a resolution on the selection of a new 403(b) plan administrator for LSC.
4. Public comment.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: May 19, 2008.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 08–1275 Filed 5–15–08; 1:00 pm]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference from the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending time is approximate):

Arts Education (application review): June 9, 2008. This meeting, from 12 p.m. to 5:30 p.m. DST, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms.

Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 14, 2008.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E8–11146 Filed 5–16–08; 8:45 am]

BILLING CODE 7537–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57812; File No. SR–ISE–2008–28]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Amendment No. 1 to the Proposed Rule Change and Order Granting Accelerated Approval of Proposed Rule Change, As Modified by Amendment No. 1 Thereto, Relating to the Exposure of Public Customer Orders

May 12, 2008.

I. Introduction

On March 18, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposal to expose public customer orders that are not executable on the Exchange before sending an order through the intermarket linkage system (a ''Linkage Order'') on behalf of the public customer. The proposed rule change was published for comment in the **Federal Register** on March 31, 2008.[3] The Commission received one comment letter regarding the proposal.[4] ISE filed Amendment No. 1 to the proposed rule change on May 7, 2008.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and is simultaneously approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

As described in the proposal, the ISE will not automatically execute a customer's options order when the ISE's best bid or offer (''BBO'') is inferior to the national best bid or offer (''NBBO'').[6] Under ISE Rule 803(c)(2)(ii), the primary market maker (''PMM'') is obligated to address public customer orders that are not automatically executed because there is a better price on another exchange.[7] Rule 803(c) specifies that the PMM can either execute the order or send a Linkage Order to any other exchange displaying the best price in an attempt to get the better price for the public customer.[8] Under the current procedure, if the PMM does not execute the public customer order, it sends a Linkage Order(s) to a competing exchange(s) even though there may be other ISE market makers who would be willing to execute the public customer order at the better price.[9]

Under the proposal, before the PMM sends a Linkage Order on behalf of a public customer, the public customer order will be exposed at the NBBO price for a period established by the Exchange not to exceed one second.[10] During the exposure period, Exchange market makers may enter responses up to the size of the order being exposed in the regular trading increment applicable to the option. If at the end of the exposure period, the order is executable at the then-current NBBO and ISE is not quoting at the then-current NBBO, the order will be executed against responses that equal or better the then-current NBBO.[11] The exposure period will be terminated if the exposed order becomes executable on the ISE at the prevailing NBBO or if the Exchange receives an unrelated order that could trade against the exposed order at the prevailing NBBO price.[12] If, after an order is exposed, the order cannot be executed in full on the Exchange at the then-current NBBO or better, and it is marketable against the then-current NBBO, the PMM will send a Linkage Order on the customer's behalf for the balance of the order as provided in Rule 803(c)(2)(ii). If the balance of the order is not marketable against the then-current NBBO, it will be placed on the ISE book.

Immediate-or-cancel orders are cancelled if they cannot be executed on the ISE upon entry. Therefore, such orders are not handled by the PMM under Rule 803(c)(2)(ii) and will not be exposed under this proposal.

The Commission received one comment letter regarding the proposed rule change.[13] The commenter believes that ISE's proposal is not consistent with Rule 602 of Regulation NMS (''Quote Rule''),[14] which ''requires a responsible broker-dealer to execute an order at its quote when that order is presented.'' [15] Specifically, the commenter believes that, if a PMM or CMM is at the ISE best bid or offer on the opposite side of the market at the time the public customer order is received, that public customer order has been ''presented'' to the PMM or CMM under the Quote Rule.[16] As a result, the commenter concludes that the proposal is inconsistent with the Quote Rule because it would permit public customer orders to be executed after the exposure period at a price or size inferior to the price or size on ISE at order presentment.[17] The commenter also requests clarification of the handling of the balance of a public customer order, a portion of which is automatically executed on ISE at the NBBO. In that scenario, the commenter was unclear whether the balance of the order would be routed as Linkage Orders or handled under the proposed exposure period. In this regard, ISE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57551 (March 25, 2008), 73 FR 16917.

[4] *See* letter from Lisa J. Fall, General Counsel, Boston Options Exchange (''BOX''), to Nancy M. Morris, Secretary, Commission, dated May 2, 2007 (''BOX Comment'').

[5] In Partial Amendment No. 1, the Exchange: (1) Amended the rule text to add subsection (e) to Supplementary Material .02 to Rule 803 to state that a ''pattern or practice of submitting unrelated orders that cause an exposure period to conclude early will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 400 and other Exchange Rules''; and (2) confirmed that the obligation of primary market makers under existing Rule 803(c)(2)(ii) to address public customer orders that are not automatically executed because there is a better price on another exchange includes the handling of the balance of an order that initially receives a partial execution on the Exchange.

[6] *See* ISE Rule 714.

[7] The Exchange noted in Amendment No. 1 that this obligation of the PMM to address these public customer orders includes the handling of the balance of an order that initially receives a partial execution on ISE.

[8] ISE Rules, Chapter 19 (Intermarket Linkage Rules).

[9] When a PMM sends a Linkage Order to another exchange, it is charged the other exchange's execution fee.

[10] The Exchange will issue a Circular to inform members of the time period. The Exchange clarified in Amendment No. 1 that this exposure process will apply to the balance of an order that received a partial execution on ISE. *See supra* note 7.

[11] Executions will be allocated pro-rata based on size (*i.e.*, the percentage of the total number of contracts available at the same price that is represented by the size of a market maker's response).

[12] The order will be executed against orders and quotes on the book and responses received during the exposure period in price priority. At the same price, customer orders will be executed first in time priority and then all other interest (orders, quotes and responses) will be allocated pro-rata based on size.

[13] *See* BOX Comment, *supra* note 4.

[14] 17 CFR 242.602.

[15] *See* BOX Comment, *supra* note 4, at 2.

[16] *See* generally BOX Comment, *supra* note 4, at 2 to 6.

[17] *Id* at 6.

confirmed in Amendment No. 1 that the exposure period will apply to the balance of a public customer order that has received partial execution on ISE.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2008–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number ISE–2008–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–28 and should be submitted on or before June 9, 2008.

IV. Discussion and Commission Findings

After carefully considering the proposal and the comment submitted, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[19] which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposal will expose public customer orders that are not executable on the Exchange before sending a Linkage Order on behalf of the public customer. The Commission notes that exposing public customer orders before the PMM sends a Linkage Order on the public customer's behalf will give additional ISE participants an opportunity to provide public customer orders an execution at the NBBO (or better) on ISE and may reduce PMM costs by reducing the number of Linkage Orders sent to other exchanges. Thus, the Commission believes that the exposure rules outlined above will allow ISE to provide more efficient and competitive executions for these orders, subject to priority principles.

The Commission also believes that the proposal is consistent with the Quote Rule.[20] The Quote Rule, among other things, requires a responsible broker or dealer to execute orders presented to it by another broker or dealer, at a price at least as favorable as the responsible broker or dealer's published bid or offer, unless an exception applies. The Commission believes that when an order is received on ISE that a responsible broker or dealer is not permitted to execute pursuant to ISE's rules or the Linkage Plan,[21] and the submitting member has chosen to allow ISE to expose the order to other additional interest rather than submitting an immediate-or-cancel (''IOC'') order,[22] the order is not ''presented'' under the Quote Rule. The Commission therefore does not believe it is necessary for ISE to ''stop'' a public customer order against the existing best priced quotes and orders on ISE's book at the beginning of the exposure period to comply with the Quote Rule.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the proposal was published for comment in the **Federal Register**. The Commission believes that the change made in Amendment No. 1 generally strengthens the proposal. In Amendment No. 1, ISE made explicit that a pattern or practice of submitting unrelated orders that cause an exposure period to conclude early will be deemed conduct inconsistent with just and equitable principles of trade and a violation of ISE Rule 400 and other Exchange rules. This addition will provide guidance to market participants regarding compliance with the requirements of ISE's rules, and is consistent with the rules of another options exchange.[23] Further, this provision will help limit potential ''gaming'' of the exposure period. For these reasons, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[24] to grant accelerated approval of the proposed rule change, as modified by Amendment No. 1.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (File No. SR–ISE–2008–28), as modified by Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–11035 Filed 5–16–08; 8:45 am]

BILLING CODE 8010–01–P

[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] 17 CFR 242.602.

[21] The Plan for the Purpose of Creating and Operating an Options Intermarket Linkage and ISE's rules contain provisions restricting the ability of an ISE member to trade-through certain prices on away markets. ISE has represented that it does not automatically execute a customer's order when ISE is not at the NBBO. In addition, public customer orders will be exposed under ISE's proposal only when ISE is not at the NBBO.

[22] ISE has represented that IOC orders are cancelled if they cannot be executed on ISE upon entry, and are not handled by the PMM under Rule 803(c)(2)(ii) and will not be exposed under this proposal. Therefore, public customers may avoid the proposed exposure period by submitting IOC orders.

[23] *See* CBOE Rule 6.14.01.

[24] 15 U.S.C. 78s(b)(2).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57815; File No. SR–NYSEArca–2007–104]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing Standards for Warrants, Rights, and Units

May 12, 2008.

I. Introduction

On October 3, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to apply certain initial and continued listing standards to rights to purchase listed securities and to adopt new listing requirements for Units.[3] On March 27, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on April 8, 2008.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to: (1) Amend NYSE Arca Equities Rules 5.2(f) and 5.5(e), the Exchange's initial and continued listing standards for warrants, to apply such standards to rights to purchase securities; [5] and (2) adopt new NYSE Arca Equities Rule 5.2(k) to add listing standards for Units. The Exchange states that the proposed rule changes herein are modeled upon the rules of The NASDAQ Stock Market LLC (''Nasdaq'') and provisions contained in the Company Guide of the American Stock Exchange LLC (''Amex'').[6]

Listing Standards for Warrants and Rights

Currently, NYSE Arca Equities Rule 5.2(f) addresses the Exchange's initial listing standards for warrants. The Exchange proposes to add rights to this Rule and apply these same initial listing standards to both warrants and rights to purchase securities.[7] As is the case for warrants, at least 500,000 rights must be publicly held by not less than 250 public beneficial holders under NYSE Arca Equities Rule 5.2(f)(1), as amended. The purpose for this change is to allow the Exchange to list rights so that it can offer investors more investment options, while also remaining competitive in the marketplace.

Currently, NYSE Arca Equities Rule 5.2(f)(2) provides, in part, that the Exchange will not list warrants unless the common stock of the company or other security underlying the warrants is already listed (and meets the pertinent continued listing requirements) or will be listed on the Exchange concurrently with the warrants. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(f)(2) to provide that the common stock of the company or other security underlying the warrants and rights must be listed and trading (and meets the pertinent continued listing standards), or will be listed and trading, on a national securities exchange concurrently with the listing and trading of warrants or rights, as applicable. The Exchange notes that it would not list a warrant or right if the security underlying such warrant or right is no longer trading or is subject to a trading halt, as imposed by the national securities exchange listing such underlying security. Therefore, the Exchange believes that investors would remain protected.

Currently, NYSE Arca Equities Rule 5.5(e) addresses the continued listing of warrants on the Exchange. NYSE Arca Equities Rule 5.5(e) states that, for continued listing, the common stock of the company or other security underlying the warrants must meet the applicable Tier I maintenance requirements. The Exchange proposes to amend this Rule so that the continued listing standard, as proposed to be modified as discussed below, would apply to both warrants and rights to purchase listed securities.[8] As is the case with the proposal to add rights to the initial listing standards, the purpose for this change is to allow the Exchange to list rights so that it can offer investors more investment options, while also remaining competitive in the marketplace.

As stated above, NYSE Arca Equities Rule 5.5(e) provides, in pertinent part, that the underlying common stock of the company or other security must meet the applicable Tier I maintenance requirements under NYSE Arca Equities Rule 5.5. The Exchange proposes to amend this language to state that, in the case of warrants and rights, the common stock of the company or other security underlying the warrants or rights, as applicable, must continue to be listed on a national securities exchange. The Exchange believes that, as long as the security underlying warrants and rights satisfies the listing standards of another national securities exchange and are otherwise in good standing for trading, investors would be able to obtain additional investment options and, at the same time, remain protected. The Exchange also proposes this change to simplify the continued listing standards under NYSE Arca Equities Rule 5.5(e) and ensure that the issuer of an underlying security is listed on a national securities exchange, in the interest of protecting investors.

Listing Standards for Units

Currently, the Exchange has no separate initial quantitative listing standards for Units, although it has a definition and continued listing standards for Units.[9] The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Units'' are defined as paired securities which may be transferred and traded only in combination with one another as a single economic unit. *See* NYSE Arca Equities Rule 5.1(b)(20). Currently, the Exchange has continued listing standards for Units in NYSE Arca Equities Rule 5.5(a), which references NYSE Arca Equities Rules 5.5(b)–(e). NYSE Arca Equities Rules 5.5(b)–(e) relate to the continued listing requirements for common stock and common stock equivalent securities, preferred stock and secondary classes of common stock, bonds and debentures, and warrants, respectively. *See* NYSE Arca Equities Rules 5.5(b)–(e). *See also infra* note 9.

[4] *See* Securities Exchange Act Release No. 57603 (April 2, 2008), 73 FR 19125.

[5] The initial and continued listing standards for warrants under NYSE Arca Equities Rules 5.2(f) and 5.5(e), respectively, were approved by the Commission in 1994. *See* Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (August 1, 1994) (SR–PSE–93–12) (approving quantitative and qualitative listing standards with respect to common stock, preferred stock, bonds and debentures, warrants, contingent value rights, and other securities).

[6] The Exchange states that Nasdaq's initial listing standards for warrants and rights are set forth in Nasdaq Rule 4420(d), and its continued listing standards for warrants and rights are set forth in Nasdaq Rule 4450(d). In addition, Nasdaq's initial listing standards for units are set forth in Nasdaq Rule 4420(h). The Exchange also states that the proposal regarding the listing standards for Units are based, in part, on provisions contained in the Amex *Company Guide*. *See infra* note 12.

[7] The Exchange states that Nasdaq made a similar change to its rule, which is now contained in Nasdaq Rule 4420(d). *See* Securities Exchange Act Release No. 43435 (October 11, 2000), 65 FR 62779 (October 19, 2000) (SR–NASD–99–69) (approving, among other things, the inclusion of rights in the initial listing standards for warrants).

[8] The Exchange states that Nasdaq's continued listing standards for warrants also apply to rights, as set forth in Nasdaq's Rule 4450(d).

[9] NYSE Arca Equities Rule 5.5(a) states that, in the case of Units, the Exchange will normally consider suspending dealings in or delisting if any of the component parts do not meet the applicable listing standards as set forth in NYSE Arca Equities Rules 5.5(b)–(e). If one or more of the components

proposes to adopt initial listing standards for Units under proposed NYSE Arca Equities Rule 5.2(k). The Exchange states that the proposed standards are substantially similar to those under Nasdaq Rule 4420(h).[10]

In particular, under proposed NYSE Arca Equities Rule 5.2(k), all Units must have at least one equity component and all components must meet the initial and continued listing standards in NYSE Arca Equities Rules 5.2(k) and 5.5 (a)–(e), as applicable, or in the case of debt components, meet certain specified criteria including: (1) An aggregate market value or principal amount of at least $5 million; (2) a requirement that the issuer of the debt security have equity securities that are listed on a national securities exchange; and (3) in the case of convertible debt, limitations on changes to conversion prices, subject to an exception, and a real-time last sale reporting requirement for the equity security into which the debt is convertible.[11] In addition, all components of the Unit must be issued by the same issuer, and all Units and issuers of such Units must comply with the initial and continued listing standards of NYSE Arca Equities Rules 5.2(k) and 5.5(a)–(e), as applicable.

The Exchange also proposes that Units be subject to a minimum listing period of 30 days from the first day of listing, except that the period may be shortened if the Units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw Units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal. Accordingly, the Exchange believes that these provisions will provide investors a meaningful period of time to react to the withdrawal of the Unit from listing and trading.

Under proposed NYSE Arca Equities Rule 5.2(k)(3), each issuer of Units must include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations thereunder a statement regarding any intention to delist the Units immediately after the minimum inclusion period referenced above. In addition, an issuer of a Unit would be required to provide information regarding the terms and conditions of the components of the Unit, the ratio of the components comprising the Unit, and when a component of the Unit is separately listed on an exchange, on the issuer's Internet Web site, or if it does not maintain a Web site, in its annual report provided to Unit holders. Further, an issuer would be required to immediately publicize through, at a minimum, a public announcement through the news media, any change in the terms of a listed Unit, such as changes to the terms and conditions of any of the components or to the ratio of components within the Unit. The Exchange believes that this heightened disclosure requirement is appropriate to ensure that sufficient information regarding the attributes of these securities is publicly available on a timely basis.

The Exchange also proposes to add language clarifying the applicability of certain continued listing standards relating to components of Units that have separated.[12] The Exchange states that, when Units in good standing begin to separate into their component securities, the remaining Units that are still intact and the components of those Units which have separated may all be separately listed and continue to trade, provided that they meet the applicable continued listing standards. The proposal specifies that, in determining whether an individual component meets the applicable distribution requirements specified in the continued listing standards, the Units that are intact and freely separable into their component parts will be counted toward the total numbers required for continued listing of the component. For example, if 1,000,000 shares of common stock are publicly held after separation from their Units, and 500,000 intact and freely separable Units are publicly held, the common stock would be credited with having 1,500,000 shares publicly held, enabling it to meet the publicly held shares requirement for common stock, which requires at least 1,100,000 shares of common stock to be publicly held.[13] If the Units are no longer freely separable and/or listed on the Exchange, the separately-traded components would still be required to meet their applicable continued listing standards, however, without aggregation of the Units.

Despite the fact that the aggregated distribution values satisfy the continued listing distribution standards, in certain circumstances under the proposal, the Exchange would also consider suspending trading in, or removing from listing, an individual component or Unit when, in the opinion of the Exchange, the public distribution or aggregate market value of such component or Unit becomes so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or Unit under such circumstances, the Exchange proposes to take into account the trading characteristics of the component or Unit and whether it would be in the public interest for trading in such component or Unit to continue.

The Exchange states that it will halt or suspend trading in the Units or rights, as the case may be, when the underlying security is halted on the relevant national securities exchange. In addition, for Units and rights that are listed on the Exchange and based upon an underlying security listed on another national securities exchange, the Exchange represents that it will monitor Units and rights under the Exchange's applicable continued listing standards.

As is the case with the initial and continued listing standards for rights, the Exchange states that the purpose for the proposed initial listing standards for Units is to allow the Exchange to list Units so that it can offer investors more investment options, while also remaining competitive in the marketplace.

III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

After careful review and based on the Exchange's representations, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[15] in that

is otherwise qualified for listing, that component may remain listed. Where all component parts of a Unit do not meet the applicable listing standards as set forth in NYSE Arca Equities Rules 5.5(b)–(e), the Unit will be delisted from the Exchange. *See supra* note 3.

[10] *See* Nasdaq Rule 4420(h). *See also* Securities Exchange Act Release No. 49746 (May 20, 2004), 69 FR 30356 (May 27, 2004) (SR–NASD–2004–81) (approving listing standards for units).

[11] The Exchange notes that real-time last sale reporting must be available for the underlying equity security, and it will not be sufficient that the Unit containing such equity security be subject to last sale reporting.

[12] The Exchange states that its proposal to clarify the applicability of listing standards relating to components of Units that have separated is modeled upon Section 1003(g)(ii) and (iii) of the Amex *Company Guide. See* Securities Exchange Act Release No. 55675 (April 26, 2007), 72 FR 24638 (May 3, 2007) (SR–Amex–2006–114) (approving amendments to the listing standards for units).

[13] See NYSE Arca Equities Rule 5.5(b)(1).

[14] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

it is designed 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.

With respect to the proposal to apply the initial and continued listing standards for warrants to rights to purchase securities, the Commission notes that it has approved the application of such standards to rights with respect to the rules of another national securities exchange.[16] The Commission believes that, in the case of warrants or rights, as applicable, the Exchange's proposal to permit the underlying security to be listed and trading on another national securities exchange should benefit investors by offering additional investment options on the Exchange for warrants and rights and, at the same time, protect such investors, as long as the underlying security satisfies the applicable initial and continued listing standards of such other national securities exchange. The Commission notes that, with respect to rights listed on the Exchange and based on an underlying security listed on another national securities exchange, the Exchange will halt or suspend trading in rights when the underlying security is halted on the relevant national securities exchange.[17] The Commission expects that the Exchange will also monitor on a continuous basis the application of the continued listing standards under proposed NYSE Arca Equities Rule 5.5(e) as they relate to such rights. Under proposed NYSE Arca Equities Rule 5.5(e), if the security underlying a series of rights or warrants is delisted by another national securities exchange, the Exchange must delist such rights.

With respect to the adoption of listing standards for Units, the Commission notes that it has approved substantially similar standards for other national securities exchanges.[18] The Commission believes that, in the case of Units based on a debt security component, the Exchange's proposal to permit the issuer of such debt component to have equity securities listed on another national securities exchange should benefit investors by offering additional investment options on the Exchange for Units.[19] The Commission notes that, with respect to Units listed on the Exchange, the Exchange will halt or suspend trading in such Units when the trading of an underlying security component is halted. In addition, the Commission further notes that the Exchange will monitor on a continuous basis the application of the continued listing standards under NYSE Arca Equities Rule 5.5(a) as they relate to such Units. Lastly, under the proposed rule, if it appears that not enough Units will be separated to allow the components to meet the public distribution and aggregate market value requirements independently or there are other concerns, the rule makes clear that the Exchange should consider delisting the components or Unit. This recognizes the fact that although the rule allows the aggregation of Units and components for purposes of the applicable distribution standards, the Exchange will need to ensure that there is some minimal level of liquidity in each component and Unit and should consider delisting if the public distribution or the aggregate market value of the components or Unit has become so reduced as to make continued listing on the Exchange inadvisable. In this regard, the Exchange will take into account the individual distribution values and the trading characteristics of the component or Unit and whether it would be in the public interest for continued trading of such component or Unit.[20]

The Commission believes that the proposal should help to promote transparency of the Exchange rules relating to the initial and continued listing of rights and Units and provide clearer guidance for members and investors trading in such securities. As noted above, the security components underlying a series of rights or Units, as applicable, will be subject to last-sale reporting by virtue of being listed on the Exchange or another national securities exchange, and the Commission notes that the Exchange will halt trading in such series of rights or Units, as applicable, if a security component thereunder ceases to trade on the relevant market or if such security component is no longer subject to last-sale reporting and is delisted on a national securities exchange. For the foregoing reasons, the Commission believes it is reasonable and consistent with the Act for the Exchange to adopt listing standards for rights and Units in the manner described in the proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSEArca–2007–104), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–11036 Filed 5–16–08; 8:45 am]

BILLING CODE 8010–01–P

[16] *See supra* notes 6 and 7.

[17] The Commission further notes that, by virtue of the requirement that the security underlying the right must be listed and trading on a national securities exchange, such security will be subject to last-sale reporting. As a result, the Commission expects the Exchange, and the Exchange has committed, to halt trading in a series of rights if the underlying security is halted on the relevant national securities exchange.

[18] *See supra* notes 10 and 12.

[19] In the case of Units based on a debt security component, the Commission notes that, if a series of equity securities of the issuer of the debt security component is delisted on a national securities exchange, the Exchange would be expected to halt trading in the related Units and institute delisting proceedings for such Units.

[20] The Commission notes that minimum distribution requirements are extremely important to ensure, among other things, the liquidity of a security and an active public market. The changes being approved for meeting the distribution standards applicable to Units and their components recognize the unique trading characteristics and challenges that can occur in meeting the minimum standards during the separation period of the Units, while containing certain protections to ensure certain minimum standards will be met.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11242 and #11243]

Maine Disaster #ME–00011

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1755–DR), dated 05/09/2008.

Incident: Severe Storms and Flooding.

Incident Period: 04/28/2008 and continuing.

Effective Date: 05/09/2008.

Physical Loan Application Deadline Date: 07/08/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 02/09/2009.

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.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

President's major disaster declaration on 05/09/2008, 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 (Physical Damage and Economic Injury Loans):

Aroostook.

Contiguous Counties (Economic Injury Loans Only):

Maine: Penobscot, Piscataquis, Somerset, Washington.

The Interest Rates are:

For Physical Damage:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

For Economic Injury:

	Percent
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 112426 and for economic injury is 112430.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–11102 Filed 5–16–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11239 and #11240]

Mississippi Disaster #MS–00019

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 05/12/2008.

Incident: Severe Storms and Tornadoes.

Incident Period: 05/02/2008.

Effective Date: 05/12/2008.

Physical Loan Application Deadline Date: 07/11/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 02/12/2009.

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: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

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:

Union.

Contiguous Counties:

Mississippi: Benton, Lafayette, Lee, Marshall, Pontotoc, Prentiss, Tippah.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11239 C and for economic injury is 11240 0.

The States which received an EIDL Declaration No. are Mississippi.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 12, 2008.

Steven C. Preston,

Administrator.

[FR Doc. E8–11100 Filed 5–16–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11244]

Oklahoma Disaster #OK–00019

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 Oklahoma (FEMA–1754–DR), dated 05/09/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/09/2008 through 04/28/2008.

Effective Date: 05/09/2008.

Physical Loan Application Deadline Date: 07/08/2008.

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.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/09/2008, 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.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Adair, Caddo, Coal, Delaware, Haskell, Hughes, Johnston, Latimer, Logan, Love, Mayes, Mcintosh, Muskogee, Okfuskee, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Seminole, Sequoyah, Tillman, Wagoner.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11244.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–11101 Filed 5–16–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Federal Register Meeting Notice; Advisory Committee on Veterans Business Affairs

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Advisory Committee Meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

DATES: The meeting will be held on June 24–25, 2008, from 9 a.m. to 5 p.m. Eastern Standard Time, each day.

ADDRESSES: The meeting will be held at the U.S. Small Business Administration, 409 3rd Street, SW., Eisenhower Conference Room, 2nd floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation on issues of interest to veteran-owned small businesses to the President, Congress, SBA Administrator, and other policy makers.

The purpose of the meeting is scheduled as a full committee meeting. The agenda will include: (1) Status of the current committee; (2) Orientation for new members; (3) Discussion of the permanency of SBA's Advisory Committee; (4) A review of SBA's Programs and Services; and (5) Implementation steps of Public Law 110–186.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Advisory Committee on Veterans Business Affairs must contact Cheryl Clark, Program Liaison, by June 19, 2008, by fax or e-mail in order to be placed on the agenda. Cheryl Clark, Program Liaison, U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416, Telephone number: (202) 205–6773, Fax number: 202–481–6085, e-mail address: *cheryl.clark@sba.gov*.

Additionally, if you need accommodations because of a disability or require additional information, please contact Cheryl Clark.

Dated: May 13, 2008.

Cherylyn Lebon,

SBA Committee Management Officer.

[FR Doc. E8–11109 Filed 5–16–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6229]

Bureau of Educational and Cultural Affairs' Strategic Objectives

DATES: The Department will accept comments from the public up to July 18, 2008.

ADDRESSES: You may submit comments, identified by any of the following methods:

- Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*
- Mail (paper, disk, or CD–ROM submissions): U.S. Department of State, Office of the Assistant Secretary for Education and Cultural Affairs, SA–44, 301 4th Street, SW., Room 800, Washington, DC 20547.
- E-mail: *ExchangesDirect@state.gov.* You must include the Title in the subject line of your message.

SUMMARY: The Bureau of Educational and Cultural Affairs (ECA), under the authority of the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright/Hays) and in furtherance of the official mission of the U.S. Department of State, fosters mutual understanding between the United States and other countries through international educational, professional and cultural programs. The Bureau does so by promoting personal, professional, and institutional ties between private citizens and organizations in the United States and abroad, as well as by presenting U.S. society and culture in all of its diversity to overseas audiences.

The strategic objective of the Bureau is to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world by establishing and furthering common interests and common values between Americans and people of different countries, cultures and faiths. To this end, the Bureau designs and implements programs that build personal and institutional relationships and that engage educational institutions and the private sector as partners on key public diplomacy initiatives. An overview of significant current and emerging initiatives is set forth below and is offered to fully inform the public and interested members of the philanthropic, corporate and NGO communities of our strategic objectives and priorities. We would like to encourage individuals, organizations and companies to consider ways in which they might provide support so that we can better achieve our goals and objectives. We would welcome initiation of independent programs supportive of our objectives, and partnerships in appropriate cases.

English Language and Youth Leadership: Our Academic programs place special attention on youth-focused English language initiatives. Demand for English language instruction is increasing around the world and matches young people's keen interest in expanding their horizons. Acquisition of English language ability not only makes young men and women more competitive in life, but guarantees them the ability to access materials on America and American values. Professional and Citizen Exchange programs, including cultural and sports programs, reach out directly to youth audiences as well as those individuals and institutions that work with young people.

We also increase cultural awareness and mutual understanding among successor generations by expanding youth exchanges to communities traditionally underserved by exchanges by conducting programs to help youth around the world learn about the values of a civil society, independent thinking, and citizen engagement. Our models for exchanges include: Youth Exchange and Study (YES), Future Leaders Exchange (FLEX), summer institutes, Congress-Bundestag Youth Exchange (CBYX), and the Global Connections school connectivity projects.

Partnerships for Latin American Youth: These initiatives bring students from underserved communities in the Western Hemisphere to U.S. community colleges; expand the English Access Microscholarship Program to Western Hemisphere countries; provide study opportunities for indigenous and disadvantaged undergraduate student leaders, including women, and for English-speaking youth from diverse communities who have emerged as leaders to learn about U.S. society, culture and values.

Promoting Foreign Languages—National Security Language Initiative (NSLI): The NSLI is designed to dramatically increase the number of Americans learning critical need foreign languages such as Arabic, Chinese, Russian, Hindi, and Farsi through new and expanded programs from kindergarten through university and

into the workforce. An essential component of U.S. national security in the post-9/11 world is the ability to engage foreign governments and peoples, especially in critical regions, to promote understanding, convey respect for other cultures and provide an opportunity to learn more about our country and its citizens. To do this, we must be able to communicate in other languages.

Performance & Alumni: Evaluation and performance measurement are essential to productive exchanges. As we involve younger, more diverse and less traditional audiences, we must assess the impact of our programs on attitudes and behavior. The Bureau's alumni programs seek to build on the exchange experience by engaging with the participants in our programs after they have returned home.

The Bureau directly funds programs that annually facilitate more than 30,000 U.S. and foreign exchange participants in over 170 countries. Of equal importance are the alumni engagement efforts of the Bureau's designated private sector exchange programs. These private sector entities have now programmed more than 10 million exchange participants heavily concentrated in the fields of science and research, or who were foreign university students at the time of their exchange.

Programs for possible public-private collaboration include the following:

English Access Micro Scholarship Program and English Learning Online: The English Access Micro Scholarship Program, conducted pursuant to Fulbright-Hays Act authorities to conduct educational information and resources programs, teaches English to high school students from disadvantaged sectors. Thus far, ''Access'' has reached 32,000 students in 50 countries, including many with significant Muslim populations. Students' improved English has led to better job and educational opportunities and the ability to compete for exchange opportunities in the U.S. ''Access'' is the first step in ECA's continuum of educational opportunities to reach disadvantaged young people around the world.

A possible companion program to the English Access Microscholarship Program is English Learning Online. This program, still in development, would provide quality English language lessons online for foreign students overseas while also providing an introduction to leadership, civic training, and community building. Private sector partnering opportunities could include both in-kind contributions of production services for video, animation, DVDs, textbooks, and other instructional aids, as well as funding.

The Benjamin A. Gilman International Scholarship Program: Educational exchange activities are at the core of our public diplomacy efforts, and large multi-national corporations are likely donors to, and partners for, our various initiatives. The Benjamin A. Gilman International Scholarship Program supports study abroad by a diverse group of U.S. undergraduate students with limited financial means, many venturing to ''non-traditional'' destinations outside Western Europe.

Community College Summit Initiative: The Community College Initiative Program brings young people from non-elite and under-represented sectors from six countries to the U.S. to study at community colleges while also learning about leadership, democracy, civic participation and other aspects of U.S. culture. This is the perfect opportunity to support local community colleges while building an appropriate workforce around the world.

International Fulbright Science and Technology (S&T) Award: The International Fulbright S&T Award is a globally-competed initiative designed to attract outstanding foreign students to the U.S. for Ph.D. study in science and technology.

Rhythm Road: American Music Abroad: Rhythm Road sends American urban music and jazz groups on tour throughout the world. ECA expects to launch a similar program for dance troupes. We anticipate that large corporations and foundations that include culture in their sphere of charitable giving may be interested in partnering to further these activities.

Global Connections and Exchange Program: The Global Connections and Exchange Program provides secondary school teachers in select countries overseas with specialized training in computer applications, Web development and the use of the Internet to enhance their daily lessons. The program empowers youth to use technology to tackle universal issues, such as gender equity, the environment, HIV/AIDS, diversity and human rights.

The Bureau welcomes the views of the philanthropic, corporate and NGO communities on these initiatives and the potential for strategic partnership in achieving them. This certification will be published in the **Federal Register**.

Goli Ameri,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–11029 Filed 5–16–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6211]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on June 19, 2008 at the George Bush Center for Intelligence, McLean, Virginia. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4) and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of proprietary commercial information that is considered privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

May 5, 2008.

Gregory B. Starr,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. E8–11136 Filed 5–16–08; 8:45 am]

BILLING CODE 4710–43–P

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: U.S. Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the U.S. Trade and Development Agency's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Carolyn Hum, Administrative Officer, U.S. Trade and Development Agency, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209, (703) 875–4357.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5), U.S.C., requires that each agency establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and

evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following have been selected as acting members of the Performance Review Board of the U.S. Trade and Development Agency: Leocadia Zak, Deputy Director, U.S. Trade and Development Agency; Geoffrey Jackson, Director for Policy and Program, U.S. Trade and Development Agency; Thomas Hardy, Chief of Staff, U.S. Trade and Development Agency; James Wilderotter, General Counsel, U.S. Trade and Development Agency; Stephen McLaughlin, Chief Information Officer, International Trade Commission; and Jeri Jensen, Managing Director for Private Sector Initiatives, Millennium Challenge Corporation.

Dated: May 13, 2008.

Carolyn Hum,

Administrative Officer.

[FR Doc. E8–11181 Filed 5–16–08; 8:45 am]

BILLING CODE 8040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Guidance on Disclosure of Policies and Charges Associated With Checked Baggage; Notice

This notice is intended to give guidance to air carriers and foreign air carriers on disclosure of carrier baggage policies and associated fees in connection with checked baggage. The general industry practice until recently has been to allow passengers two free checked bags, generally of up to 50 or 70 pounds each. Several air carriers have recently adopted policies of charging passengers an amount, in addition to the fare already paid, for any checked baggage or for more than one checked bag. Some of these policies imposing charges for checking a second bag add $25 to the cost of a passenger's trip while others may add far greater amounts for checking a single bag, either because it is overweight or because the carrier has different fares based on whether a passenger checks bags and the number he or she checks. A number of others have announced plans to implement similar policies.

The Department's long-standing policy has been to require carriers to clearly disclose significant conditions applicable to air fares. Failure to disclose such conditions has been considered an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712 and where warranted the Aviation Enforcement Office has taken enforcement action against carriers who engage in such practices. The Aviation Enforcement Office considers such significant conditions to include limiting passengers to fewer than two free checked bags of the size and weight that have generally been free on the carrier in the past and to assessing passengers a charge in addition to the air fare for such checked baggage. Therefore, it is important that carriers provide prominent and timely notice of these baggage policies and such charges.

To meet the requirements implicit in 49 U.S.C. 41712 with respect to Internet advertisements, air carriers and foreign air carriers should place a notice regarding the above-described additional baggage charges on the first screen in which the carrier offers a fare quotation of a specific itinerary selected by a consumer. This notice should appear if the carrier imposes an additional baggage charge for one or two checked bags. The notice may consist of either (1) an asterisk or similar character in close proximity to the fare quotation referring to a statement on the same screen that ''additional baggage charge may apply,'' or (2) a more detailed summary of the baggage charges on the same screen as the fare quotation. In either case, the text should contain a hyperlink to a full description of the carrier's baggage policies.

In print advertisements, an asterisk or similar character in close proximity to the fare quotation should refer the reader to a succinct statement of the baggage policies and charges. This statement may appear in typeface smaller than the rest of the advertisement and be placed, for example, along with the summary of other significant conditions and all fees and taxes which currently may be separated out from the base fare. Furthermore, in order to ensure compliance with 49 U.S.C. 41712, airline reservations agents should disclose these baggage charges and limitations during telephone or counter sales prior to completing a sale.

Internet displays and airline agents should also make clear when the added charges or revised policies are to take effect. In no case should more restrictive baggage policies or additional charges be applied retroactively to a consumer who purchased his or her ticket at a time when the charges did not apply, or when a lower charge applied. Whatever the contract of carriage provides regarding free baggage as of the date of each ticket sale is binding on the carrier. The Aviation Enforcement Office considers any carrier practice that violates its contract of carriage provisions to constitute an unfair and deceptive trade practice in violation of 49 U.S.C. 41712.

With respect to fares that are purchased at the time of an advertisement for future travel after new baggage policies and charges are planned to take effect, carriers should place a notice on their home Web site screen highlighting the new policies and charges. Similar notices should appear in print advertisements relating to fare offerings applicable to future travel that is subject to new baggage policies and charges.

This disclosure guidance's applicability, it should be noted, extends to ticket agents. Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C–70), U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590.

An electronic version of this document is available at *http://www.regulations.gov*.

Dated: May 13, 2008.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. E8–11103 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Fresno County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that a Tier I Environmental Impact Statement (EIS) will be prepared for the State Route 180 Westside Expressway Route Adoption Study, located in Fresno County, California.

FOR FURTHER INFORMATION CONTACT: Trais Norris, Senior Environmental Planner, Sierra Pacific Environmental Analysis Branch, Caltrans, 2015 E. Shields Avenue, Suite 100, Fresno, California 93726, or call (559) 243–8178.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans will prepare a Tier I EIS on a proposal to establish

a route for improving and extending State Route 180 (SR 180) from Interstate 5 (I–5) to State Route 99 (SR 99), in Fresno County, California.

In late 2005, at the behest of local and regional government representatives, Caltrans began work on a Route Adoption Study with a multi-staged alternative screening process and a broad range of environmental studies. All of this work was aimed at preparing and processing an Environmental Impact Report (EIR) under the California Environmental Quality Act of 1970 (CEQA) and subsequently recommending a route for adoption by the California Transportation Commission (CTC). The goal of this proposal has now extended to include preparation of a Tier I EIS under the National Environmental Policy Act (NEPA). SR 180 is a west-to-east, rural, two-lane highway extending approximately 25 miles between State Route 33 (SR 33) in the community of Kerman and SR 99 in the city of Fresno. A 20-mile gap exists between the current westerly terminus of SR 180 and I–5, farther to the west. The proposed action consists of selecting the most appropriate location for an ultimate four-lane expressway between I–5 and SR 99, over a distance of approximately 45 miles. Two generally 1,000-foot-wide alternative corridor alignments, the Northern Route and the Southern Route, will be considered in the EIS along with several alignment variations that avoid impacts to site-specific resources. The Northern Route Alternative extends an estimated 48.3 miles beginning at an existing interchange on I–5 at Shields Avenue. The Southern Route Alternative extends an estimated 47.4 miles beginning at a point where the Belmont Avenue alignment would intersect I–5 about 2 miles south of the Shields Avenue interchange. Both routes proceed east, bypassing the City of Mendota to the north and the south and merge on a single alignment between Shields and Belmont Avenues just east of the City of Mendota. Continuing east for approximately 10 miles, the routes split again. The Northern Route continues on an alignment just south of Belmont, terminating at Valentine Avenue in the City of Fresno. The Southern Route runs generally on an alignment just north of Whitesbridge and ends at a connection with the future westerly extension of SR 180 at Brawley Avenue. In addition, a No Build Alternative will be considered, which would leave existing SR 180 unchanged. Upon completion of the NEPA and CEQA environmental processes, the CTC will make the route adoption decision.

In 2005, letters describing the proposed action and soliciting comments were sent to the appropriate federal, state and local agencies and to private organizations and citizens who have expressed or are known to have interest in this proposal. Public information meetings were also held in February 2006 and October 2006. Although the proposal and the alternatives it describes are unchanged, following publication of the NOI, a public scoping meeting will be held on June 11, 2008 from 5 p.m. to 7 p.m. at the Kerman Community Center in Kerman, California. A newsletter describing the new direction and opportunity provided by the Tier I document will also be sent to agencies and local residents.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. If you have any information regarding historic resources, endangered species, or other sensitive issues, which could be affected by this route adoption, please notify this office. Comments or questions concerning this proposed action and the EIS should be directed to Caltrans' contact at the address provided previously.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 12, 2008.

Nancy Bobb,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E8–11074 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Milwaukee County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed interchange project in Milwaukee County, Wisconsin by the Wisconsin Department of Transportation (WisDOT).

FOR FURTHER INFORMATION CONTACT: David Scott, FHWA, Suite 8000, 525 Junction Road, Madison, WI 53717; Telephone: (608) 829–7522.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Wisconsin Department of Transportation (WisDOT), will prepare an Environmental Impact Statement on a proposal to improve the Zoo Interchange (I–94 and I–894/U.S. 45 interchange) and adjacent interchanges in Milwaukee County, WI. This freeway interchange has emerging pavement and structural needs, safety issues and design deficiencies. The proposed project may require full reconstruction and redesign of the Zoo Interchange study area in the vicinity of: U.S. 45 at Burleigh Street on the north and I–894/U.S. 45 at Lincoln Avenue on the south (5.5 miles), I–94 at 124th Street on the west, and I–94 at 70th Street on the east (3.5 miles). The Environmental Impact Statement will evaluate the Zoo Interchange, I–94 and U.S. 45 freeway mainline for the entire corridor as well as the service interchanges in Milwaukee County. Those service interchanges within these limits include U.S. 45 and North Avenue, U.S. 45 and Swan Boulevard/Watertown Plank Road, U.S. 45 and Wisconsin Avenue/Bluemound Road, U.S. 45/I–894 and Greenfield Avenue, I–94 and STH 100/108th Street, and I–94 and 84th Street interchanges.

The proposed Zoo Interchange project is intended to make necessary safety improvements and to accommodate existing and projected future traffic volumes through the interchange.

Public involvement will be solicited throughout this process including involvement from minority and low-income populations in the project study area to ensure that the construction of the corridor does not create disproportionately high and adverse environmental and health impacts to these communities. A series of public information meetings will be held during the project study. Public notice will be given as to the time and place of all workshops and public information meetings. In addition, a public hearing will be held after the Draft Environmental Impact Statement has been prepared. A Zoo Interchange project study e-mail address, *dotdtsdsezoo@dot.state.wi.us*, and a public Web site will be maintained throughout the study for public comment and information at *http://www.sefreeways.org*. To ensure that the full range of issues related to this proposed action are addressed and all

significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the Environmental Impact Statement should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: May 13, 2008.

David J. Scott,

Southeast Freeways Coordinator, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. E8–11107 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice and Request For Comments

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on March 10, 2008 (73 FR 12794).

DATES: Comments must be submitted on or before June 18, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Nakia Poston, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On March 10, 2008, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR that the agency was seeking OMB approval. 73 FR 12794. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden. The revised requirement is being submitted for clearance by OMB as required by the PRA.

Title: Solicitation of Applications and Notice of Funds Availability for the Capital Assistance to States—Intercity Rail Service Program.

OMB Control Number: 2130–0575.

Type of Request: Extension of a currently approved collection.

Affected Public: 50 States and District of Columbia and Their Partners.

Abstract: On December 16, 2007, President Bush signed Public Law 110–161, The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008. As part of this Act, Congress provided $30 million to FRA to award one or more grants for eligible projects related to capital improvements (fixed facilities and rolling stock) necessary to support improved or new intercity passenger services, and planning activities that lead to the development of a passenger rail corridor investment plan. Funds provided under this grant program may constitute no more than 50 percent of the total cost of a selected project, with the remaining cost funded from other sources. The funding provided under these grants will be made available to grantees on a reimbursement basis. FRA anticipates awarding grants to multiple eligible participants. FRA may choose to award a grant or grants within the available funds in any amount. Funding made available through grants provided under this program, together with funding from other sources that is committed by a grantee as part of a grant agreement, must be sufficient to complete the funded project and achieve the anticipated improvement to intercity passenger rail service. FRA began accepting grant applications on March 18, 2008. Applications may be submitted until the earlier of Wednesday, September 30, 2009, or the date on which all available funds will have been committed under this program.

Annual Estimated Burden Hours: 12,617.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov*.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on May 12, 2008.

D.J. Stadtler,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E8–11077 Filed 5–16–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4797

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4797, Sales of Business Property.

DATES: Written comments should be received on or before July 18, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Sales of Business Property.

OMB Number: 1545–0148.

Form Number: 4797.

Abstract: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section 1231 of the Internal Revenue Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 1,993,957.

Estimated Time per Respondent: 53 hr., 1 min.

Estimated Total Annual Burden Hours: 100,633,248.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 6, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–11163 Filed 5–16–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1040–PR and 1040–SS

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040–PR, Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico) and Form 1040–SS, U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)

DATES: Written comments should be received on or before July 18, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico).

OMB Number: 1545–0090.

Form Number: Form 1040–PR.

Abstract: Form 1040–PR, is used by self-employed individuals to figure and report self-employment tax under IRC chapter 2 of Subtitle A, and provide credit to the taxpayer's social security account. Anejo H–PR is used to compute household employment taxes.

Title: U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).

OMB Number: 1545–0090.

Form Number: Form 1040–SS.

Abstract: Form 1040–SS, is used by self-employed individuals to figure and report self-employment tax under IRC chapter 2 of Subtitle A, and provide credit to the taxpayer's social security account. Both of these forms are also used by bona-fide residents of Puerto Rico to claim the additional child tax credit.

Current Actions: Editorial changes made to the form to address various aspects of the form have resulted in a total paperwork burden increase of 118,792 hours. This form is being submitted for renewal purposes only.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 244,400.

Estimated Time per Respondent: 14 hours 44 minutes.

Estimated Total Annual Burden Hours: 2,880,460.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 8, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–11165 Filed 5–16–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2005–40

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2005–40, Election to Defer Net Experience Loss in a Multiemployer Plan.

DATES: Written comments should be received on or before July 18, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election to Defer Net Experience Loss in a Multiemployer Plan.

OMB Number: 1545–1935.

Notice Number: Notice 2005–40.

Abstract: This notice describes the election that must be filed by an eligible multiemployer plan's enrolled actuary to the Service in order to defer a net experience loss. The notice also describes the notification that must be given to plan participants and beneficiaries, to labor organizations, to contributing employers and to the Pension Benefit Guaranty Corporation within 30 days of making an election with the Service and the certification that must be filed if a restricted amendment is adopted.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved new collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 12.

Estimated Average Time per Respondent: 80 hours.

Estimated Total Annual Burden Hours: 960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 7, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–11168 Filed 5–16–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0621]

Agency Information Collection Activities (National Practitioner Data Bank Regulations) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATE: Comments must be submitted on or before June 18, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB

Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0621'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0621.''

SUPPLEMENTARY INFORMATION:

Title: National Practitioner Data Bank Regulations (NPDB).

OMB Control Number: 2900–0621.

Type of Review: Revision of a currently approved collection.

Abstract: The National Practitioner Data Bank, authorized by the Health Care Quality Improvement Act of 1986 and administered by the Department of Health and Human Services, was established for the purpose of collecting and releasing certain information concerning physicians, dentists, and other licensed health care practitioners. The Act requires VA to obtain information from the Data Bank on health care providers who provide or seek to provide health care services at VA facilities and report information regarding malpractice payments and adverse clinical privileges action to the Data Bank.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2008, at page 8935.

Affected Public: Individuals or Households.

Estimated Average Burden per Respondent: 1,750 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 350.

Dated: May 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–11162 Filed 5–16–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Proposed Information Collection (Claim for One Sum Payment (Government Life Insurance)); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to process beneficiaries claims for payment of insurance proceeds.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 18, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0060 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Claim for One Sum Payment (Government Life Insurance), VA Form 29–4125.

b. Claim for Monthly Payments (National Service Life Insurance), VA Form 29–4125a.

c. Claim for Monthly Payments (United States Government Life Insurance, (USGLI)), VA Form 29–4125k.

OMB Control Number: 2900–0060.

Type of Review: Extension of a currently approved collection.

Abstract: Beneficiaries of deceased veterans must complete VA Form 29–4125 to apply for proceeds of the veteran's Government Insurance policies. If the beneficiary desires monthly installment in lieu of one lump payment he or she must complete VA Forms 29–4125a and 29–4125k. VA uses the information to determine the claimant's eligibility for payment of insurance proceeds and to process monthly installment payments.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,787 hours.

a. VA Form 29–4125—8,200 hours.

b. VA Form 29–4125a—462 hours.

c. VA Form 4125k—125 hours.

Estimated Average Burden Per Respondent:

a. VA Form 29–4125—6 minutes.

b. VA Form 29–4125a—15 minutes.

c. VA Form 4125k—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 84,350.

a. VA Form 29–4125—82,000.

b. VA Form 29–4125a—1,850.

c. VA Form 4125k—500.

Dated: May 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–11164 Filed 5–16–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0618]

Proposed Information Collection (Application by Insured Terminally Ill Person for Accelerated Benefit (38 CFR 9.14(e)); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on the information needed to process accelerated death benefit payment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 18, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0618 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application by Insured Terminally Ill Person for Accelerated Benefit (38 CFR 9.14(e).

OMB Control Number: 2900–0618.

Type of Review: Extension of a currently approved collection.

Abstract: An insured person who is terminally ill may request a portion of the face value of his or her Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI) prior to death. If the insured would like to receive a portion of the SGLI or VGLI he or she must submit a Servicemembers' and Veterans' Group Life Insurance Accelerated Benefits Option application. The application must include a medical prognosis by a physician stating the life expectancy of the insured person and a statement by the insured on the amount of accelerated benefit he or she choose to receive. The application is obtainable by writing to the Office of Servicemembers' Group Life Insurance ABO Claim Processing, 290 West Mt. Pleasant Avenue, Livingston, NJ 07039, or calling 1–800–419–1473 or downloading the application via the Internet at *http://www.insurance.va.gov.*

Affected Public: Individuals or households.

Estimated Annual Burden: 40 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 200.

Dated: May 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–11166 Filed 5–16–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0119]

Proposed Information Collection (Report of Treatment in Hospital); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine a claimant's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 18, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0119 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Treatment in Hospital, VA FL 29–551.

OMB Control Number: 2900–0119.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–551 is used to collect information from hospitals where a claimant was treated. VA uses the data to determine the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,055 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20,277.

Dated: May 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–11167 Filed 5–16–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0107]

Proposed Information Collection (Certificate as to Assets) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on the information needed to audit accountings of fiduciaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 18, 2008.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0107 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certificate as to Assets, VA Form 21–4709.

OMB Control Number: 2900–0107.

Type of Review: Extension of a currently approved collection.

Abstract: Fiduciaries are required to complete VA Form 21–4709 to report investment in savings, bonds and other securities that he or she received on behalf of beneficiaries who are incompetent or under legal disability. Estate analysts employed by VA use the data collected to verify the fiduciaries accounting of a beneficiary's estate.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Annual Burden: 863 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 4,316.

Dated: May 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–11170 Filed 5–16–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0635]

Proposed Information Collection (Report of Treatment in Hospital); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to request beneficiaries' current mailing addresses.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 18, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to OMB Control No. 2900–0635 in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Suspension of Monthly Check, VA Form 29–0759.

OMB Control Number: 2900–0635.

Type of Review: Extension of a currently approved collection.

Abstract: When a beneficiary's monthly insurance check is not cashed within one year from the issued date, the Department of Treasury returns the funds to VA. VA Form 29–0759 is used to advise the beneficiary that his or her monthly insurance checks have been suspended and to request the beneficiary to provide a current address or if desired a banking institution for direct deposit for monthly checks.

Affected Public: Individuals or households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: May 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–11172 Filed 5–16–08; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 73, No. 97

Monday, May 19, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 6187]

RIN 1400–AC47

Amendment to the International Traffic in Arms Regulations: The United States Munitions List

Correction

§121.1 [Corrected]

In proposed rule document 08–1122 beginning on page 19778 in the issue of Friday, April 11, 2008, make the following correction:

On page 19780, in the first column, in §121.1(b), in the first line, ''(b)'' should read ''*(b)''.

[FR Doc. C8–1122 Filed 5–16–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5213–N–01]

Section 8 Housing Choice Vouchers: Implementation of the HUD–VA Supportive Housing Program

Correction

In notice document 08–1220 beginning on page 25026 in the issue of Tuesday, May 6, 2008 make the following corrections:

1. On page 25028, in the first column, under heading (1), in the second paragraph, in the second line, ''the HUD–50058'' should read ''the form HUD–50058''.

2. On the same page, in the same column, under the same heading, in the same paragraph, in the 12th through 14th lines, ''must be 0 since the family must be absorbed, and 12f must be left blank.'' should read ''must have an amount recorded, and 12f must include the initial PHA's code.''.

3. On the same page, in the same column, under the same heading, in the same paragraph, immediately following the 14th line, the following text was omitted:

''(2) Portability Moves Where Case Management is Provided by the Receiving PHA's Partnering VAMC.

If a family wants to move to another jurisdiction where it will not be possible for the initial PHA's partnering VAMC to provide case management services, the VAMC must first determine that the HUD-VASH family could be served by another VAMC that is participating in this program, and the receiving PHA must have a HUD-VASH voucher available for this family. In these cases, the families must be absorbed by the receiving PHA either as a new admission (upon initial participation in the HUD-VASH program) or as a portability move-in (after an initial leasing in the initial PHA's jurisdiction). Upon absorption, the initial PHA's HUD-VASH voucher will be available to lease to a new HUD-VASH eligible family, as determined by the partnering VAMC, and the absorbed family will count toward the number of HUD-VASH slots awarded to the receiving PHA.

When the receiving PHA completes the HUD-50058 under the scenarios above, the action type that must be recorded on line 2a is ''1'' for a new admission (a family that is new to the HCV program) or ''4'' for a portability move-in (a family that was previously leased up in the jurisdiction of the initial PHA). Whether the family is a new admission or portability move-in, in section 12 of the HUD-50058, line 12d is marked ''Y,'' 12e must be 0 since the family must be absorbed, and 12f must be left blank.''

[FR Doc. C8–1220 Filed 5–16–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. WY–920–1050–ET; WYW 87233]

Public Land Order No. 7678; Extension of Public Land Order No. 6650; Wyoming

Correction

In notice document 07–3135 appearing on page 35063 in the issue of Tuesday, June 26, 2007 make the following correction:

In the second column, under the **Order** heading, in the third paragraph, in the second line, ''June 22, 2007'' should read ''June 22, 2027''.

[FR Doc. C7–3135 Filed 5–16–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
May 19, 2008

Part II

Federal Reserve System

12 CFR Part 226
Truth in Lending; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1286]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: On June 14, 2007, the Board published proposed amendments to Regulation Z, which implements the Truth in Lending Act (TILA), and to the staff commentary to the regulation, following a comprehensive review of TILA's rules for open-end (revolving) credit that is not home-secured. The proposed revisions addressed disclosures provided with credit card applications and solicitations, at account-opening, on periodic statements, when terms are changed on an account, and in advertisements.

The Board is seeking comment on a limited number of additional revisions to the regulation and commentary. New proposed amendments address creditors' responsibilities to establish reasonable instructions for receiving timely payments and when a due date falls on a weekend or holiday. Creditors' responsibilities when investigating a claim of unauthorized transactions or an allegation of a billing error are also addressed. Advertisements for deferred interest plans would be required to provide additional information about how interest could be imposed. Comments submitted to the Board in response to the June 2007 proposed revisions remain under consideration by the Board and need not be submitted a second time.

DATES: Comments must be received on or before July 18, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R–1286, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Benjamin K. Olson, Attorney, Amy Burke or Vivian Wong, Senior Attorneys, Krista Ayoub, Ky Tran-Trong, or John C. Wood, Counsels, or Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background on TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. The purposes of TILA are (1) to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit; and (2) to protect consumers against inaccurate and unfair credit billing and credit card practices.

TILA's disclosures differ depending on whether consumer credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, or administrative sanction.

II. Review of Regulation Z's Rules for Open-End (Not Home-Secured) Plans

The Board published proposed amendments to Regulation Z's rules for open-end plans that are not home-secured in June 2007 (June 2007 Proposal). 72 FR 32948, June 14, 2007. The goal of the amendments is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account. The proposed changes affect the format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-term notices; and (5) advertisements.

The June 2007 Proposal was preceded by two advance notices of proposed rulemaking (ANPR). In December 2004, the Board announced its intent to conduct a review of Regulation Z in stages, starting with the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retail credit card plans (December 2004 ANPR). 69 FR 70925, December 8, 2004. The December 2004 ANPR sought public comment on a variety of specific issues relating to three broad categories: the format of open-end credit disclosures, the content of those disclosures, and the substantive protections provided for open-end credit under the regulation.

In October 2005, the Board published a second ANPR (October 2005 ANPR). 70 FR 60235, October 17, 2005. The October 2005 ANPR solicited comment on implementing amendments to TILA contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the ''Bankruptcy Act''). Public Law 109–8, 119 Stat. 23. The Bankruptcy Act's TILA amendments principally affect open-end credit accounts and require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements. In the October 2005 ANPR, the Board stated its intent to implement the Bankruptcy Act amendments as part of the Board's ongoing review of Regulation Z's open-end credit rules.

In developing the June 2007 Proposal, the Board conducted consumer research, in addition to considering comments received on the two ANPRs. Specifically, the Board retained a research and consulting firm (Macro International) to assist the Board in using consumer testing to develop proposed model forms for the summary table disclosures provided in direct-mail solicitations and applications; disclosures provided at account opening; periodic statement disclosures; and subsequent disclosures, such as notices provided when key account

terms are changed, and notices on checks provided to access credit card accounts. A report summarizing the results of the Board's testing efforts is available on the Board's Web site: *http://www.federalreserve.gov.*

The Board received over 2,500 comments on the June 2007 Proposal. About 85% of these were from consumers and consumer groups, and of those, nearly all (99%) were from individuals. Regarding comments from industry representatives, about 10% were from financial institutions or their trade associations. The vast majority (90%) of the industry letters were from credit unions and their trade associations. Those latter comments were mainly about a proposed revision to the definition of open-end credit that could affect how many credit unions currently structure their consumer loan products.

A summary of comments received in response to the June 2007 Proposal and this rulemaking (May 2008 Proposal) will be included in the Board's final revisions to Regulation Z's open-end credit rules. In general, commenters generally supported the June 2007 Proposal and the Board's use of consumer testing to develop revisions to disclosure requirements. There was opposition to some aspects of the proposal. For example, industry representatives opposed many of the format requirements for periodic statements, as being overly prescriptive. They also opposed the Board's proposal to require creditors to provide at least 45 days' advance notice before certain key terms change or interest rates are increased due to default or delinquency. Consumer groups opposed the Board's proposed alternative that would eliminate the effective annual percentage rate (APR) as a periodic statement disclosure. Consumers and consumer groups also believe the Board's proposal was too limited in scope and urged the Board to provide more substantive protections and prohibit certain card issuer practices.

In early 2008, the Board worked with its testing consultant, Macro International, to revise model disclosures in response to comments received, and in March 2008, the Board conducted an additional round of one-on-one cognitive interviews on revised disclosures provided with applications and solicitations, on periodic statements, and with checks that access a credit card account. The results of these interviews are discussed throughout the section-by-section analysis below, to the extent the March 2008 testing influenced the matters being proposed in this May 2008 Proposal.

The Board will continue to work with its consultant to revise the model disclosures, based on comments received on the June 2007 and May 2008 Proposals. Macro International then will conduct additional rounds of cognitive interviews to test the revised disclosures. After the cognitive interviews, quantitative testing will be conducted. The goal of the quantitative testing is to measure consumers' comprehension and the usability of the newly-developed disclosures relative to existing disclosures and formats.

III. Effect of Additional Rulemaking on June 2007 Proposal

The Board is publishing additional proposed revisions to a limited number of provisions affecting Regulation Z's rules for open-end credit (May 2008 Proposal). Proposed amendments to Regulation Z that were published in June 2007 and are not addressed in VI. Section-by-section Analysis below remain under the Board's consideration as proposed. Comments submitted to the Board in response to those June 2007 proposed revisions to Regulation Z need not be submitted a second time.

The Board, along with the Office of Thrift Supervision and the National Credit Union Administration, is also publishing elsewhere in today's **Federal Register** a proposal to adopt rules prohibiting specific unfair acts or practices with respect to consumer credit card accounts under their authority under the Federal Trade Commission Act (FTC Act).[1] *See* 15 U.S.C. 57a(f)(1). The Board's proposal would add a new Subpart C to the Board's Regulation AA, Unfair or Deceptive Acts or Practices (2008 Regulation AA Proposal). 12 CFR part 227. The proposal would, among others, (1) prohibit banks from treating payments on a consumer credit card account as late unless the consumer is provided with a reasonable amount of time to make a payment, (2) establish rules governing the allocation of payments on outstanding balances, (3) limit banks' ability to increase the rate of interest applicable to any outstanding balance, and (4) prohibit banks from computing finance charges based on balances for days in billing cycles preceding the most recent billing cycle.

At the end of the period for public comment for the May 2008 Proposal and the 2008 Regulation AA Proposal, the Board will review the comments received and continue to conduct additional consumer tests on revised disclosures to consider any appropriate changes. The comment period for this May 2008 Proposal is 60 days (rather than 75 days, as provided in the Regulation AA Proposal) after this notice is published in the **Federal Register**, to facilitate a timely resumption and completion of the Board's consumer testing efforts. Following the Board's analysis of the comments (including comments from the June 2007 Proposal) and the results of consumer testing, the Board anticipates adopting at the same time final rules for these related proposals. The Board will provide creditors and processors with an adequate time to implement the necessary changes.

IV. Summary of Proposed Revisions

Applications and Solicitations. The June 2007 Proposal contained changes to the format and content of credit and charge card application and solicitation disclosures to make them more meaningful and easier for consumers to use. The May 2008 Proposal would revise the content requirements on several disclosures, as follows:

- *Grace period labels.* The June 2007 proposed requirement to use the term ''grace period'' as a heading in the summary table provided at application (and elsewhere such as at account opening or with checks that access credit card accounts) would be eliminated. The phrase ''how to avoid interest'' (or ''paying interest'' if no grace period exists) or substantially similar terminology would be required instead.
- *Minimum interest charge.* The May 2008 Proposal would add a *de minimis* dollar amount trigger of $1.00 for disclosing minimum interest or finance charges. Currently, card issuers must disclose in the summary table at application and account opening any minimum interest or finance charge. The $1.00 trigger would be adjusted when cumulative percentage changes to the Consumer Price Index added to the $1.00 trigger equals or exceeds the next whole dollar.
- *Foreign transaction fees.* The May 2008 Proposal would require issuers to disclose fees for purchase transactions in a foreign currency or conducted outside the United States in the table provided at application or solicitation. The June 2007 Proposal required creditors to disclose these fees in the summary table provided at account-opening but not in the table provided at application or solicitation.
- *Penalty rate when credit privileges are terminated.* Currently, card issuers are not required to disclose in the

[1] For simplicity, this notice will refer only to the Board's proposal.

application summary table increased rates that apply when credit privileges are terminated. The May 2008 Proposal would eliminate the exception.

• *Oral disclosures.* Card issuers generally must provide cost disclosures in oral applications or solicitations initiated by the issuer. The May 2008 Proposal would require additional oral disclosures for issuers that require fees or a security deposit to issue the card that are 25 percent or more of the minimum credit limit offered for the account. These issuers would be required to orally provide the amount of available credit the consumer would have after paying the fees or security deposit, assuming the consumer receives the minimum credit limit.

Account-opening Disclosures. The May 2008 Proposal would require creditors assessing fees at account opening that are 25 % or more of the minimum credit limit to provide a notice of the consumer's right to reject the plan after receiving disclosures if the consumer has not used the account or paid a fee (other than certain application fees). Changes regarding ''grace period'' terminology and minimum interest charge disclosure requirements are proposed to conform the disclosure requirements for the account-opening table to the requirements for the table required with applications or solicitations. Model forms are proposed to ease compliance for creditors offering open-end (not home-secured) plans that are not accessed by credit cards, such as lines of credit or overdraft plans.

Checks that Access Credit Card Accounts. The June 2007 Proposal required creditors to disclose on the front of the page containing the checks that access credit card accounts information such as the rates that will apply if the checks are used, any transaction fees, and whether or not a grace period exists. The May 2008 Proposal would add a requirement to disclose any date by which consumers must use the check to receive the disclosed rates.

Changes in Consumer's Interest Rate and Other Account Terms. The June 2007 Proposal required that when a change-in-terms notice accompanies a periodic statement, creditors provide a tabular disclosure on the front of the periodic statement of the key terms being changed. Consistent with the 2008 Regulation AA Proposal that restricts creditors' ability to apply increased rates to certain existing balances, creditors would be required to clarify how existing or new balances would be affected by any rate increase.

Crediting Payments. Currently, creditors may require consumers to comply with reasonable payment instructions, including a cut-off hour for receiving payments. The May 2008 Proposal deems a cut-off hour for mailed payments before 5 p.m. on the due date to be an unreasonable instruction. Creditors that set due dates on a weekend or holiday but do not accept mailed payments on those days would not be able to consider a payment received on the next business day as late for any reason.

Investigating Claims of Unauthorized Transactions or Allegations of Billing Errors. Currently, creditors must conduct a reasonable investigation before imposing liability for an unauthorized transaction, and may reasonably request a consumer's cooperation. The May 2008 Proposal clarifies that a creditor may not, however, deny a claim solely if the consumer does not comply with a request to sign a written affidavit or file a police report, and for consistency extends guidance for reasonably investigating claims of unauthorized transactions to allegations of billing errors.

Advertising Provisions. For deferred interest plans that advertise ''no interest'' or similar terms, the May 2008 Proposal would add notice and proximity requirements to require advertisements to state the circumstances under which interest is charged from the date of purchase and, if applicable, that the minimum payments required will not pay off the balance in full by the end of the deferral period. Model clauses are proposed to ease compliance.

V. The Board's Rulemaking Authority

TILA mandates that the Board prescribe regulations to carry out the purposes of the act. TILA also specifically authorizes the Board, among other things, to do the following:

• Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).

• Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

• Add or modify information required to be disclosed with credit and charge card applications or solicitations if the Board determines the action is necessary to carry out the purposes of, or prevent evasions of, the application and solicitation disclosure rules. 15 U.S.C. 1637(c)(5).

• Require disclosures in advertisements of open-end plans. 15 U.S.C. 1663.

For the reasons discussed in this notice, the Board is using its specific authority under TILA, in concurrence with other TILA provisions, to effectuate the purposes of TILA, to prevent the circumvention or evasion of TILA, and to facilitate compliance with the act.

VI. Section-By-Section Analysis

Section 226.5 General Disclosure Requirements

5(a) Form of Disclosures

5(a)(1) General

Paragraph 5(a)(1)(ii)(A)

Under § 226.5(a)(1)(ii)(A) in the June 2007 Proposal, certain disclosures need not be written, including disclosures under § 226.6(b)(1) of charges that are imposed as part of the plan and may be provided at any time before the consumer agrees to pay or becomes obligated to pay for the charge, pursuant to the disclosure timing requirements of § 226.5(b)(1)(ii). 72 FR 32948, 33043, June 14, 2007. Under proposed § 226.5(b)(1)(ii), these charges are charges that are imposed as part of the plan but that are not required to be disclosed in a tabular format under § 226.6(b)(4). 72 FR 32948, 33044, June 14, 2007. Such charges would include, for example, a charge to make an on-line payment on the account. In addition, under proposed § 226.5(a)(1)(ii)(A), change-in-terms disclosures, under § 226.9(c)(2)(ii)(B), related to the disclosures discussed above (for example, an increase in the amount of an on-line payment charge) also need not be provided in writing.

Commenters on the June 2007 Proposal suggested that creditors should be permitted to provide disclosures in electronic form, without having to comply with the consumer notice and consent procedures of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.*, at the time an on-line or other electronic service is used. For example, commenters suggested, if a consumer wishes to make an on-line payment on the account, for which the creditor imposes a fee (which has not previously been disclosed), the creditor should be allowed to disclose the fee electronically, without E-Sign notice and consent, at the time the on-line payment service is requested.

Commenters contended that such a provision would not harm consumers and would expedite transactions, and also that it would be consistent with the Board's proposal to permit oral disclosure of such fees.

Under section 101(c) of the E-Sign Act, if a statute or regulation requires that consumer disclosures be provided in writing, certain notice and consent procedures must be followed in order to provide the disclosures in electronic form. Since, under the Board's June 2007 Proposal, the disclosures discussed above are not required to be provided in writing, the Board believes that the E-Sign notice and consent requirements do not apply when the consumer requests the service in electronic form. The Board proposes to add comment 5(a)(1)(ii)(A)–1 to clarify this matter.

Paragraph 5(a)(1)(iii)

Under § 226.5(a)(1)(iii) in the June 2007 Proposal, certain disclosures may be provided in electronic form without regard to the consumer notice and consent provisions of the E-Sign Act. The Board proposes to add comment 5(a)(1)(iii)–1 to clarify that the disclosures specified in § 226.5(a)(1)(ii)(A) also may be provided in electronic form without regard to the E-Sign Act when the consumer requests the service in electronic form, such as on a creditor's Web site.

5(a)(2) Terminology

Use of the term ''grace period''. Under § 226.5(a)(2)(iii) in the June 2007 Proposal, the term ''grace period'' would be required to be used, as applicable, in any disclosure that must be in tabular format under proposed § 226.5(a)(3). 72 FR 32948, 33044, June 14, 2007. TILA Section 122(c)(2)(C), which is implemented currently in § 226.5a(a)(2)(ii), requires credit card applications and solicitations under § 226.5a to use the term ''grace period'' to describe the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. 15 U.S.C. 1632(c)(2)(C). The Board's proposal was meant to promote uniformity in the use of this term across other disclosures and thereby improve consumer understanding of the concept.

Some industry commenters argued, however, that the Board should reconsider requiring use of the term ''grace period.'' One industry commenter noted that research conducted by the Board and by the United States Government Accountability Office (GAO), as well as the commenter's own research, demonstrated that the term is confusing as a descriptor of the interest-free period between the purchase and the due date for customers who pay their balances in full.[2] This commenter suggested that the Board revise the disclosure of the grace period in the credit card application and solicitation table to use the heading ''interest-free period'' instead of ''grace period.''

The Board further tested alternative disclosures for the grace period in March 2008. Based on the results from consumer testing, as discussed in greater detail in the section-by-section analysis to § 226.5a(b)(5) below, the Board is using its authority under TILA Sections 105(a) and (f), and TILA Section 127(c)(5) to delete the requirement to use the term ''grace period'' in the table required by § 226.5a. 15 U.S.C. 1604(a) and (f), 1637(c)(5). To maintain consistent terminology across other disclosures, the Board is also withdrawing its proposal under § 226.5(a)(2)(iii) to require the term ''grace period'' to be used, as applicable, in any disclosure that must be in tabular format under proposed § 226.5(a)(3). If this approach is adopted as proposed, conforming changes will also be made to remove the term ''grace period'' from all model forms and associated commentary when the Board adopts revisions to the Regulation Z rules for open-end (not home-secured) plans.

The Board also notes that with the removal of the term ''grace period'' from the table required by § 226.5a, use of the term ''grace period'' in subsequent disclosures to the consumer would not be appropriate pursuant to the proposed requirement that creditors use consistent terminology under proposed § 226.5(a)(2)(i). While the use of identical language is not required under proposed comment 5(a)(2)–4, creditors are still required to use terms close enough in meaning to enable the consumer to relate the different disclosures. As discussed further below with respect to the proposed revisions to § 226.5a(b)(5), the Board proposes to require using language focused on the terms ''how to avoid paying interest'' or ''paying interest.'' Consequently, subsequent disclosures to consumers should also use similar terms.

[2] United States Government Accountability Office, *Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers*, 06–929 (September 2006) (GAO Report on Credit Card Rates and Fees).

5(b) Time of Disclosures

5(b)(1) Account-Opening Disclosures

5(b)(1)(ii) Charges Imposed as Part of an Open-End (Not Home-Secured) Plan

Comment 5(b)(1)(ii)–1, under the June 2007 Proposal, states that charges that are imposed as part of an open-end (not home-secured) plan, other than those specified in § 226.6(b)(4), may be disclosed orally or in writing at any time before a consumer agrees to pay the charge or becomes obligated for the charge. 72 FR 32948, 33104, June 14, 2007. The Board proposes to revise the comment to clarify that electronic disclosure of these charges, without regard to the E-Sign Act notice and consent requirements, is also permissible as an alternative to oral or written disclosure, when a consumer requests a service in electronic form, such as on a creditor's Web site.

5(b)(1)(iv) Membership Fees

TILA Section 127(a) requires creditors to provide specified disclosures ''before opening any account.'' 15 U.S.C. 1637(a). Section 226.5(b)(1) requires these disclosures (identified in § 226.6) to be furnished before the first transaction is made under the plan. In the June 2007 Proposal, guidance currently in comment 5(b)(1)–1 about creditors' ability to assess certain membership fees before consumers receive the account-opening disclosures was moved to § 226.5(b)(1)(iv). Currently and under the June 2007 Proposal, creditors may collect or obtain the consumer's promise to pay, a membership fee before the disclosures are provided, if the consumer can reject the plan after receiving the disclosures. If a consumer rejects the plan, the creditor must promptly refund the fee if it has been paid or take other action necessary to ensure the consumer is not obligated to pay the fee. 72 FR 32948, 33044, June 14, 2007.

Comment 5(b)(1)–1 currently provides that if after receiving the account-opening disclosures, the consumer uses the account, pays a fee or negotiates a cash advance check, the creditor may consider the account not rejected. The comment, renumbered as comment 5(b)(1)(i)–1 in the June 2007 Proposal, was amended to clarify that if the only activity on account is the creditor's assessment of fees (such as start-up fees), the consumer is not considered to have accepted the account until the consumer is provided with a billing statement and makes a payment. 72 FR 32948, 33103, June 14, 2007. The June 2007 proposed clarification was intended to address concerns about some subprime card accounts that

assess a large number of fees at account opening. Consumers who have not made purchases or otherwise obtained credit on the account would have an opportunity to review their account-opening disclosures and decide whether to reject the account and decline to pay the fees.

Few comments were received on the June 2007 proposed interpretation regarding when a consumer is considered to have accepted an account. Consumer groups supported the proposal but urged the Board to require a disclosure on periodic statements that would inform consumers about their right to reject the plan and not pay fees agreed to prior to receiving account-opening disclosures. An industry commenter also supported the proposal but suggested the Board provide a safe harbor for considering the account as accepted, such as 30 days after a consumer received a new credit card and account-opening disclosures.

The Board proposes additional clarifications to ease compliance and to address further the concerns raised in the June 2007 Proposal. Comment 5(b)(1)–1, renumbered as comment 5(b)(1)(i)–1 in the June 2007 Proposal, addresses a creditor's general duty to provide account-opening disclosures ''before the first transaction.'' The comment is reorganized for clarity to provide existing examples of ''first transactions.''

The Board further clarifies consumers' right not to pay fees that were assessed or agreed to be paid before the consumer received account-opening disclosures, if a consumer rejects a plan after receiving the disclosures, as stated in § 226.5(b)(1)(iv) of the June 2007 Proposal. Currently and under the June 2007 Proposal, creditors may collect or obtain the consumer's agreement to pay ''membership fees'' before providing account-opening disclosures if the consumer may reject the plan after receiving the disclosures, but the term ''membership fee'' is not defined. The Board proposes in revised § 226.5(b)(1)(iv) and new comment 5(b)(1)(iv)–1 that ''membership fee'' has the same meaning as fees for issuance or availability of a credit or charge card under § 226.5a(b)(2), for consistency and ease of compliance. Such fees include annual or other periodic fees, or ''start-up'' fees such as account-opening fees. 72 FR 32948, 33046, 33108, June 14, 2007.

Comment 5(b)(1)–1, renumbered as comment 5(b)(1)(i)–1 in the June 2007 Proposal, currently provides that home equity lines of credit (HELOCs) are not subject to the prohibition on the payment of fees other than application or refundable membership fees before account-opening disclosures are provided. *See* § 226.5b(h) regarding limitations on the collection of fees. This existing guidance is moved to revised § 226.5(b)(1)(iv) and a new comment 5(b)(1)(iv)–4 for clarity.

Also, under revised § 226.5(b)(1)(iv), the Board proposes to clarify that if a consumer rejects an open-end (not home-secured) plan as permitted under that provision (i.e., if the creditor collects or obtains the consumer's agreement to pay ''membership fees'' before providing account-opening disclosures), consumers are not obligated to pay any membership fee, or any other fee or charge (other than an application fee that is charged to all applicants whether or not they receive the credit). The revision is intended to remove ambiguity that if a consumer rejects a plan under § 226.5(b)(1)(iv), the consumer could nevertheless be obligated for fees or charges (including interest on unpaid fee balances) other than a ''membership fee'' or certain application fees.

Comments 5(b)(1)(iv)–2 and –3 are proposed to provide guidance on when a consumer is considered to have rejected the plan. Comment 5(b)(1)(iv)–2 provides guidance currently in comment 5(b)(1)–1, renumbered as comment 5(b)(1)(i)–1 in the June 2007 Proposal, that a consumer who has received account-opening disclosures and uses the account or makes a payment on the account after receiving a billing statement is deemed not to have rejected the plan. The Board proposes to provide a safe harbor: A creditor may deem the plan to be rejected if, 60 days after the creditor mailed the account-opening disclosures, the consumer has not used the account or made a payment on the account. The Board requests comment on whether another time period would be more appropriate.

New comment 5(b)(1)(iv)–3 provides guidance currently in comment 5(b)(1)–1, renumbered as comment 5(b)(1)(i)–1 in the June 2007 Proposal, regarding when a consumer is considered to have ''used'' the account. The Board proposes to add that a consumer is not considered to use an account when, for example, a consumer receives a credit card in the mail and calls to activate the card for security purposes. This is added in response to requests for Board staff to provide guidance on the issue. The Board also proposes additional guidance about the assessment of creditors' fees, as a further response to concerns raised in the June 2007 Proposal. The comment would clarify that a consumer does not ''use'' an account when the creditor assesses fees (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures) to the account. Similarly, the consumer does not ''use'' an account when, for example, a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances.

As discussed in the section-by-section analysis to § 226.6(b)(4)(vii), the Board also proposes a disclosure requirement for creditors that require substantial fees at account opening and leave consumers with a limited amount of available credit. Those creditors would be required to provide a notice of the consumer's right to reject the plan and not pay fees unless the consumer uses the account or pays the fees. The proposed revision to the timing rules in § 226.5(b)(1)(iv) regarding the collection of fees prior to the delivery of account-opening disclosures would apply to all open-end (not home-secured) plans, although the Board believes the impact of the proposal would primarily affect some subprime credit card issuers. The Board solicits comment on the appropriate scope.

Section 226.5a Credit and Charge Card Applications and Solicitations

TILA Section 127(c), implemented by § 226.5a, requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.[3] 15 U.S.C. 1637(c). The format and content requirements differ for cost disclosures in card applications or solicitations, depending on whether the applications or solicitations are given through direct mail, provided electronically, provided orally, or made available to the general public such as in ''take-one'' applications and in catalogs or magazines. Disclosures in applications and solicitations provided by direct mail or electronically must be presented in a table. For oral applications and solicitations, certain cost disclosures must be provided orally, except that issuers in some cases are allowed to provide the disclosures later in a written form. Applications and solicitations made available to the general public, such as in a take-one application, must contain one of the

[3] Charge cards are a type of credit card for which full payment is typically expected upon receipt of the billing statement. To ease discussion, this memorandum will refer simply to ''credit cards.''

following: (1) The same disclosures as for direct mail presented in a table; (2) a narrative description of how finance charges and other charges are assessed, or (3) a statement that costs are involved, along with a toll-free telephone number to call for further information.[4]

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Currently, § 226.5a(b)(1), which implements TILA Section 127(c)(1)(A)(i)(I), requires issuers to disclose each APR that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer. Comment 5a(b)(1)–7 requires that if a rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose the increased penalty rate that may apply and the specific event or events that may result in the increased rate. The specific event or events must be described outside the table with an asterisk or other means to direct the consumer to the additional information. Comment 5a(b)(1)–7 also specifies that an issuer need not disclose an increased rate that would be imposed if credit privileges are permanently terminated.

In the June 2007 Proposal, the Board proposed a number of changes to how penalty rates are disclosed in the table to enhance consumers' awareness of these rates and the specific event or events that may result in the increase of rates. *See* proposed § 226.5a(b)(1)(iv) and new comment 5a(b)(1)–4 (previously comment 5a(b)(1)–7). 72 FR 32948, 33046, June 14, 2007. For example, the Board proposed to require card issuers to briefly disclose in the table the specific event or events that may result in the penalty rate. In addition, the Board proposed that the penalty rate and the specific events that cause the penalty rate to be imposed must be disclosed in the same row of the table. *See* proposed Model Form G–10(A), 72 FR 32948, 33069, June 14, 2007. The Board proposed to retain the current provision that an issuer need not disclose an increased rate that would be imposed if credit privileges are permanently terminated, but proposed to move this provision from current comment 5a(b)(1)–7 to proposed § 226.5a(b)(1)(iv).

In response to the June 2007 Proposal, some consumer groups requested that the Board delete the statement that the card issuer need not disclose the increased rate that would be imposed if credit privileges are permanently terminated. They viewed this provision as inconsistent with the Board's other efforts to ensure that consumers are aware of penalty rates. They believed card issuers should be required to disclose this information in the table if the rate is different than the penalty rate that otherwise applies.

The Board proposes to delete the current provision that an issuer need not disclose an increased rate that would be imposed if credit privileges are permanently terminated. The provision may be unnecessary. The Board is not aware of any issuers that are imposing an increased rate when credit privileges are permanently terminated that is different from the penalty rate. Moreover, the Board agrees that to the extent an issuer is charging a different rate when credit is permanently terminated than the penalty rate, this different rate should be disclosed along with the penalty rate.

Elsewhere in today's **Federal Register** the Board proposes under Regulation AA that card issuers making firm offers of credit and offering a range of APRs or credit limits must also disclose clearly and conspicuously that if the consumer is approved for the credit, the APR and credit limit on the account will depend on the specific criteria bearing on creditworthiness. Model language is proposed that issuers may use to comply with the requirements. Under the June 2007 Proposal, card issuers offering APRs that will depend on a later determination of the consumer's creditworthiness must disclose in the table provided with applications or solicitations, within prescribed format requirements, either specific rates or a range of rates, and a statement that the rate for which the consumer may qualify at account opening depends on the creditor's creditworthiness. 72 FR 32948, 33045, 33046, June 14, 2007. If the approach under Regulation AA is adopted as proposed, appropriate conforming changes will be made to ensure consistency among the regulatory requirements and to facilitate compliance when the Board adopts revisions to the Regulation Z rules for open-end (not home-secured) credit.

5a(b)(3) Minimum Finance Charge

Currently, § 226.5a(b)(3), which implements TILA Section 127(c)(1)(A)(ii)(II), requires that card issuers must disclose any minimum or fixed finance charge that could be imposed during a billing cycle. Card issuers typically impose a minimum charge (e.g., $.50) in lieu of interest in those months where a consumer would otherwise incur an interest charge that is less than the minimum charge (a so-called ''minimum interest charge''). In response to the December 2004 ANPR, one industry commenter suggested that the Board no longer require that the minimum finance charge be disclosed in the table because these fees are typically small and consumers do not shop on them. Another industry commenter suggested that the Board only require that the minimum finance charge be included in the table if the charge is a significant amount. On the other hand, some consumer groups urged the Board to continue to include the minimum finance charge in the table because this charge can have a significant effect on the cost of credit.

In the June 2007 Proposal, the Board proposed to retain the minimum finance charge disclosure in the table. Although minimum charges currently may be small, the Board was concerned that card issuers may increase these charges in the future. Also, the Board noted that it was aware of at least one credit card product for which no APR is charged, but each month a fixed charge is imposed based on the outstanding balance (for example, $6 charge per $1,000 balance). If the minimum finance charge disclosure was eliminated from the table, card issuers that offer this type of pricing would no longer be required to disclose the fixed charge in the table. The Board also did not propose to require the minimum finance charge only if it is a significant amount. The Board was concerned that this approach could undercut the uniformity of the table, and could be misleading to consumers. The Board also proposed to amend § 226.5a(b)(3) to require card issuers to disclose in the table a brief description of the minimum finance charge, to give consumers context for when this charge will be imposed. 72 FR 32948, 33046, June 14, 2007.

In response to the June 2007 Proposal, several industry commenters again recommended that the Board delete this disclosure from the table unless the minimum finance charge is over a certain nominal amount. They indicated that in most cases, the minimum interest charge is so small as to be irrelevant to consumers. They believed that it should only be in the table if the minimum finance charge is a significant amount. Also, they believed that the purpose of the summary table is to highlight the most relevant terms that

[4] In the June 2007 Proposal, the Board proposed revising the rule applicable to take-ones to delete the option to satisfy the provisions of § 226.5a by including a narrative description of how finance charge and other charges are assessed. *See* proposed § 226.5a(e), 72 Fr 32948, 33048, June 14, 2007.

consumers use in evaluating credit card applications. They suggested that it is unlikely that consumers would choose a card based on a minimal charge. Also, they believed that the retention of an irrelevant fee clutters the summary table, detracting from other more important terms. One commenter recommended that minimum interest charges under $2.00 should be excluded from disclosure in the table, and another commenter recommended a cut off of $1.00. Consumer groups agreed with the Board's proposal to require the disclosure of the minimum interest charge in all cases and not to allow issuers to exclude the minimum interest charge from the table if the charge was under a certain specific amount.

The Board proposes to revise proposed § 226.5a(b)(3) to provide that an issuer must disclose in the table any minimum or fixed finance charge in excess of $1.00 that could be imposed during a billing cycle and a brief description of the charge, pursuant to its authority under TILA Section 127(c)(5). 15 U.S.C. 1637(c)(5). The $1.00 amount would be adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on the June 1 of previous years equals or exceeds $1.00. *See* proposed comment 5a(b)(3)–2. This approach in adjusting the dollar amount that triggers the disclosure of a minimum or fixed finance charge is similar to TILA's rules for adjusting a dollar amount of fees that trigger additional protections for certain home-secured loans. TILA 103(aa), 15 U.S.C. 1602(aa). At the issuer's option, the issuer may disclose in the table any minimum or fixed finance charge below the threshold. This flexibility is intended to facilitate compliance when adjustments are made to the dollar threshold. For example, if an issuer has disclosed a $1.50 minimum finance charge in its application and solicitation table at the time the threshold is increased to $2.00, the issuer could continue to use forms with the minimum finance charge disclosed, even though the issuer would no longer be required to do so.

The Board recognizes that most issuers currently charge a minimum interest charge of $1.00 or less. In consumer testing conducted by the Board in March 2008, participants were asked to compare disclosure tables for two credit card accounts and decide which account they would choose. In one of the disclosure tables, a small minimum interest charge was disclosed. In the other disclosure table, no minimum interest charge was disclosed. None of the participants indicated that they would choose the account where no minimum interest charge was disclosed because of this fact. Thus, the Board agrees that when the minimum interest charge is a *de minimis* amount (*i.e.*, $1.00 or less, as adjusted for inflation), disclosure of the minimum interest charge is not information that consumers will use to shop for a card. The rule would continue to require disclosure in the table if the minimum interest charge is over this *de minimis* amount to ensure that consumers are aware of significant minimum interest charges that might impact them. The Board requests comment on whether $1.00 is the appropriate initial threshold amount.

5a(b)(4) Transaction Charges

Section 226.5a(b)(4), which implements TILA Section 127(c)(1)(A)(ii)(III), requires that card issuers disclose any transaction charge imposed on purchases. In the June 2007 Proposal, the Board proposed to amend § 226.5a(b)(4) to explicitly exclude from the table fees charged for transactions in a foreign currency or that take place in a foreign country. 72 FR 32948, 33046, June 14, 2007. In an effort to streamline the contents of the table, the Board proposed to highlight only those fees that may be important for a significant number of consumers. In consumer testing for the Board, participants did not tend to mention foreign transaction fees as important fees they use to shop. In addition, there are few consumers who may pay these fees with any frequency. Thus, the Board proposed to except foreign transaction fees from disclosure of transaction fees. The Board proposed to *include* foreign transaction fees in the account-opening summary table that is required under proposed § 226.6(b)(4), so that interested consumers can learn of the fees before using the card.

In response to the June 2007 Proposal, some consumer groups recommended that the Board require foreign transaction fees in the table required under § 226.5a. They questioned the utility of the Board requiring foreign transaction fees in the account-opening table required under § 226.6, but prohibiting those fees to be disclosed in the table under § 226.5a. They believed that consumers as well as the industry would be better served by eliminating the few differences between the disclosures required at the two stages. In addition, one industry commenter recommended that the table required under § 226.5a include foreign transaction fees. This commenter believed that the foreign transaction fee is relevant to any consumer who travels in other countries, and the ability to choose a credit card based on the presence of the fee is important. In addition, the commenter noted that the large amount of press attention that the issue has received suggests that the presence or absence of the fee is now of interest to a significant number of consumers.

The Board proposes to require that foreign transaction fees must be disclosed in the table required under § 226.5a. Specifically, the Board proposes to withdraw proposed § 226.5a(b)(4)(ii) that would have prevented a card issuer from disclosing a foreign transaction fee in the table required by § 226.5a. In addition, the Board proposes to add comment 5a(b)(4)–2 to indicate that foreign transaction fees charged by the card issuer are considered transaction charges for the use of a card for purchases, and thus must be disclosed in the table required under § 226.5a. The Board is concerned about the inconsistency in requiring foreign transaction fees in the account-opening table required by § 226.6, but prohibiting that fee in the table required by § 226.5a. In the June 2007 Proposal, the Board proposed that issuers may substitute the account-opening table for the table required by § 226.5a. *See* proposed comment 5a–2, 72 FR 32948, 33105, June 14, 2007. The Board is concerned about those cases where one issuer substitutes the account-opening table for the table required under § 226.5a (and thus is required to disclose the foreign transaction fee) but another issuer provides the table required under § 226.5a (and thus is prohibited from disclosing the foreign transaction fee). If a consumer was comparing the disclosures for these two offers, it may appear to the consumer that the issuer providing the account-opening table charges a foreign transaction fee and the issuer providing the table required under § 226.5a does not, even though the second issuer may charge the same or higher foreign transaction fee than the first issuer. Thus, to promote uniformity, the Board proposes to require issuers to disclose the foreign transaction fee in both the account-opening table required by § 226.6 and the table required by § 226.5a. *See* proposed comment 5a(b)(4)–2. The Board also proposes that foreign transaction fees would be disclosed in the table required by § 226.5a similar to how those fees are disclosed in the proposed account-opening tables published in the June 2007 Proposal. *See* Model Forms and Samples G–17(A), (B) and (C) 72 FR

32948, 33074, 33075, 33076, June 14, 2007.

5a(b)(5) Grace Period

Currently, § 226.5a(b)(5), which implements TILA Section 127(c)(A)(iii)(I), requires that card issuers disclose in the table required by § 226.5a, the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. Section 226.5a(a)(2)(ii), which implements TILA Section 122(c)(2)(C), requires credit card applications and solicitation under § 226.5a to use the term ''grace period'' to describe the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. 15 U.S.C. 1632(c)(2)(C). In the June 2007 Proposal, the Board proposed new § 226.5(a)(2)(iii) to extend this requirement to use the term ''grace period'' to all references to such a term for the disclosures required to be in the form of a table, such as the account-opening table. 72 FR 32948, 33044, June 14, 2007.

In response to the June 2007 Proposal, one industry commenter recommended that the Board no longer mandate the use of the term ''grace period'' in the table. Although TILA specifically requires use of the term ''grace period,'' this commenter urged the Board to use its exception authority to choose a term that is more understandable to consumers. This commenter pointed out that research conducted by the Board, by the GAO and by that commenter demonstrated that the term is confusing as a descriptor of the interest-free period between the purchase and the due date for customers who pay their balances in full. This commenter suggested that the Board revise the disclosure of the grace period in the table to use the heading ''interest-free period'' instead of ''grace period.''

As discussed in the section-by-section analysis to § 226.5(a)(2), the Board proposes to use its exemption authority to delete the requirement to use the term ''grace period'' in the table required by § 226.5a. 15 U.S.C. §§ 1604(a) and (f) and 1637(c)(5). As the Board discussed in the June 2007 Proposal, consumer testing conducted for the Board prior to that proposal indicated that some participants misunderstood the word ''grace period'' to mean the time after the payment due date that an issuer may give the consumer to pay the bill without charging a late-payment fee. The GAO in its Report on Credit Card Rates and Fees found similar misunderstandings by consumers in its consumer testing. Furthermore, many participants in the GAO testing incorrectly indicated that the grace period was the period of time promotional interest rates applied. Nonetheless, in consumer testing conducted for the Board prior to the June 2007 Proposal, the Board found that participants tended to understand the term grace period more clearly when additional context was added, such as describing that if the consumer paid the bill in full each month, the consumer would have some period of time (*e.g.*, 25 days) to pay the new purchase balance in full to avoid interest. Thus, the Board proposed to retain the term ''grace period.''

As discussed above, in response to the June 2007 Proposal, one commenter performed its own testing with consumers on the grace period disclosure proposed by the Board. This commenter found that the term ''grace period'' was still confusing to the consumers it tested, even with the additional context given in the grace period disclosure proposed by the Board. The commenter found that consumers understood the term ''interest-free period'' to more accurately describe the interest-free period between the purchase and the due date for customers who pay their balances in full.

In consumer testing conducted by the Board prior to issuing the June 2007 Proposal, the Board tested the phrase ''interest-free period.'' The Board found that some consumers believed the phrase ''interest-free period'' referred to the period of time that a 0% introductory rate would be in effect, instead of the grace period. In consumer testing conducted by the Board in March 2008, the Board tested disclosure tables for a credit card solicitation that used the phrase ''How to Avoid Paying Interest on Purchases'' as the heading for the row containing the information on the grace period. Participants in this testing generally seemed to understand this phrase to describe the grace period. In addition, in the March 2008 consumer testing, the Board also tested the phrase ''Paying Interest'' in the context of a disclosure relating to a check that accesses a credit card account, where a grace period was not offered on this access check. Specifically, the phrase ''Paying Interest'' was used as the heading for the row containing information that no grace period was offered on the access check. Likewise, participants seemed to understand this phrase to mean that no grace period was being offered on the use of the access check. Thus, the Board proposes to revise proposed § 226.5a(b)(5) to require that issuers use the phrase ''How to Avoid Paying Interest on Purchases,'' or a substantially similar phrase, as the heading for the row describing the grace period. If no grace period on purchases is offered, when an issuer is disclosing this fact in the table, the issuer must use the phrase ''Paying Interest,'' or a substantially similar phrase, as the heading for the row describing that no grace period is offered.

As discussed above, § 226.5a(b)(5) requires that card issuers disclose in the table required by § 226.5a, the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. Comment 5a(b)(5)–1 provides that a card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read ''30 days'' or ''30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date).''

In the June 2007 Proposal, the Board proposed to amend § 226.5a(b)(5) to require card issuers to disclose briefly any conditions on the applicability of the grace period. 15 U.S.C. 1637(c)(5). 72 FR 32948, 33046, June 14, 2007. The Board also proposed to amend comment 5a(b)(5)–1 to provide guidance for how issuers may meet the requirements in proposed § 226.5a(b)(5). Specifically, proposed comment 5a(b)(5)–1 provided that an issuer that conditions the grace period on the consumer paying his or her balance in full by the due date each month, or on the consumer paying the previous balance in full by the due date the prior month will be deemed to meet requirements in disclosing the grace period by providing the following disclosure: ''If you pay your entire balance in full each month, you have [at least] ____ days after the close of each period to pay your balance on purchases without being charged interest.'' 72 FR 32948, 33109, June 14, 2007.

In response to the June 2007 Proposal, several commenters suggested that the Board revise the model language provided in proposed comment 5a(b)(5)–1 to describe the grace period. One commenter suggested the following language: ''Your due date is [at least] 25 days after your bill is totaled each month. If you don't pay your bill in full by your due date, you will be charged interest on the remaining balance.'' Other commenters also recommended that the Board revise the disclosure of the grace period to make clearer that the consumer must pay the total balance in full each month by the due date to avoid

paying interest on purchases. In addition, some consumer groups commented that if the issuer does not provide a grace period, the Board should mandate specific language that draws the consumer's attention to this fact.

In the March 2008 consumer testing, the Board tested the following language to describe a grace period: ''Your due date is [at least] ____ days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance (excluding promotional balances) by the due date each month.'' Participants that read this language appeared to understand it correctly. Thus, the Board proposes to amend comment 5a(b)(5)–1 to provide this language as guidance to issuers on how to disclose a grace period. The Board notes that currently issuers typically require consumers to pay their entire balance in full each month to qualify for a grace period on purchases. Nonetheless, the Board proposes elsewhere in today's **Federal Register** to prohibit most issuers from requiring consumers to pay off promotional balances in order to receive any grace period offered on purchases. Thus, consistent with this proposed prohibition, the language in proposed comment 5a(b)(5)–1 indicates that the entire balance (excluding promotional balances) must be paid each month to avoid interest charges on purchases.

Also, in the March 2008 consumer testing, the Board tested language to describe that no grace period was being offered. Specifically, in the context of testing a disclosure related to an access check where a grace period was not offered on this access check, the Board tested the following language: ''We will begin charging interest on these check transactions on the transaction date.'' Most participants that read this language understood there was no way to avoid paying interest on this check transaction, and therefore, that no grace period was being offered on this check transaction. Thus, the Board proposes to add comment 5a(b)(5)–2 to provide guidance on how to disclose the fact that no grace period on purchases is offered on the account. Specifically, proposed comment 5a(b)(5)–2 would provide that issuers may use the following language to describe that no grace period on purchases is offered, as applicable: ''We will begin charging interest on purchases on the transaction date.''

5a(b)(6) Balance Computation Method

TILA Section 127(c)(1)(A)(iv) calls for the Board to name not more than five of the most common balance computation methods used by credit card issuers to calculate the balance on which finance charges are computed. 15 U.S.C. 1637(c)(1)(A)(iv). If issuers use one of the balance computation methods named by the Board, § 226.5a(b)(6) requires that issuers must disclose the name of that balance computation method in the table as part of the disclosures required by § 226.5a, and issuers are not required to provide a description of the balance computation method. If the issuer uses a balance computation method that is not named by the Board, the issuer must disclose a detailed explanation of the balance computation method. *See* current § 226.5a(b)(6); § 226.5a(a)(2)(i). In the June 2007 Proposal, the Board proposed to retain a brief reference to the balance computation method, but move the disclosure from the table to directly below the table. *See* June 2007 proposed § 226.5a(a)(2)(iii), 72 FR 32948, 33045, June 14, 2007.

Currently, the Board in § 226.5a(g) has named four balance computation methods: (1) Average daily balance (including new purchases) or (excluding new purchases); (2) two-cycle average daily balance (including new purchases) or (excluding new purchases); (3) adjusted balance; and (4) previous balance. In the June 2007 Proposal, the Board proposed to retain these four balance computation methods.

Elsewhere in today's **Federal Register**, the Board proposes to prohibit some issuers from using a balance computation method commonly referred to as the ''two-cycle'' balance method. Nonetheless, the Board does not propose deleting the two-cycle average daily balance method from the list in § 226.5(g) because the prohibition, if adopted, would not apply to all issuers, such as state chartered credit unions that are not subject to National Credit Union Association rules.

5a(b)(15) Payment Allocation

Some credit card issuers will allocate payments in excess of the minimum payment first to balances that are subject to the lowest APR. For example, if a cardholder made purchases using a credit card account and then initiated a balance transfer, the card issuer might allocate a payment (less than the amount of the balances) to the transferred balance portion of the account if that balance was subject to a lower APR than the purchases. Card issuers often will offer a discounted initial rate on balance transfers (such as 0 percent for an introductory period) with a credit card solicitation, but not offer the same discounted rate for purchases. In addition, the Board is aware of at least one issuer that offers the same discounted initial rate for balance transfers and purchases for a specified period of time, where the discounted rate for balance transfers (but not the discounted rate for purchases) may be extended until the balance transfer is paid off if the consumer makes a certain number of purchases each billing cycle. At the same time, issuers typically offer a grace period for purchases if a consumer pays his or her bill in full each month. Card issuers, however, do not typically offer a grace period on balance transfers or cash advances. Thus, on the offers described above, a consumer cannot take advantage of both the grace period on purchases and the discounted rate on balance transfers. The only way for a consumer to avoid paying interest on purchases—and thus have the benefit of the grace period—is to pay off the entire balance, including the balance transfer subject to the discounted rate.

In the consumer testing conducted for the Board prior to the June 2007 Proposal, many participants did not understand that they could not take advantage of the grace period on purchases and the discounted rate on balance transfers at the same time. Model forms were tested that included a disclosure notice attempting to explain this to consumers. Nonetheless, testing showed that a significant percentage of participants still did not fully understand how payment allocation can affect their interest charges, even after reading the disclosure tested. In the supplementary information accompanying the June 2007 Proposal, the Board indicated its plans to conduct further testing of the disclosure to determine whether the disclosure can be improved to more effectively communicate to consumers how payment allocation can affect their interest charges.

In the June 2007 Proposal, the Board proposed to add § 226.5a(b)(15) to require card issuers to explain payment allocation to consumers. Specifically, the Board proposed that issuers explain how payment allocation would affect consumers, if an initial discounted rate was offered on balance transfers or cash advances but not purchases. The Board proposed that issuers must disclose to consumers that (1) the initial discounted rate applies only to balance transfers or cash advances, as applicable, and not to purchases; (2) that payments will be allocated to the balance transfer or cash advance balance, as applicable, before being allocated to any purchase balance during the time the discounted initial rate is in effect; and (3) that the consumer will incur interest on the

purchase balance until the entire balance is paid, including the transferred balance or cash advance balance, as applicable. 72 FR 32948, 33047, June 14, 2007.

In response to the June 2007 Proposal, several commenters recommended the Board test a simplified payment allocation disclosure that covers cases other than low rate balance transfers offered with a credit card. In consumer testing conducted for the Board in March 2008, the Board tested the following payment allocation disclosure: ''Payments may be applied to balances with lower APRs first. If you have balances at higher APRs, you may pay more in interest because these balances cannot be paid off until all lower-APR balances are paid in full (including balance transfers you make at the introductory rate).'' Some participants understood from prior experience that issuers typically will apply payments to lower APR balances first and the fact that this method causes them to incur higher interest charges. For those participants that did not know about payment allocation methods from prior experience, the disclosure tested was not effective in explaining payment allocation to them.

Elsewhere in today's **Federal Register**, the Board proposes substantive provisions on how issuers may allocate payments. To the extent these substantive provisions are adopted, the Board would withdraw its proposal to require a card issuer to explain payment allocation to consumers in the table.

5a(b)(16) Available Credit

Elsewhere in today's **Federal Register**, the Board proposes under Regulation AA to address concerns regarding subprime credit cards by prohibiting institutions from financing security deposits and fees for credit availability (such as account-opening fees or membership fees) if those charges would exceed 50 percent of the credit limit during the first twelve months and from collecting at account opening fees that are 25 percent or more of the credit limit. Under the June 2007 Proposal, card issuers that require fees or a security deposit to issue a card that are 25 percent or more of the minimum credit limit offered on the account must offer an example in the table provided with applications and solicitations of the amount of available credit the consumer would have after paying the fees or security deposit, assuming the creditor receives the minimum credit limit. 72 FR 32948, 33047, June 14, 2007. If the approach under Regulation AA is adopted as proposed, appropriate revisions will be made to ensure consistency among the regulatory requirements and to facilitate compliance when the Board adopts revisions to the Regulation Z rules for open-end (not home-secured) credit.

5a(d) Telephone Applications and Solicitations

5a(d)(1) Oral Disclosure

Section 226.5a(d) specifies rules for providing cost disclosures in oral applications and solicitations initiated by a card issuer. Pursuant to TILA 127(c)(2), card issuers generally must provide certain cost disclosures during the oral conversation in which the application or solicitation is given. Alternatively, an issuer is not required to give the oral disclosures if the card issuer either does not impose a fee for the issuance or availability of a credit card (as described in § 226.5a(b)(2)) or does not impose such a fee unless the consumer uses the card, provided that the card issuer provides the disclosures later in a written form. 15 U.S.C. 1637(c)(2).

Currently, under § 226.5a(d)(1), if the issuer provides the oral disclosures, the issuer must provide information required to be disclosed under § 226.5a(b)(1) through § 226.5a(b)(7). This includes information about (1) APRs; (2) fees for issuance or availability of credit; (3) minimum interest charges; (4) transaction charges for purchases; (5) grace period on purchases; (6) balance computation method; and (7) as applicable, a statement that charges incurred by use of the charge card are due when the periodic statement is received.

In the June 2007 Proposal, the Board did not propose to revise § 226.5a(d)(1). In response to the June 2007 Proposal, some consumer groups suggested that the Board revise § 226.5a(d)(1) to require issuers that are marketing credit cards by telephone, to disclose additional information to consumers at the time of the phone call, such as the cash advance fee, the late payment fee, the over-limit fee, the balance transfer fee, information about penalty rates, any fees for required insurance, or the disclosure about available credit in proposed § 226.5a(b)(16). 72 FR 32948, 33047, June 14, 2007.

The Board proposes to amend § 226.5a(d)(1) to require that if an issuer provides the oral disclosures, the issuer must also disclose orally the information about available credit in proposed § 226.5a(b)(16) if required to do so, pursuant to its authority under TILA Section 127(c)(5). 15 U.S.C. 1637(c)(5). Proposed § 226.5a(b)(16) provides that if (1) a card issuer imposes required fees for the issuance or availability of credit, or a security deposit, that will be charged against the card when the account is opened, and (2) the total of those fees and/or security deposit equal 25 percent or more of the minimum credit limit applicable to the card, the card issuer must disclose in the table an example of the amount of the available credit that a consumer would have remaining after these required fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit offered on the relevant account. The issuer also must disclose the available credit remaining after including any optional fees for issuance or availability of credit that may be debited to the account.

Currently, issuers that provide the oral disclosures must inform consumers about the fees for issuance and availability of credit that are applicable to the card. The Board believes that the information about available credit would complement this disclosure, by disclosing to consumers the impact of these fees on the available credit. The Board does not propose to require issuers to provide orally other fees applicable to the account, such as the cash advance fee, the late payment fee, the over-limit fee, the balance transfer fee or fees for required insurance. The Board is concerned that providing this information in oral conversations about credit cards would lead to information overload for consumers. The Board notes that issuers providing oral disclosures currently would be required to provide information about the penalty rate to consumers because this information is required to be disclosed pursuant to § 226.5a(b)(1).

Section 226.6 Account-Opening Disclosures

TILA Section 127(a), implemented in § 226.6, requires creditors to provide information about key credit terms before an open-end plan is opened, such as rates and fees that may be assessed on the account. Consumers' rights and responsibilities in the case of unauthorized use or billing disputes are also explained. 15 U.S.C. 1637(a). *See* also Model Forms G–2 and G–3 in Appendix G.

Descriptions of balance computation methods. Creditors are required, under § 226.6(a)(1)(iii) and § 226.6(b)(2)(i)(D) of the June 2007 Proposal, to explain the method used to determine the balance upon which rates are applied. 72 FR 32948, 33049, June 14, 2007. Model Clauses that explain commonly used methods, such as the average daily balance method, are at Appendix G–1.

The Model Clauses at Appendix G–1 were republished without change in the June 2007 Proposal. 72 FR 32948, 33066, June 14, 2007. The Board requested comment on whether model clauses for methods such as the ''previous balance'' or ''adjusted balance'' method should be eliminated because they are no longer used. Few commenters addressed the issue. Commenters recommended retaining the existing clauses, and two commenters asked the Board to add a model clause explaining the daily balance method. The Board proposes to add a new paragraph (f) to describe a daily balance method in G–1 and in a new G–1A. In addition, a new Appendix G–1A is proposed for open-end (not home-secured) plans. The clauses in G–1A refer to ''interest charges'' rather than ''finance charges'' to explain balance computation methods. The Board's consumer testing prior to the June 2007 Proposal indicated that consumers generally had a better understanding of ''interest charge'' than ''finance charge,'' which is reflected in the Board's use of ''interest'' (rather than ''finance charge'') in proposed Account-opening Samples and to describe costs other than fees on periodic statements. *See* proposed Samples G–17(B) and G–17(C) and § 226.7(b)(6)(iii). 72 FR 32948, 33075, 33076, and 33052, June 14, 2007. Comment App. G–1 is revised to clarify that for HELOCs subject to § 226.5b, creditors may properly use the model clauses in either Appendix G–1 or G–1A. References throughout the regulation and commentary to Model Clauses in G–1 will be updated to reflect the addition of G–1A when the Board adopts revisions to the rules for open-end credit (not home-secured) plans.

6(b)(2) Rules Relating to Rates for Open-End (Not Home-Secured) Plans

The June 2007 Proposal sets forth in § 226.6(b)(2) rules related to disclosing rates for open-end (not home-secured) plans. 72 FR 32948, 33049, June 14, 2007. Creditors must disclose information about any rates that initially apply, and about rates that may apply after the initial rate ends. Under current rules, comment 6(a)(2)–11 provides that creditors need not disclose increased rates that may apply if credit privileges are permanently terminated. That rule was retained in the June 2007 Proposal, but was moved to § 226.6(b)(4)(ii)(C) and comment 6(b)(2)(iii)–2.iii., to be consistent with § 226.5a(b)(1)(iv) in the June 2007 Proposal. 72 FR 32948, 33050, 33115, June 14, 2007. As discussed in the section-by-section analysis to § 226.5a(b)(1), the Board proposes to eliminate that exception; accordingly, the references to increased rates upon permanently terminated credit privileges in § 226.6(b)(4)(ii)(C) and in paragraph iii. to comment 6(b)(2)(iii)–2 are removed in this May 2008 Proposal.

6(b)(4) Tabular Format Requirements for Open-End (Not Home-Secured) Plans

In June 2007, the Board proposed in § 226.6(b)(4) to introduce format requirements for account-opening disclosures for open-end (not home-secured) plans. The proposed summary of account-opening disclosures is based on the format and content requirements for the tabular disclosures provided with direct mail applications for credit and charge cards under § 226.5a, as it would be revised under the June 2007 Proposal. Proposed forms under G–17 in Appendix G illustrate the account-opening tables. 72 FR 32948, 33049, 33074, 33075, 33076, June 14, 2007.

Lines of credit without credit cards. The June 2007 Proposal to require a tabular summary of key terms to be provided before an account is opened applies to all open-end loan products, except HELOCs. This would include products such as credit card accounts, traditional overdraft credit plans, personal lines of credit, and revolving plans offered by retailers without a credit card.

Some industry commenters asked the Board to limit any new disclosure rules to credit card accounts. They acknowledged that credit card accounts typically have complex terms, and a tabular summary is an effective way to present key disclosures. In contrast, these commenters noted that other open-end (not home-secured) products such as personal lines of credit or overdraft plans have very few of the cost terms required to be disclosed. Alternatively, if the Board continued to apply the new requirements to open-end plans other than HELOCs, commenters asked that the Board consider publishing model forms to ease compliance.

The Board continues to believe that even for non-credit card accounts the benefit to consumers from receiving a concise summary of rates and important fees appears to outweigh the costs, such as developing the new disclosures and revising them as needed. To ease compliance and address commenters' concerns, the Board is publishing proposed Sample G–17(D) for open-end plans such as lines of credit or overdraft plans.

6(b)(4)(iii) Fees

6(b)(4)(iii)(D) Minimum Finance Charge

TILA Section 127(a)(3), which is currently implemented in § 226.6(a)(4), requires creditors to disclose in account-opening disclosures the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge. 15 U.S.C. 1637(a)(3). In the June 2007 Proposal, the Board required creditors to disclose in account-opening disclosures the amount of any finance charges in § 226.6(b)(1)(A), and further required creditors to disclose any minimum finance charge in the account-opening table in § 226.6(b)(4)(iii)(D). 72 FR 32948, 33049, 33050, June 14, 2007.

In this May 2008 Proposal, the Board would require card issuers to disclose in the table provided with applications or solicitations minimum or fixed finance charges in excess of $1 that could be imposed during a billing cycle (along with a formula for adjusting the threshold over time) and a brief description of the charge, for the reasons discussed in the section-by-section analysis to § 226.5a(b)(3). At the card issuer's option, the card issuer may disclose in the table any minimum or fixed finance charge below the threshold. The Board proposes the same disclosure requirements to apply to the account-opening table for the same reasons. Section 226.6(b)(4)(iii)(D) would be revised and new comments 6(b)(4)(iii)–1 and –2 would be added, accordingly. As noted in the section-by-section analysis to § 226.5a(b)(4), under the June 2007 Proposal, card issuers may substitute the account-opening table for the table required by § 226.5a. Conforming the minimum finance charge disclosure requirement for the two tables promotes consistency and uniformity.

Under proposed § 226.5(b)(1)(ii) of the June 2007 Proposal, charges that are imposed as part of the plan may be provided at any time before the consumer agrees to pay or becomes obligated to pay for the charge, pursuant to the disclosure timing requirements of § 226.5(b)(1)(ii). 72 FR 32948, 33044, June 14, 2007. Creditors may provide disclosures of these charges in writing but creditors are not required to do so. 72 FR 32948, 33043, June 14, 2007. *See* section-by-section analysis to § 226.5(a)(1) above. If creditors are required to disclose in the account-opening table minimum finance charges in excess of $1, minimum or fixed finance charges of $1 or less would no longer be required to be disclosed in writing at account-opening. The Board believes creditors will continue to do so, to meet the timing requirement to

disclose the fee before the consumer becomes obligated for the charge. And creditors that choose to charge more than $1 would be required to include the cost in the account-opening table.

6(b)(4)(iv) Grace Period

Under TILA, creditors providing disclosures with applications and solicitations must discuss grace periods on purchases; at account opening, creditors must explain grace periods more generally. 15 U.S.C. 1637(c)(1)(A)(iii); 15 U.S.C. 1637(a)(1). Section 226.6(b)(4)(iv) in the June 2007 Proposal required creditors to state for all balances on the account, whether or not a period exists in which consumers may avoid the imposition of finance charges, and if so, the length of the period. 72 FR 32948, 33050, June 14, 2007. As discussed in the section-by-section analysis to § 226.5(a)(2) and to § 226.5a(b)(5), the Board is revising provisions relating to the description of grace periods. Section § 226.6(b)(4)(iv) is revised and comment 6(b)(4)(iv)–1 is added, consistent with the proposed revisions to § 226.5a(b)(5) and commentary. A reference to required use of the phrase ''grace period'' in comment 6(b)(4)–3 of the June 2007 Proposal is withdrawn. 72 FR 32948, 33115, June 14, 2007.

6(b)(4)(vi) Payment Allocation

Section 226.6(b)(4)(vi) of the June 2007 Proposal required creditors to disclose in the account-opening tabular summary, if applicable, the information regarding how payments will be allocated if the consumer transfers balances at a low rate and then makes purchases on the account. 72 FR 32948, 33050, June 14, 2007. The payment allocation disclosure requirements proposed for the account-opening table mirror the proposed requirements in § 226.5a(b)(15) to be provided in the table given at application or solicitation. 72 FR 32948, 33047, June 14, 2007. Elsewhere in today's **Federal Register**, the Board proposes limitations on how creditors may allocate payments on outstanding credit card balances. For the reasons discussed in the section-by-section analysis to § 226.5a(b)(15), the Board would withdraw proposed § 226.6(b)(4)(vi) to the extent the substantive rule is adopted.

6(b)(4)(vii) Available Credit

The Board proposed in June 2007 a disclosure targeted at subprime card accounts that assess substantial fees at account opening and leave consumers with a limited amount of available credit. Proposed § 226.6(b)(4)(vii) applied to creditors that require fees for the availability or issuance of credit, or a security deposit, that equals 25 percent or more of the minimum credit limit offered on the account. If that threshold is met, card issuers must disclose in the table an example of the amount of available credit the consumer would have after the fees or security deposit are debited to the account, assuming the consumer receives the minimum credit limit. 72 FR 32948, 33050, June 14, 2007. The account-opening disclosures regarding available credit are also required for credit and charge card applications or solicitations. *See* proposed § 226.5a(b)(16), 72 FR 32948, 33047, June 14, 2007.

The Board proposes an additional disclosure to inform consumers about their right to reject a plan when fees have been charged and the consumer receives account-opening disclosures but has not used the account or paid a fee after receiving a billing statement (other than an application fee that is charged to all consumers who apply for the account whether or not they are accepted for the credit). Creditors must provide consumers with notice about the right to reject the plan in such circumstances. The Board believes that tailoring the disclosure to impact creditors offering subprime credit card accounts is appropriately narrow, but seeks comment on the scope of the proposed disclosure. The Board proposes a new comment 6(b)(4)(vii)–1 to provide creditors with model language to comply with the disclosure requirement, and conforming changes would be made to account-opening model forms and samples, if the revision to § 226.6(b)(4)(vii) is adopted.

As discussed in the section-by-section analysis to § 226.5a(b)(16), elsewhere in today's **Federal Register**, the Board proposes rules under Regulation AA regarding card issuers' ability to finance certain fee amounts, and when start-up fees may be collected during the first twelve months after the account is opened. If the approach under Regulation AA is adopted as proposed, appropriate revisions will be made to ensure consistency among the regulatory requirements and to facilitate compliance when the Board adopts revisions to the Regulation Z rules for open-end (not home-secured) credit.

Section 226.7 Periodic Statements

7(b) Rules Affecting Open-End (Not Home-Secured) Plans

7(b)(11) Due Date; Late Payment Costs

In the June 2007 Proposal, the Board added § 226.7(b)(11) to implement TILA amendments in the Bankruptcy Act that require creditors that charge a late-payment fee to disclose on the periodic statement (1) the payment due date or, if different, the earliest date on which the late-payment fee may be charged, and (2) the amount of the late-payment fee. 15 U.S.C. 1637(b)(12). The Board also proposed to require that creditors disclose on the periodic statement any cut-off hour for receiving payments closely proximate to each reference of the due date, if the cut-off hour is before 5 p.m. on the due date. If the cut-off hours prior to 5 p.m. differ depending on the method of payment (such as by check or via the Internet), creditors would have been required to state the earliest time without specifying the method to which the cut-off hour applies, to avoid information overload. *See* proposed § 226.7(b)(11)(i)(B), § 226.7(b)(13). Under the June 2007 Proposal, cut-off hours of 5 p.m. or later could continue to be disclosed under the existing rule (including on the reverse side of periodic statements). 72 FR 32948, 33053, June 14, 2007.

Comments were divided on the proposed cut-off hour disclosure for periodic statements. Industry representatives that have a cut-off hour earlier than 5 p.m. for an infrequently used payment means expressed concern about consumer confusion if the more commonly used payment method is later than 5 p.m. Consumer groups urged the Board also to adopt a ''postmark'' date on which consumers could rely to demonstrate their payment was mailed sufficiently in advance for the payment to be timely received, or to eliminate cut-off hours altogether. Both consumer groups and industry representatives asked the Board to clarify what time zone by which the cut-off hour should be measured.

As discussed in the section-by-section analysis to § 226.10(b), the Board proposes that to comply with the requirement in § 226.10 to provide reasonable payment instructions, a creditor's cut-off hour for receiving payments *by mail* can be no earlier than 5 p.m. in the location where the creditor has designated the payment to be sent. Comment is requested on whether there continues to be a need for creditors to disclose cut-off hours before 5 p.m. for payments made by telephone or electronically.

Section 226.9 Subsequent Disclosure Requirements

9(b) Disclosures for Supplemental Credit Access Devices and Additional Features

Section 226.9(b) currently requires certain disclosures when a creditor adds a credit device or feature to an existing

open-end plan. When a creditor adds a credit feature or delivers a credit device to the consumer within 30 days of mailing or delivering the account-opening disclosures under current § 226.6(a), and the device or feature is subject to the same finance charge terms previously disclosed, the creditor is not required to provide additional disclosures. If the credit feature or credit device is added more than 30 days after mailing or delivering the account-opening disclosures, and is subject to the same finance charge terms previously disclosed in the account-opening agreement, the creditor must disclose that the feature or device is for use in obtaining credit under the terms previously disclosed. However, if the added credit device or feature has finance charge terms that differ from the disclosures previously given at account opening, then disclosure of the differing terms must be given before the consumer uses the new feature or device.

The June 2007 Proposal addressed disclosures that must be provided with checks that access credit card accounts (that are not home-secured). A new § 226.9(b)(3) would require certain information to be disclosed each time that such checks are mailed to a consumer, for checks mailed more than 30 days following the delivery of the account-opening disclosures. Specifically, the June 2007 Proposal would require that the following key terms be disclosed on the front of the page containing the checks: (1) Any discounted initial rate, and when that rate will expire, if applicable; (2) the type of rate that will apply to the checks after expiration of any discounted initial rate (such as whether the purchase or cash advance rate applies) and the applicable APR; (3) any transaction fees applicable to the checks; and (4) whether a grace period applies to the checks, and if one does not apply, a statement that interest will be charged immediately. Proposed § 226.9(b)(3) would require that these key terms be disclosed in a tabular format substantially similar to Sample G–19 in Appendix G. 72 FR 32948, 33056, 33082, June 14, 2007.

The Board proposes to add a disclosure to the summary table required by § 226.9(b)(3) in the June 2007 Proposal, pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). The additional disclosure is set forth in proposed § 226.9(b)(3)(C) and would require additional information regarding the expiration date of any offer of a discounted initial rate. If a discounted initial rate applies to the checks, the creditor would be required to disclose any date by which the consumer must use the checks in order to receive the discounted initial rate. If the creditor will honor the checks if they are used after the disclosed date but will apply to the advance an APR other than the discounted initial rate, the creditor must disclose that fact and the type of APR that will apply under those circumstances.

The Board believes that it is important that consumers receive clear disclosures regarding the expiration date of any offer of a promotional rate that would be applicable to checks that access a credit card account. This disclosure is particularly important if the creditor will honor the checks, but at a higher interest rate, after the expiration date of the promotional rate offer. A consumer who is unaware of the expiration date for the offer of a promotional rate may use the check with the expectation of receiving the promotional rate, only to later discover, after he or she is contractually bound on the advance, that the check was subject to a higher interest rate than expected. This disclosure is designed to enable a consumer to better evaluate what the cost of using the check will be, and to make an informed decision whether to use the check or an alternative source of credit.

In consumer testing conducted for the Board in March 2008, the Board tested a disclosure of the date by which a consumer must use checks that access a credit card account in order to qualify for a discounted initial rate offer. This disclosure was labeled ''Use by Date'' and stated ''You must use this check by 4/1/08 for the promotional APR to apply. If you use the check after that date, we may still honor the check but you will not receive the promotional APR. Instead, the standard APR for Cash Advances will apply.'' The responses given by testing participants indicated that they generally did not understand prior to the testing that there may be a use-by date applicable to an offer of a promotional rate for a check that accesses a credit card account. However, the participants that read the tested language understood that the standard cash advance rate, not the promotional rate, would apply if the check was used after April 1, 2008. Thus, the Board believes that this disclosure may improve consumer understanding of the terms applicable to these checks. In addition to proposed § 226.9(b)(3)(C), the Board also proposes a corresponding change to Sample G–19 to include the language that was tested in March 2008.

Paragraph 9(b)(3)(E)

Section 226.9(b)(3)(D) in the June 2007 Proposal required creditors offering access checks to disclose, among other information, whether or not a period exists in which consumers may avoid the imposition of finance charges and, if so, the length of the period. 72 FR 32948, 33056, June 14, 2007. As discussed in the section-by-section analysis to § 226.5(a)(2), § 226.5a(b)(5) and § 226.6(b)(4)(iv), the Board is revising provisions relating to the description of grace periods. Section 226.9(b)(3)(E), as renumbered in the May 2008 Proposal, is revised and comment 9(b)(3)(E)–1 is added, consistent with the proposed revisions to § 226.5a(b)(5) and § 226.6(b)(4)(iv) and related commentary. The Board also proposes to revise Sample G–19 for conformity with the proposed revisions.

Finally, the Board also is deleting from § 226.9(b)(3)(A), as proposed in June 2007, the requirement that a creditor use the term ''introductory'' or ''intro'' in immediate proximity to the listing of the discounted initial rate for checks that access a credit card account. This change is proposed for consistency with proposed revisions to § 226.16(e)(2), which is discussed in more detail in the section-by-section analysis below and creates a new definition of ''promotional rate'' to be used to describe offers of discounted initial interest rates that are made in connection with existing accounts. The Board is aware that checks that access a credit card account are provided to consumers that already have an existing credit card account, so the term ''promotional rate'' may be a more appropriate term than '' introductory rate'' for describing any discounted initial rate applicable to such checks. Sample G–19 is revised accordingly.

9(c) Change in Terms

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

9(c)(2)(ii) Charges Not Covered by § 226.6(b)(4)

In the June 2007 Proposal, the Board proposed § 226.9(c)(2)(ii), which stated that if a creditor increases a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(1) but not covered by § 226.6(b)(4), the creditor may provide notice to the consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge, and may provide the notice orally or in writing. 72 FR 32948, 33056, June 14, 2007. The Board proposes to amend comment 9(c)(2)(ii)–1 to reflect the permissibility of electronic notice and to clarify (by a cross-reference to

comment 5(a)(1)(ii)(A)–1) that electronic notice may be provided without regard to the notice and consent requirements of the E-Sign Act when a consumer requests a service in electronic form.

9(c)(2)(iii) Disclosure Requirements

As discussed elsewhere in today's **Federal Register**, subject to certain exceptions, the Board proposes to prohibit increasing the APR applicable to balances outstanding at the end of the fourteenth day after a notice disclosing the change in the APR is provided to the consumer. A creditor would, however, be permitted to apply a rate increase to such outstanding balances when the rate increase is due to: the operation of an index or formula; the expiration of a promotional rate; the loss of a promotional rate due to one or more events specified in the account agreement, provided that the bank increases the rate to the rate that would have applied after expiration of the promotional rate; or the consumer's failure to make the required minimum periodic payment within 30 days from the due date for that payment.

For consistency with the proposed substantive restrictions regarding the application of increased APRs to pre-existing balances, the Board proposes a new § 226.9(c)(2)(iii)(A)(*7*) to clarify that a creditor that provides a change in terms notice in connection with an increase in an APR must disclose the balances to which the increased rate will be applied, pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). If the creditor is subject to restrictions on rate increases to existing balances proposed elsewhere in today's **Federal Register** or other applicable law, the creditor would also identify the balances to which the current rate will continue to apply.

The Board believes that it is important for consumers to be clearly notified when the current rate, rather than the increased rate, will continue to apply to balances already outstanding on their accounts. This disclosure could assist consumers to make better-informed decisions regarding usage of their accounts. For example, if a consumer erroneously believed that a rate increase would be applicable to the outstanding balance on the account, that consumer might seek an alternative source of credit with which to pay off the outstanding balance, even if the cost of such alternative credit may be higher than the rate that is in fact applicable to such balance.

The Board proposes to revise Sample G–20 in Appendix G in order to include a disclosure that would comply with the new proposed requirement. Comment 9(c)(2)(iii)(A)–8, which discusses the content of Sample G–20, is revised accordingly.

9(g) Increase in Rates Due to Delinquency or Default as a Penalty

In the June 2007 Proposal, the Board proposed to add a new section 226.9(g), which would require that a creditor provide a consumer with 45 days' advance notice when a rate is increased due to the consumer's delinquency or default, or if a rate is increased as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit. 72 FR 32948, 33058, June 14, 2007. As discussed elsewhere in today's **Federal Register**, the Board also proposes to prohibit the application of a penalty rate to balances that are outstanding at the end of the fourteenth day after a notice disclosing the change in the APR is provided to the consumer, except in the event that a consumer fails to make the required minimum periodic payment within 30 days from the due date for that payment.

The Board proposes to add new illustrations to comment 9(g)–1, to provide guidance on the impact of substantive protections regarding the application of increased APRs to pre-existing balances on the timing requirements of 45 days' advance notice before delinquency or default rates or penalty rates may be imposed.

The Board also proposes to revise § 226.9(g)(3)(i)(D) of the June 2007 Proposal, which required creditors to disclose the balances to which a delinquency or default rate or penalty rate would be applied, and a new § 226.9(g)(3)(i)(E), for conformity with the proposed substantive restriction regarding increased APRs on pre-existing balances. Section 9(g)(3)(i)(D) would be revised to require creditors subject to the proposed substantive restrictions to disclose how balances may be affected if the consumer fails make the required minimum periodic payment within 30 days from the due date for that payment. New § 226.9(g)(3)(i)(E) would require a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment. Conforming changes are also made to Sample G–21 in Appendix G.

Section 226.10 Prompt Crediting of Payments

Section 226.10, which implements TILA Section 164, generally requires a creditor to credit to a consumer's account a payment that conforms to the creditor's instructions (also known as a conforming payment) as of the date of receipt, except when a delay in crediting the account will not result in a finance or other charge. 15 U.S.C. 1666c; § 226.10(a). Section 226.10 also requires a creditor that accepts a non-conforming payment to credit the payment within five days of receipt. *See* § 226.10(b). The Board has previously interpreted § 226.10 to permit creditors to specify cut-off times indicating the time when a payment is due, provided that the requirements for making payments are reasonable, to allow most consumers to make conforming payments without difficulty. *See* comments 10(b)–1 and –2. Pursuant to § 226.10(b) and comment 10(b)–1, if a creditor imposes a cut-off time, it currently must be disclosed on the periodic statement; many creditors put the cut-off time on the back of statements.

10(b) Specific Requirements for Payments

Reasonable requirements for cut-off times. In the June 2007 Proposal, the Board sought to address concerns that cut-off times may effectively result in a due date that is one day earlier in practice than the due date disclosed. The Board did not propose to require a minimum cut-off time. Rather, the Board proposed a disclosure-based approach, which would have created a new § 226.7(b)(11) to require that for open-end (not home-secured) plans, creditors must disclose the earliest of their cut-off times for payments in close proximity to the due date on the front page of the periodic statement, if that earliest cut-off time is before 5 p.m. on the due date. In recognition of the fact that creditors may have different cut-off times depending on the type of payment (e.g., mail, Internet, or telephone), the Board's proposal would have required that creditors disclose only the earliest cut-off time, if earlier than 5 p.m. on the due date. 72 FR 32948, 33053, 33054, June 14, 2007.

Although some consumers supported the proposed cut-off time disclosure, other consumers and consumer groups thought that the proposed disclosure would provide only a minimal benefit to consumers. These commenters recommended that the Board consider other approaches to more effectively address cut-off times. Consumer groups recommended that the Board adopt a postmark rule, under which the timeliness of a consumer's payment would be evaluated based on the date on which the payment was postmarked.

Some consumers commented that cut-off times are unfair and should be abolished, while other consumers suggested that the Board establish minimum cut-off times, for example, 4:00 p.m. in the time zone in which the billing center is located.

Industry commenters expressed concern that the proposed disclosure would prove confusing to consumers. They noted that many creditors vary their cut-off times by payment channel and that disclosure of only the earliest cut-off hour would be inaccurate and misleading. They suggested that, if the Board retains this requirement, a creditor should be permitted to identify to which payment method the cut-off time relates, disclose the cut-off hours for all payment channels, or to disclose the cut-off hour for the payment method used by the consumer, if known. Industry commenters also asked that the Board relax the location requirement for the cut-off time disclosure on the periodic statement.

Both consumer groups and industry commenters urged the Board to clarify which time zone should be considered when determining if the cut-off time is prior to 5 p.m.

In light of feedback received on the June 2007 Proposal, the Board proposes to address cut-off times for mailed payments by providing guidance as to the types of requirements that would be reasonable for creditors to impose for payment received by mail. In part, the Board proposed to move guidance currently contained in the commentary to the regulation. Currently, comment 10(b)–1 provides examples of specific payment requirements creditors may impose, and comment 10(b)–2 states that payment requirements must be reasonable, in particular that it should not be difficult for most consumers to make conforming payments. The Board proposes to move the substance of comments 10(b)–1 and 10(b)–2 to §§ 226.10(b)(1) and (2) of the regulation. Under the May 2008 Proposal, § 226.10(b)(1) would state the general rule, namely that a creditor may specify reasonable requirements that enable most consumers to make conforming payments. The Board would expand upon the example in current comment 10(b)–1(i)(B) in new § 226.10(b)(2)(ii), which would state that it would not be reasonable for a creditor to set a cut-off time for payments by mail that is earlier than 5 p.m. at the location specified by the creditor for receipt of such payments.

The language in current comment 10(b)–2 stating that it should not be difficult for most consumers to make conforming payments would not be included in the proposed regulatory text. The Board believes that this language is unnecessary and that in substance is duplicative of the requirement that any payment requirements be reasonable and enable most consumers to make conforming payments.

The Board believes that it is important that the requirements that a creditor sets for payments be reasonable, so that most consumers will be able to make payments that conform with those requirements. If the creditor's requirements make it unduly burdensome for a consumer to make a conforming payment, then a consumer may become subject to the fees and other penalties associated with late payments, without having a reasonable opportunity to avoid those adverse consequences. With regard to cut-off times, any cut-off time specified by a creditor on the due date for payments should afford consumers a reasonable opportunity to make payment on that date.

At the same time, the Board is mindful of the burden that specifying a particular cut-off time or times by regulation could have on creditors. Each creditor may have different internal processes and systems, and may work with different vendors and service providers, so a one-size-fits-all approach may not be feasible. As a result, while the proposed regulation would contain one example of an unreasonable cut-off time for payments made by mail, it would not impose a single cut-off time on all creditors for all methods of payment. The Board requests comment on the operational burden that the proposed rule would impose on creditors.

The Board has not proposed a postmark rule as suggested by consumer group commenters. In part, this is because the Board proposes elsewhere in today's **Federal Register** a rule that would require a creditor to provide consumers with a reasonable time to make payments. The Board believes this substantive protection effectively addresses the concerns expressed by consumer groups regarding insufficient time to make payments. The Board also believes that it would be difficult for consumers to retain proof of when their payments were postmarked, in order to challenge the prompt crediting of payments under such a rule. A consumer generally is not given proof of the postmark date at the time that he or she mails a payment; to effectively retain evidence of the postmark date, a consumer would in many cases need to pay extra postage charges in order to receive a proof of mailing. In addition, a mailed payment may not have a legible postmark date when it reaches the creditor or creditor's service provider. Finally, the Board believes there would be significant operational costs and burdens associated with capturing and recording the postmark dates for payments.

Under the June 2007 Proposal, § 226.10(b) contained a cross-reference to § 226.7(b)(11), regarding the disclosure of cut-off hours on periodic statements. In the section-by-section analysis to § 226.7(b)(11), the Board solicits comment on whether disclosure of cut-off hours near the due date for payment methods other than mail (e.g., telephone or internet) should be retained. If the Board adopts revisions to § 226.7 that do not require disclosure of any cut-off hour closely proximate to the due date, the proposed cross-reference would be withdrawn.

June 2007 proposed revisions to comment 10(b)–2, regarding payments made via a creditor's Web site, remain unchanged.

10(d) Crediting of Payments When Creditor Does Not Receive or Accept Payments on Due Date

Holiday and weekend due dates. The Board's June 2007 Proposal did not address the practice of setting due dates on dates on which a creditor does not accept payments, such as weekends or holidays. A weekend or holiday due date might occur, for example, if a creditor sets its payment due date on the same day (the 25th, for example) of each month. While in most months the 25th would fall on a business day, in other months the 25th might be a weekend day or holiday, due to fluctuations in the calendar. However, the Board received a number of comments from consumer groups, individual consumers, and a United States Senator criticizing weekend or holiday due dates. The comment letters expressed concern that a consumer whose due date falls on a date on which the creditor does not accept payments must pay one or several days early in order to avoid the imposition of fees or other penalties that are associated with a late payment. Comment letters from consumers indicated that, for many consumers, weekend and holiday due dates are a common occurrence. Some of these commenters suggested that the Board mandate an automatic grace period until the next business day for any such weekend or holiday due dates. Other commenters recommended that the Board prohibit weekend or holiday due dates.

In response to these comments, the Board proposes a new § 226.10(d) that

would require a creditor to treat a payment received by mail the next business day as timely, if the due date for the payment is a day on which the creditor does not receive or accept payment by mail, such a day on which the U.S. Postal Service does not deliver mail. Thus, a consumer whose due date falls on a Sunday on which a creditor does not accept payment by mail would not be subject to late payment fees or increases in the interest rate applicable to the account due to late payment if the consumer's payment were received by mail on the next day that the creditor does accept payment by mail. The Board proposes this rule using its authority to regulate the prompt posting of payments under TILA section 164, which states that ''[p]ayments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board.'' 15 U.S.C. 1666c.

The Board acknowledges that this proposal may require creditors to modify their systems to ensure that payment due dates do not fall on dates when they do not receive mail or to backdate payments or waive fees and interest, which would impose some degree of burden on creditors. The Board solicits comment on the extent of the burden associated with any system modification that would be required to comply with the proposed rule.

The proposed rule in § 226.10(d) would be limited to payments made by mail. The Board is particularly concerned about payments by mail because the consumer's time to pay, as a practical matter, is the most limited for those payments, since a consumer paying by mail must account for the time that it takes the payment to reach the creditor. The Board solicits comment as to whether this rule also should address payments made by other means, such as telephone payments or payments made via the internet.

The Board notes that it also received a large number of comment letters from consumers who expressed concern more generally that the amount of time consumers are given to pay their bills is continually decreasing. The Board believes that its proposal under Regulation Z regarding weekend or holiday due dates will complement the Board's proposal to require banks to provide a consumer with a reasonable amount of time to make payments.

Section 226.12 Special Credit Card Provisions

12(a) Issuance of Credit Card

TILA Section 132, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. 15 U.S.C. 1642.

The Board has been asked over the years to provide guidance on actions card issuers may take to ''substitute'' on an unsolicited basis a new card for an accepted credit card. *See* Comment 12(a)(2)–2. For example, the Board has provided guidance that card issuers may, on an unsolicited basis, substitute a new card that reflects a change in the card issuer's name, or that can be used to access new account features such as when the card originally accepted could be used only for purchases and the creditor substitutes a new card that can also be used to obtain cash advances.

The Board has also provided guidance on limitations on an issuer's ability to issue a new card as a substitute for an accepted card. For example, if the originally accepted card is honored only at Merchant A, the issuer cannot substitute a new card that is honored only at Merchant B. To be a permissible substitution in this example, the new card must continue to be honored by Merchant A, even though the card may also be used at Merchant B or other merchants. Card issuers rely on this interpretation to substitute on an unsolicited basis a general-purpose bank card that is honored at many merchants for a card originally honored by a single merchant.

Over the years, consumers have expressed their confusion, and in some cases frustration, when they receive on an unsolicited basis a new general-purpose card (which may be honored at multiple merchants) that is sent in substitution for a card originally honored by a single merchant. They express concern about potential identity theft when cards are sent out without warning or notice, and frustration about the issuer's unilateral decision to change fundamentally the potential uses of the card from that originally requested.

The June 2007 Proposal did not propose changes to the Board's current guidance on issuing credit cards in renewal of or substitution for an accepted credit card. Consumer groups urged the Board to limit the ability of card issuers to issue on an unsolicited basis a new card for an accepted card, for example, if the credit features differ greatly or if the accepted card has not been used for an extended period of time. Industry commenters, on the other hand, generally supported the Board's proposal to retain the existing guidance on permissible renewals and substitutions.

The Board has become aware of issuances in which general-purpose cards were sent on an unsolicited basis as a substitute for the merchant card where the accounts for the originally accepted card had not been active with the merchant for a long period of time. This practice is permitted under current rules. Some consumers who responded to the June 2007 Proposal urged the Board to limit issuers' ability to send cards without consent or warning in these circumstances, due to concerns of cardholder security and identity theft.

The Board proposes a narrow response to address concerns about the unsolicited issuance of new cards for accepted cards on accounts that have been inactive for a long period of time. Under the proposed revision to comment 12(a)(2)–2.v., a card issuer that proposes to change the merchant base that will honor the card, such as from a card that is honored by a single merchant to a general-purpose card, may not properly substitute the new card for the accepted card without a specific request or application if the account has been inactive for a 24 month period preceding the issuance of the substitute card. Changing the merchant base to enable the card holder to use an accepted card at a new affiliate of the merchant is not affected by the proposal. Under the proposal, an account is considered inactive if no credit has been extended and the account has no outstanding balance. *See* proposed § 226.11(b)(2), which implements TILA amendments in the Bankruptcy Act affecting accounts that are ''inactive'' for three consecutive months. 72 FR 32948, 33058, June 14, 2007. The Board requests comment on whether a longer time period, such as 36 months, would be more appropriate.

The proposal would not affect the renewal or substitution of cards by the original card issuer when, for example, a consumer opens a credit card account with a merchant to take advantage of a discounted purchase price or a low introductory rate, and does not use the card for a number of years. In that case, the issuer could send a new card on an unsolicited basis in renewal of or substitution for the originally accepted card, even if the new card could be used to obtain additional credit features with the retailer. Nor does the proposal limit

creditors' ability to send a general-purpose card in place of an inactive retail card if the consumer specifically requests or applies for the general-purpose card. The proposal would, however, address consumers' confusion when a card issued by a creditor with whom the consumer may have no previous relationship arrives in the mail on an unsolicited basis, as a substitute for a retail card account the consumer has not used in some time.

12(b) Liability of Cardholder for Unauthorized Use

TILA and Regulation Z provide protections to consumers against losses due to unauthorized transactions on open-end plans. *See* TILA Section 133; 15 U.S.C. 1643, § 226.12(b); TILA Section 161(b)(1); 15 U.S.C. 1666(b)(1), § 226.13(a)(1). Comment 12(b)–2 and –3 address a card issuer's rights and responsibilities in responding to a claim of unauthorized use under § 226.12. Comment 12(b)–2 clarifies that a card issuer is not required to impose any liability. Comment 12(b)–3 clarifies that the card issuer wishing to impose liability must investigate claims in a reasonable manner and provides guidance on conducting an investigation of a claim. As discussed in the section-by-section analysis to § 226.13(f), which requires creditors to conduct a reasonable investigation of an allegation of a billing error, the Board proposes to include guidance currently provided in the context of a claim of unauthorized transactions under § 226.12(b) in proposed comment 13(f)–3.

Comment 12(b)–3 provides that a card issuer may reasonably request the consumer's cooperation. A card issuer may not, however, automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request. The Board proposes to add, by way of example, that such requests would include any card issuer requirement that the consumer submit a signed statement or affidavit or file a police report. *See* 59 FR 64351, 64352, December 14, 1994; 60 FR 16771, 16774, April 3, 1995. The Board is concerned that such card issuer requests could cause a chilling effect on a consumer's ability to assert his or her right to avoid liability for an unauthorized transaction. However, if the card issuer otherwise has no knowledge of facts confirming the billing error, comment 12(b)–3 states that the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation.

Section 226.13 Billing Error Resolution

13(f) Procedures if Different Billing Error or No Billing Error Occurred

Section 226.13(f) sets forth procedures for resolving billing error claims if the creditor determines that no error or a different error occurred. A creditor must first conduct a reasonable investigation before the creditor may deny a consumer's claim or conclude that the billing error occurred differently than as asserted by the consumer. *See* TILA Section 161(a)(3)(B)(ii); 15 U.S.C. 1666(a)(3)(B)(ii). Footnote 31 was proposed to be deleted as unnecessary, in light of the general obligation under § 226.13(f). The footnote provides that to resolve allegations of nondelivery of property or services, creditors must determine whether property or services were actually delivered, mailed, or sent as agreed. To resolve allegations of incorrect information on a periodic statement due to an incorrect report, creditors must determine that the information was correct. *See* § 226.13(f), footnote 31.

Consumer advocates urged the Board to retain the substance of footnote 31. They noted that the current guidance in footnote 31 requires issuers to take concrete steps for resolving claims of nondelivery such as obtaining delivery records or contacting merchants, to consumers' detriment. Without this guidance, advocates expressed concern that issuers would conduct more perfunctory investigations as, in their view, has been the case by some creditors applying the same ''reasonable investigation'' standard for investigations into allegations of errors on credit reports under the Fair Credit Reporting Act. 15 U.S.C. 1681 *et seq.* In light of the commenters' concerns, the Board proposes to reinstate the substance of footnote 31 in a new comment 13(f)–3.

TILA and Regulation Z provide protections to consumers against losses due to unauthorized transactions on open-end plans. *See* TILA Section 133; 15 U.S.C. 1643, § 226.12(b); TILA Section 161(b)(1); 15 U.S.C. 1666(b)(1), § 226.13(a)(1). In reviewing its guidance on conducting a reasonable investigation under § 226.13(f), the Board notes that card issuers have express guidance on conducting a reasonable investigation of a claim of unauthorized transaction under § 226.12(b) but there is no similar guidance for creditors under § 226.13. *See* comment 12(b)–3. To harmonize the standards under the two provisions and address inquiries Board staff has received over the years on this issue, the Board proposes to include applicable guidance currently provided in the context of a claim of unauthorized transactions under § 226.12(b) in proposed comment 13(f)–3.

In contrast to comment 12(b)–3, which applies to the unauthorized use of a credit card, the corresponding guidance in comment 13(f)–3 would apply to all creditors offering an open-end plan. The comment would provide that in conducting an investigation of an allegation of a billing error, a creditor may reasonably request the consumer's cooperation. A creditor may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request. Consistent with the proposed revision to comment 12(b)–3, discussed in the section-by-section analysis to § 226.12(b), the proposed comment further states, by way of example, that such requests include any creditor requirement that the consumer submit a signed statement or affidavit or file a police report. *See* 59 FR 64351, 64352, December 14, 1994; 60 FR 16771, 16774, April 3, 1995. The Board is concerned that such creditor requests could cause a chilling effect on a consumer's ability to assert his or her billing error rights. However, consistent with the guidance in comment 12(b)–3, if the creditor otherwise has no knowledge of facts confirming the billing error, comment 13(f)–3 would provide that the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the creditor reasonably to terminate the investigation. The procedures involved in investigating alleged billing errors may differ, as illustrated in the proposed comment.

Section 226.14 Determination of Annual Percentage Rate

TILA Section 127(b)(6) requires disclosure of an APR calculated as the quotient of the total finance charge for the period to which the charge relates divided by the amount on which the finance charge is based, multiplied by the number of periods in the year. 15 U.S.C. 1637(b)(6). This rate has come to be known as the ''historical APR'' or ''effective APR.'' Section 226.14(c) contains the rules for determining the effective APR. Comment 14(c)–10 provides guidance on how to determine the effective APR when the finance charges imposed during the billing cycle relate to activity in a prior cycle, such as for adjustments relating to error resolution, when transactions occur late in a billing cycle and are impracticable to post until the following billing cycle, or when a consumer fails to pay a purchase balance under a deferred

interest feature by the payment due date and interest is imposed from the date of purchase.

In the June 2007 Proposal, the Board proposed two alternative approaches for disclosing an effective APR. 72 FR 32948, 33052, June 14, 2007. In discussing the proposal, the Board noted that there has been a longstanding controversy about the extent to which the effective APR disclosure requirement advances TILA's purposes to provide consumers with information about the cost of credit that helps consumers compare credit costs and make informed credit decisions, and to strengthen competition in the consumer credit markets, or undermines them. 15 U.S.C. 1601(a). The first alternative was designed to improve the disclosure and consumer understanding and reduce creditor uncertainty about the effective APR computation. The second approach would eliminate the requirement to disclose the effective APR. 72 FR 32948, 32998, 32999, June 14, 2007. Comments to the June 2007 were sharply divided on the matter.

Elsewhere in today's **Federal Register**, the Board proposes to prohibit banks from computing finance charges based on balances for days in billing cycles that precede the most recent billing cycle (so called two-cycle billing method). Interest adjustments due to error resolutions or in connection with deferred interest plans are not intended to be affected by the substantive ban. If, after additional consumer testing and analysis of the comments received, the Board determines to retain the effective APR disclosure requirement and the substantive prohibition on computing finance charges based on previous billing cycles is adopted, the Board will conform comment 14(c)–10 to the extent appropriate.

Section 226.16 Advertising

16(e) Promotional Rates

In the June 2007 Proposal, the Board proposed to implement TILA Section 127(c)(6), as added by Section 1303(a) of the Bankruptcy Act, and TILA Section 127(c)(7), as added by Section 1304(a) of the Bankruptcy Act, in § 226.16(e). TILA Section 127(c)(6) requires that if a credit card issuer states an introductory rate in applications, solicitations, and all accompanying promotional materials, the issuer must use the term ''introductory'' clearly and conspicuously in immediate proximity to each mention of the introductory rate. 15 U.S.C. 1637(c)(6). In addition, TILA Section 127(c)(6) requires credit card issuers to disclose, in a prominent location closely proximate to the first mention of the introductory rate, other than the listing of the rate in the table required for credit card applications and solicitations, the time period when the introductory rate expires and the rate that will apply after the introductory rate expires. TILA Section 127(c)(7) further applies these requirements to ''any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service.'' 15 U.S.C. 1637(c)(7).

In implementing these sections of the Bankruptcy Act, the Board proposed in the June 2007 Proposal to expand the types of disclosures to which these rules would apply. *See* proposed § 226.5a(a)(2)(v), 72 FR 32948, 33045, June 14, 2007. The Board also proposed to extend these requirements for the presentation of introductory rates to other written or electronic advertisements for open-end credit plans that may not accompany an application or solicitation (other than advertisements of HELOCs subject to § 226.5b, which were addressed in the Board's proposed rule regarding new regulatory protections for consumers in the residential mortgage market, 73 FR 1672, 1721, January 9, 2008). 72 FR 32948, 33064, June 14, 2007.

Several industry commenters stated that the Board's proposed use of the term ''introductory rate'' and required use of the word ''introductory'' or ''intro'' was overly broad in some cases. In particular, industry commenters were critical of the use of these terms as applied to special rates offered to consumers with an existing account. These commenters noted that in the marketplace, the phrase ''introductory rates'' refers to promotional rates offered in connection with the opening of a new account. In contrast, special rates offered by card issuers to consumers with existing accounts are typically called ''promotional rates.'' These commenters believed that consumers would be confused by the word ''introductory'' or ''intro'' associated with a special rate offered on a consumer's already-opened account.

In light of these concerns, the Board proposes to revise § 226.16(e)(2) as proposed in June 2007, to define separately ''promotional'' and ''introductory'' rates. For consistency, the Board proposes the same definition of promotional rates in connection with proposed substantive protections under the FTC Act, published elsewhere in today's **Federal Register**. As a result of these revisions, the requirement to state the term ''introductory'' under § 226.16(e)(3) of the June 2007 Proposal will be limited to promotional rates that are considered ''introductory rates'' under the revised § 226.16(e)(2). Conforming revisions to § 226.16(e)(4) and to commentary provisions to § 226.16(e) are also proposed. If revisions to § 226.16(e)(2) are adopted as proposed, conforming changes will also be made throughout Regulation Z and associated commentary to be consistent with these new definitions when the Board adopts revisions to the Regulation Z rules for open-end (not home-secured) plans.

16(e)(1) Scope

As discussed in the June 2007 Proposal, the Bankruptcy Act amendments regarding ''introductory rates'' apply to direct-mail applications and solicitations, and accompanying promotional materials, as well as Internet-based credit card solicitations. The Board proposed to extend these requirements not only to publicly available applications and solicitations to open a credit card account, and all accompanying materials, but also to electronic applications. *See* proposed § 226.5a(a)(2)(v), 72 FR 32948, 33045, June 14, 2007. In addition, in the interest of consistency and to promote the informed use of credit, the Board proposed to extend the requirements of § 226.16(e) to other written and electronic advertisements for open-end credit plans that may not accompany an application or solicitation, other than advertisements of HELOCs subject to § 226.5(b). 72 FR 32948, 33064, June 14, 2007.

The Board solicits comment on whether all or any of the information required under § 226.16(e) to be provided with the disclosure of a promotional rate would be helpful in advertisements that are not in written or electronic form such as in telephone, radio, or television advertisements. Furthermore, the current proposed guidance on complying with § 226.16(e) is directed towards written and electronic advertisements. If these requirements are extended to advertisements that are not in written or electronic form, additional guidance regarding how advertisers may comply with the requirements may be needed, for example, to apply proximity requirements in an oral context. Therefore, the Board also solicits comment on appropriate additional guidance if the requirements are extended to advertisements that are not in written or electronic form.

16(e)(2) Definitions

In the June 2007 Proposal, the Board proposed to define the term ''introductory rate'' as any rate of

interest applicable to an open-end plan for an introductory period if that rate is less than the advertised APR that will apply at the end of the introductory period. 72 FR 32948, 33064, June 14, 2007. As discussed above, since this proposed definition for ''introductory rate'' would have encompassed special rates that may be offered to consumers with existing accounts, the Board proposes to modify the definition and to refer to these rates as ''promotional rates.'' A new definition for ''introductory rate'' is also proposed, which would define them as promotional rates that are offered in connection with the opening of an account.

Specifically, the Board would modify the June 2007 proposed definition of ''introductory rate'' for the new definition of ''promotional rate'' to apply more generally to any APR applicable to one or more balances or transactions on a consumer credit card account for a specified period of time that is lower than the APR that will be in effect at the end of that period. In addition to removing the reference to ''introductory period,'' the new proposed definition of ''promotional rate'' also recognizes that special rate offers may not apply to the entire account but may only apply to a specific balance or transaction. Furthermore, the new definition removes the term ''advertised,'' which commenters asserted would imply that the APR in effect after the introductory period had to have been ''advertised'' before the requirements under proposed §§ 226.16(e)(3) and (4) would have applied. This was not the Board's intention. The Board's proposed use of the term ''advertised'' in the definition was intended to refer to the advertising requirements regarding variable rates and the accuracy requirements for such rates. The Board will instead address these requirements in a new comment 16(e)–1.

New proposed comment 16(e)–1 provides that if a variable rate will apply at the end of the promotional period, the promotional rate must be compared to the APR that would have been advertised had such rate applied instead of the promotional rate. In direct-mail credit card applications and solicitations (and accompanying promotional materials), this rate is one that must have been in effect within 60 days before the date of mailing, as required under proposed § 226.5a(c)(2)(i) (and currently under § 226.5a(b)(1)(ii)). For variable-rate disclosures provided by electronic communication, this rate is one that was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address, or within the last 30 days of making it available at another location such as a card issuer's web site, as required under proposed § 226.5a(c)(2)(ii) (and currently under § 226.5a(b)(1)(iii)).

Elsewhere in today's **Federal Register**, the Board proposes to establish rules regarding the allocation of payments on outstanding credit card balances, and proposes to define ''promotional rate'' as a part of the proposal. Consistent with the 2008 Regulation AA Proposal, the proposed definition under § 226.16(e) would also include any APR applicable to one or more transactions on a consumer credit card account that is lower than the APR that applies to other transactions of the same type. This definition is meant to capture ''life of balance'' offers where a special rate is offered on a particular balance for as long as any portion of that balance exists. A new proposed comment 16(e)–2 provides an illustrative example of a ''life of balance'' offer and is similar to a comment proposed in the 2008 Regulation AA Proposal. The new proposed comment 16(e)–2 will result in the renumbering of current proposed comments 16(e)–2 through 16(e)–5 under the June 2007 Proposal.

The Board also proposes a new definition for ''introductory rate'' to conform more closely to how the term is most commonly used. Proposed § 226.16(e)(2)(ii) would define ''introductory rate'' as a promotional rate that is offered in connection with the opening of an account.

Finally, the Board also proposes to define ''promotional period'' in § 226.16(e)(2)(iii). The definition is similar to one previously proposed for ''introductory period'' in the June 2007 Proposal, which in turn was consistent with the definition in TILA Section 127(c)(6)(D)(ii).

16(e)(3) Stating the Term ''Introductory''

The Board proposed in the June 2007 Proposal to implement TILA Section 127(c)(6)(A), as added by section 1303(a) of the Bankruptcy Act, in § 226.16(e)(3). 72 FR 32948, 33064, June 14, 2007. TILA Section 127(c)(6)(A) requires the term ''introductory'' to be used in immediate proximity to each listing of the temporary APR in the application, solicitation, or promotional materials accompanying such application or solicitation. 15 U.S.C. 1637(c)(6)(A).

Section 226.16(e)(3) remains unchanged from the June 2007 Proposal. The Board notes, however, with the proposed revision to the definition of ''introductory rate'' in § 226.16(e)(2), as discussed above, § 226.16(e)(3) would not apply to all promotional rates. Instead, only promotional rates offered in connection with the opening of an account (i.e., introductory rates) would be covered under § 226.16(e)(3). Proposed comment 16(e)–1 under the June 2007 Proposal has been deleted as unnecessary since the clarification is already included in the regulation.

16(e)(4) Stating the Promotional Period and Post-Promotional Rate

The Board proposed § 226.16(e)(4) in the June 2007 Proposal to implement TILA Section 127(c)(6)(A), as added by Section 1303(a) of the Bankruptcy Act. 72 FR 32948, 33064, June 14, 2007. TILA Section 127(c)(6)(A) requires that the time period in which the introductory period will end and the APR that will apply after the end of the introductory period be listed in a clear and conspicuous manner in a ''prominent location closely proximate to the first listing'' of the introductory APR (excluding disclosures in the application and solicitation table). 15 U.S.C. 1637(c)(6)(A).

As discussed above, the Board proposes changes to the definition of ''introductory rate'' in response to comments received on the June 2007 Proposal. In order to be consistent with the proposed changes to § 226.16(e)(2), the Board proposes to replace the term ''introductory'' with the term ''promotional'' in proposed § 226.16(e)(4). Furthermore, while the Board is broadening the types of rates covered under the term ''promotional rates'' to special life-of-balance-type offers under proposed § 226.16(e)(2)(i)(B), the Board recognizes that requiring disclosure of when the promotional rate will end and the post-promotional rate that will apply after the end of the promotional period would not make sense for these types of offers since the rate in effect for such offers last as long as the balance is in existence. Therefore, the Board proposes that the requirements of § 226.16(e)(4) apply only to promotional rates under § 226.16(e)(2)(i)(A). Similar changes are proposed for proposed comments 16(e)–4, 16(e)–5, and 16(e)–6 (previously proposed comments 16(e)–3, 16(e)–4, and 16(e)–5). 72 FR 32948, 33143, 33144, June 14, 2007.

16(h) Deferred Interest Offers

Many creditors offer deferred interest plans where consumers may avoid paying interest on purchases if the outstanding balance is paid in full by the end of the deferred interest period. If the outstanding balance is not paid in full when the deferred interest period

ends, these deferred interest plans often require the consumer to pay interest that has accrued during the deferred interest period. Moreover, these plans typically begin charging interest accrued from the date of purchase if the consumer defaults on the credit agreement. Some deferred interest plans define default under the card agreement to include failure to make a minimum payment during the deferred interest period while other plans do not. Advertisements often prominently disclose the possibility of financing the purchase of goods or services at no interest.

The Board proposes to use its authority under TILA Section 143(3) to add a new § 226.16(h) to address the Board's concern that the disclosures currently required under Regulation Z may not adequately inform consumers of the terms of deferred interest offers. 15 U.S.C. 1663(3). It is not clear that many of these types of offers would be covered under the requirements regarding promotional rates under proposed § 226.16(e), nor that such requirements would be particularly helpful to consumers in understanding deferred interest offers. Separately, the allocation of payments for deferred interest offers is addressed in the Board's Regulation AA Proposal published elsewhere in today's **Federal Register**.

The Board's proposed rules regarding deferred interest offers would incorporate many of the concepts currently proposed for promotional rates under § 226.16(e). Specifically, the Board proposes to require that the deferred interest period be disclosed in immediate proximity to each statement regarding interest or payments during the deferred interest period. The Board also proposes that certain information about the terms of the deferred interest offer be disclosed in close proximity to the first statement regarding interest or payments during the deferred interest period. These proposals are discussed in more detail below.

Conforming changes have been proposed for proposed comment 16(b)–4, which is current comment 16(b)–9. The Board also notes that guidance in comment 7(b)–1 as proposed in June 2007 (renumbered from current 7–3) refers to ''deferred payment'' transactions rather than ''deferred interest'' offers. 72 FR 32948, 33120, June 14, 2007. The Board will conform terminology when the revisions to the rules for open-end (not home-secured) plans are adopted.

16(h)(1) Scope

Similar to the rules applicable to promotional rates under proposed § 226.16(e), the Board proposes that the rules related to deferred interest offers under proposed § 226.16(h) be applicable to all written and electronic advertisements, including accompanying promotional materials for direct mail applications or solicitations and accompanying promotional materials for publicly available applications or solicitations.

As discussed above in the section-by-section analysis to § 226.16(e)(1), the Board solicits comment on whether the proposed requirements relating to promotional rates should be extended to advertisements that are not in written or electronic form, such as telephone, radio, and television advertisements, and if so, what additional guidance would be appropriate. Similarly, the Board requests comment on whether the proposed requirements for deferred interest offers under § 226.16(h) should be applicable to advertisements that are not in written or electronic form, and if so, what additional guidance would be appropriate to help advertisers comply with these requirements.

16(h)(2) Definitions

The Board proposes to define ''deferred interest'' in new § 226.16(h)(2) as finance charges on balances or transactions that a consumer is not obligated to pay if those balances or transactions are paid in full by a specified date. The term does not, however, include finance charges the creditor allows a consumer to avoid in connection with a recurring grace period. Therefore, an advertisement including information on a recurring grace period that could potentially apply each billing period, would not be subject to the additional disclosure requirements under § 226.16(h). This definition is similar to the definition proposed in the 2008 Regulation AA Proposal, published elsewhere in today's **Federal Register**. In proposed comment 16(h)–1, the Board notes that deferred interest offers do not include offers that allow a consumer to defer payments during a specified time period, but where the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. Furthermore, deferred interest offers do not include 0% APR offers where a consumer is not obligated under any circumstances for interest attributable to the time period the 0% APR was in effect, though such offers may be considered promotional rates under proposed § 226.16(e)(2)(i).

Furthermore, the Board proposes to define the ''deferred interest period'' for purposes of proposed § 226.16(h) as the maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date that the consumer must pay the balance or transaction in full in order to avoid finance charges on such balance or transaction.

16(h)(3) Stating the Deferred Interest Period

The Board proposes to add new § 226.16(h)(3) to require that the deferred interest period or the date by which the consumer must pay the balance or transaction in full to avoid finance charges on such balance or transaction be disclosed clearly and conspicuously in immediate proximity to each statement of ''no interest,'' ''no payments,'' or ''deferred interest'' or similar term regarding interest or payments during the deferred interest period. Proposed comment 16(h)–2 would provide guidance on the meaning of ''immediate proximity'' by providing a safe harbor similar to the one provided in comment 16(e)–3 of this May 2008 Proposal (renumbered from comment 16(e)–2 under the June 2007 Proposal). Therefore, under proposed comment 16(h)–2, if the deferred interest period is disclosed in the same phrase as each statement of ''no interest,'' ''no payments,'' or ''deferred interest'' or similar term regarding interest or payments during the deferred interest period (for example, ''no interest for 12 months,'' ''no payments until December 2008'', or ''12 months of deferred interest''), the deferred interest period or date will be deemed to be in immediate proximity to the statement. Furthermore, the Board proposes that these terms must be equally prominent in order to be considered ''clear and conspicuous'' and proposes to amend comment 16–2 to reflect this.

The proposal will better ensure clear disclosure of the time period in which the consumer has to pay the balance or transaction amount in order to avoid being charged interest by requiring both a proximity and prominence requirement for the disclosure of the deferred interest period or date. This information combined with the information that the Board proposes to require in § 226.16(h)(4), as discussed below, will help consumers to understand these offers when statements of ''no interest,'' ''no payments,'' or other similar terms are used in advertisements.

16(h)(4) Stating the Terms of the Deferred Interest Offer

In order to ensure that consumers notice and fully understand certain terms related to a deferred interest offer, the Board proposes that certain disclosures be required in a prominent location closely proximate to the first listing of a statement of ''no interest,'' ''no payments,'' ''deferred interest,'' or a similar term regarding interest or payments during the deferred interest period. In particular, the Board proposes to require a statement that if the balance or transaction is not paid within the deferred interest period, interest will be charged from the date the consumer became obligated for the balance or transaction. The Board also proposes to require a statement that interest can also be charged from the date the consumer became obligated for the balance or transaction if the account is otherwise in default. If the minimum monthly payments on the account do not fully amortize the balance or transaction within the deferred interest period, the advertisement also must state that making only the minimum monthly payments will not pay off the balance or transaction in time to avoid interest charges. To facilitate compliance with this provision, the Board proposes model language in Sample G–22 in Appendix G.

While most advertisements of deferred interest offers describe the conditions required to take advantage of the offer, the conditions are often placed in a location that is not easily noticed or stated in terms that are not easily understood. The Board believes that by requiring this information to be in a prominent location closely proximate to the first listing of a statement of ''no interest,'' ''no payments,'' ''deferred interest,'' or a similar term regarding interest and payments under the deferred interest period, and by providing model language for this information, disclosure of this information will be more noticeable and understandable to consumers.

Under proposed § 226.16(e)(4), the promotional period and post-promotional rate must be in a prominent location closely proximate to the first listing of the promotional rate, in accordance with the requirements of TILA Section 127(c)(6), as added by Section 1303(a) of the Bankruptcy Act. In the June 2007 Proposal, the Board provided proposed guidance on the meaning of ''prominent location closely proximate'' and ''first listing.'' *See* proposed comment 16(e)–3 and 16(e)–4, 72 FR 32948, 33143, 33144, June 14, 2007, renumbered as 16(e)–4 and 16(e)–5 in this May 2008 Proposal. To be consistent with the guidance proposed for these terms under § 226.16(e)(4), the Board also proposes similar guidance in comments 16(h)–3 and 16(h)–4. As a result, proposed comment 16(h)–3 would provide that the information required under proposed § 226.16(h)(4) that is in the same paragraph as the first listing of a statement of ''no interest,'' ''no payments,'' ''deferred interest'' or similar term regarding interest or payments during the deferred interest period would be deemed to be in a prominent location closely proximate to the statement. Similar to proposed comment 16(e)–4, information appearing in a footnote would not be deemed to be in a prominent location closely proximate to the statement.

Proposed comment 16(h)–4 further provides that the first listing of a statement of ''no interest,'' ''no payments,'' or deferred interest or similar term regarding interest or payments during the deferred interest period is the most prominent listing of one of these statements on the front side of the first page of the principal promotional document. Consistent with proposed comment 16(e)–5 in this May 2008 Proposal (renumbered from comment 16e–4 under the June 2007 TILA Proposal), the comment borrows the concept of ''principal promotional document'' from the Federal Trade Commission's definition of the term under the Fair Credit Reporting Act. 16 CFR 642.2(b). If one of these statements is not listed on the principal promotional document or there is no principal promotional document, the first listing of one of these statements is the most prominent listing of the statement on the front side of the first page of each document containing one of these statements. The Board also proposes that the listing with the largest type size be a safe harbor for determining which listing is the most prominent. In the proposed comment, the Board also notes that consistent with comment 16(c)–1, a catalog or other multiple-page advertisement is considered one document for these purposes.

The Board also proposes comment 16(h)–5 to clarify that the information the Board proposes to require under § 226.16(h)(4) does not need to be segregated from other information the advertisement discloses about the deferred interest offer. This may include triggered terms that the advertisement is required to disclose under § 226.16(b). The comment is consistent with the Board's approach on many other required disclosures under Regulation Z. *See* comment 5(a)–2. Moreover, the Board believes flexibility is warranted to allow advertisers to provide other information that may be essential for the consumer to evaluate the offer such as a minimum purchase amount to qualify for the deferred interest offer.

16(h)(5) Envelope Excluded

The Board proposed § 226.16(e)(5) to implement TILA Section 127(c)(6)(B), as added by Section 1303(a) of the Bankruptcy Act. 15 U.S.C. 1637(c)(6)(B). TILA Section 127(c)(6)(B) specifically excludes envelopes or other enclosures in which an application or solicitation to open a credit card account is mailed from the requirements of TILA Section 127(c)(6)(A)(ii) and (iii). Under the June 2007 Proposal, the Board also proposed to exclude banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation. 72 FR 32948, 33064, June 14, 2007.

Similarly, the Board proposes to exclude envelopes or other enclosures in which an application or solicitation is mailed, or banner advertisements or pop-up advertisements linked to an electronic application or solicitation from the requirements of proposed § 226.16(h)(4). Interested consumers generally look at the contents of an envelope or click on the link in the banner advertisement or pop-up advertisement in order to learn more about an offer instead of relying solely on the information on an envelope, banner advertisement, or pop-up advertisement to become informed about an offer. Furthermore, given the limited space that envelopes, banner advertisements, and pop-up advertisements have to convey information, the Board believes there is little need to impose the burden of providing the information proposed under § 226.16(h)(4) on these types of communications.

Appendix G—Open-End Model Forms and Clauses; Appendix H—Closed-End Model Forms and Clauses

Appendices G and H set forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z. Appendix G contains model forms, model clauses and sample forms applicable to open-end plans.

The Board proposes to add a sample form to illustrate, in the tabular format, the disclosures required under § 226.6(b)(4) for account-opening disclosures for open-end plans such as lines of credit or an overdraft plan. *See* proposed Sample G–17(D).

The Board also proposes to revise Sample G–19 that may be used when access checks are provided on a credit

card account, as discussed in the section-by-section analysis to § 226.9(b)(3), and Samples G–20 and G–21 that may be used when terms change or rates are increased, as discussed in the section-by-section analysis to § 226.9(c)(2) and § 226.9(g).

Finally, the Board proposes new model clauses G–22 that creditors offering deferred interest plans may use in advertisements.

VII. Initial Regulatory Flexibility Act Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z.

The Board believes that the amendments to Regulation Z in this May 2008 Proposal would not, standing alone, have a significant economic impact on a substantial number of small entities. However, based on its analysis and for the reasons stated in the June 2007 Proposal, the Board believes that, in the aggregate, the amendments to Regulation Z contained in the June 2007 Proposal and in this May 2008 Proposal would have a significant economic impact on a substantial number of small entities. 72 FR 32948, 33033, 33034, June 14, 2007. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period for this May 2008 Proposal and further consideration of comments received on the June 2007 Proposal. The Board requests public comment in the following areas.

1. *Reasons, statement of objectives and legal basis for the proposed rule.* The purpose of the Truth in Lending Act is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. In this regard, the goal of the proposed amendments to Regulation Z in this May 2008 Proposal and the June 2007 Proposal is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end account. Accordingly, the Board is proposing changes to format, timing, and content requirements for the five main types of disclosures governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

The **SUPPLEMENTARY INFORMATION** above and the **SUPPLEMENTARY INFORMATION** for the June 2007 Proposal describe in detail the reasons, objectives, and legal basis for each component of the proposed rules. 72 FR 32948 through 33036, June 14, 2007.

2. *Description of small entities to which the proposed rule would apply.* The total number of small entities likely to be affected by the proposal is unknown, because the open-end credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that extend even small amounts of consumer credit. *See* § 226.1(c)(1).[5] Based on December 31, 2007 call report data, there are approximately 12,479 depository institutions in the United States that have assets of $165 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act. Of them, there were 2,159 banks, 3,445 insured credit unions, and 26 other thrift institutions with credit card assets (or securitizations), and total assets of $165 million or less. The number of small non-depository institutions that are subject to Regulation Z's open-end credit provisions cannot be determined from information in call reports, but recent congressional testimony by an industry trade group indicated that 200 retailers, 40 oil companies, and 40 third-party private label credit card issuers of various sizes also issue credit cards.[6] There is no comprehensive listing of small consumer finance companies that may be affected by the proposed rules or of small merchants that offer their own credit plans for the purchase of goods or services. Furthermore, it is unknown how many of these small entities offer open-end credit plans as opposed to closed-end credit products, which would not be affected by the proposed rule.

The effect of the proposed revisions to Regulation Z on small entities also is unknown. Small entities would be required to, among other things, conform their open-end credit disclosures, including those in solicitations, account opening materials, periodic statements, and change-in-terms notices, and advertisements to the revised rules. The Board has sought to reduce the burden on small entities, where possible, by proposing model forms that can be used to ease compliance with the proposed rules. Small entities also would be required to update their systems to comply with the proposed rules regarding reasonable cut-off times for payments and weekend or holiday payment due dates.

The precise costs to small entities of updating their systems are difficult to predict. These costs will depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer open-end accounts, the complexity of the terms of the open-end credit products that they offer, and the range of such product offerings. Nevertheless, the Board believes that these costs, in the aggregate for the June 2007 and May 2008 Proposals, will have a significant economic effect on small entities. The Board seeks information and comment on the effects of the proposed rules on small entities.

3. *Projected reporting, recordkeeping and other compliance requirements of the proposed rule.* The compliance requirements of the proposed revisions to Regulation Z included in this May 2008 Proposal are described above in VI. Section-by-Section Analysis. The compliance requirements of the proposed revisions to Regulation Z in the June 2007 Proposal are described in the section-by-section analysis included with those proposals. 72 FR 32948, 32958 through 33033, June 14, 2007. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

4. *Other federal rules.* As noted in the section-by-section analysis in the June 2007 Proposal for § 226.13(i), there is a potential conflict between Regulation Z and Regulation E with respect to error resolution procedures when a transaction involves both an extension of credit and an electronic fund transfer. 72 FR 32948, 33019, June 14, 2007. The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation Z in this May 2008 Proposal. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule. The Board also seeks comment regarding any duplication, overlap, or conflict between the proposed revisions to

[5] Regulation Z generally applies to ''each individual or business that offers or extends credit when four conditions are met: (i) the credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly; (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes.'' § 226.1(c)(1).

[6] Testimony of Edward L. Yingling for the American Bankers' Association before the Subcommittee on Financial Institutions and Consumer Credit, Financial Services Committee, United States House of Representatives, April 26, 2007, fn. 1, p 3.

Regulation Z in this May 2008 Proposal and the 2008 Regulation AA Proposal discussed elsewhere in today's **Federal Register**.

5. *Significant alternatives to the proposed revisions.* As previously noted, the June 2007 Proposal and the May 2008 Proposal implement the Board's mandate to prescribe regulations that carry out the purposes of TILA. In addition, portions of the June 2007 Proposal are intended to implement certain provisions of the Bankruptcy Act that require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements. The Board seeks with both the June 2007 Proposal and the May 2008 Proposal to balance the benefits to consumers arising out of more effective TILA disclosures against the additional burdens on creditors and other entities subject to TILA. To that end, and as discussed above in VI. Section-by-section Analysis and in the section-by-section analysis accompanying the June 2007 Proposal, consumer testing was conducted for the Board in order to assess the effectiveness of the proposed revisions to Regulation Z. 72 FR 32948, 32958 through 33033, June 14, 2007. In this manner, the Board has sought to avoid imposing additional regulatory requirements without evidence that these proposed revisions may be beneficial to consumer understanding regarding open-end credit products.

The Board welcomes comments on any significant alternatives, consistent with TILA and the Bankruptcy Act, that would minimize the impact of the proposed rule on small entities.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions and small businesses.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other creditors. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 552,398 hours for the 1,172 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation.

As mentioned in the preamble the Federal Reserve is seeking comment on additional revisions to the June 2007 Proposal. The Federal Reserve believes the proposed additional revisions would not increase the burden estimates published in the June 2007 Proposal. 72 FR 32948, 33034, 33035, June 14, 2007. However, at this time the Federal Reserve is restating a portion of its burden estimates published in the June 2007 Proposal to correct minor mathematical errors. In addition, the Federal Reserve will address respondent burden associated with a Regulation AA proposed rule and previously implemented notice to cosigners.

In the June 2007 Proposal, the Federal Reserve estimated that the proposed revisions would increase the total annual burden on a one-time basis from 552,398 to 625,638 hours, an increase of 73,240 hours. 72 FR 32948, 33035, June 14, 2007. The Federal Reserve affirms its methodology; however, due to a mathematical error, the annual onetime burden for the proposed revisions to the rules governing periodic statements was understated by 4,000 hours. The correct annual onetime burden for this disclosure requirement is 46,880 hours (not 42,800); therefore, the total annual onetime burden for all requirements would increase by 77,240 hours. This one-time burden estimate does not include the burden addressing the Home Ownership and Equity Protection Act disclosures as announced in a separate proposed rulemaking (Docket No. R–1305, 73 FR 1672, January 9, 2008).

The Federal Reserve estimated in the June 2007 Proposal that the proposed total annual burden on a continuing basis would increase from 552,398 to 607,759 hours, an increase of 55,361 hours. However, the burden for revisions to the change-in-terms notices was incorrectly calculated as 55,361 hours. The correct annual burden for the proposed revision on a continuing basis would be 18,454 hours, a difference of 36,907 hours. Thus, the total burden on a continuing basis would increase from 552,398 to 570,852 hours.

Elsewhere in today's **Federal Register**, the Federal Reserve, along with the Office of Thrift Supervision (OTS) and the National Credit Union Association, are proposing to adopt substantive protections using their authority under the Federal Trade Commission Act (FTC Act) to address unfair and deceptive acts or practices. The proposed rule would prohibit institutions from engaging in certain acts or practices in connection with credit cards. This proposal evolved from the Federal Reserve's June 2007 Proposal and the OTS August 2007 Advance Notice of Proposed Rulemaking under the FTC Act. 72 FR 43570, August 6, 2007. The Federal Reserve's proposed rule under Regulation AA is coordinated with its June 2007 Proposal amending Regulation Z's rules for open-end credit.

Under Regulation AA's proposed § 227.28, creditors would be prohibited from certain marketing practices in relation to prescreened firm offers for consumer credit card accounts unless a disclaimer sufficiently explains the limitations of the offers. The Federal Reserve anticipates that creditors would, with no additional burden, incorporate the proposed disclosure requirement under § 227.28 with the existing disclosure requirements for credit and charge card applications and solicitations under § 226.5a. Thus in order to avoid double-counting the Federal Reserve will account for the PRA burden associated with proposed Regulation AA § 227.28 under Regulation Z § 226.5a.

Under current § 227.14(b), creditors must provide a clear and conspicuous disclosure statement shall be given in writing to a cosigner prior to being obligated on credit transactions subject to § 227.14(b). The disclosure statement shall be substantively similar to the example provided in § 227.14(b). This disclosure is standardized and does not change from one individual to another; thus, the cost and burden to the industry is low. The Federal Reserve proposes to account for the burden associated with Regulation AA's § 227.14(b) under Regulation Z. The proposed annual burden associated with § 227.14(b) is estimated to be 16,943 hours. The proposed total annual burden for the Regulation Z information collection, including the revisions in the June 2007 Proposal, in this May 2008 Proposal, and the Regulation AA disclosure requirements is estimated to be 665,035 hours, an increase of 112,637 hours.

The title of the Regulation Z information collection will be updated to account for these sections of Regulation AA.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimates. Using the Federal Reserve's method, the total current estimated annual burden for all financial institutions subject to Regulation Z, including Federal Reserve-supervised institutions, would be approximately 12,324,037 hours. The proposed rule would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation Z by 1,271,944 hours to 13,595,981 hours. On a continuing basis, the proposed revisions to the change-in-terms notices would increase the estimated annual frequency, thus increasing the total annual burden on a continuing basis from 12,324,037 to 13,230,534 hours. The inclusion of the Regulation AA requirements would increase the total annual burden from 12,324,037 to 16,679,157 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including card issuers, retailers, and depository institutions (of which there are approximately 19,300) potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199),[7] Washington, DC 20503.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets. If a provision in the regulation or commentary was also proposed to be revised in the June 2007 Proposal, in addition to this rulemaking, bold-faced arrows or brackets, as appropriate, also reflect the June 2007 proposed revisions.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

[7] The Paperwork Reduction Project number (7100–0200) published in the June 14, 2007, notice was incorrect.

Authority and Issuance

For the reasons set forth in the preamble, the Board further proposes to amend 12 CFR part 226, as proposed to be amended at 71 FR 32948, June 14, 2007, as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.5 is amended by revising paragraph (a)(2)(iii) and paragraph (b)(1)(iv) to read as follows:

Subpart B—Open-End Credit

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.*

* * * * *

►(2) *Terminology.*◄

* * * * *

►(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term *penalty APR* shall be used, as applicable. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed,* or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.◄

* * * * *

(b) *Time of disclosures.*

(1) **[***Initial***]** ►*Account-opening*◄ *disclosures.*

* * * * *

►(iv) *Membership fees.*

A. *General.* In general, a creditor may not collect any fee (other than application fees excludable from the finance charge under § 226.4(c)(1)) before account-opening disclosures are provided. However, a creditor may collect, or obtain the consumer's agreement to pay, a membership fee before providing account-opening disclosures if, after receiving the disclosures the consumer may reject the plan and have no obligation to pay any fee that was assessed or agreed to be paid before the consumer received account-opening disclosures, or any other fee or charge. A membership fee

for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in § 226.5a(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge. Application fees permitted by paragraph (b)(1)(v) of this section are not affected by this requirement.

B. *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b, are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section.◄

* * * * *

3. Section 226.5a is amended by revising paragraph (b)(1)(iv), paragraph (b)(3), paragraph (b)(4), paragraph (b)(5), and paragraph (d)(1) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(b) Required disclosures. * * *

(1) * * *

►(iv) *Penalty rates.* If a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, pursuant to paragraph (b)(1) of this section the card issuer must disclose the increased rate that would apply, a description of the types of balances to which the increased rate will apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. Issuers must briefly disclose the circumstances under which any discounted initial rate may be revoked, and the rate that will apply after the revocation.◄

* * * * *

(3) *Minimum finance charge.* Any minimum or fixed finance charge ►if it exceeds $1.00◄ that could be imposed during a billing cycle►, and a brief description of the charge. The $1.00 threshold amount shall be adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on the June 1 of previous years equals or exceeds $1.00. The card issuer may, at its option, disclose in the table minimum or fixed finance charges below the dollar threshold.◄

(4) *Transaction charges.* Any transaction charge imposed ►by the card issuer◄ for the use of the card for purchases.

(5) *Grace period.* The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge ►due to a periodic interest rate and any conditions on the availability of the grace period.◄ If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. ►When an issuer is disclosing a grace period in the tabular format, the phrase ''How to Avoid Paying Interest on Purchases,'' or a substantially similar phrase, shall be used as the heading for the row describing the grace period. If no grace period on purchases is offered, when an issuer is disclosing this fact in the tabular format, the phrase ''Paying Interest,'' or a substantially similar phrase, shall be used as the heading for the row describing that no grace period is offered.◄

* * * * *

(d) *Telephone applications and solicitations*—(1) *Oral disclosure.* The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) ►and (b)(16)◄ of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

* * * * *

4. Section 226.6 is amended by revising paragraph (b)(4)(ii)(C), paragraph (b)(4)(iii)(D), paragraph (b)(4)(iv), and paragraph (b)(4)(vii), as follows:

§ 226.6 ►Account-opening disclosures◄ [Initial disclosure statement].

* * * * *

►(b) *Rules affecting open-end (not home-secured) plans.*◄

* * * * *

►(4) *Tabular format requirements for open-end (not home-secured) plans.*◄

* * * * *

►(ii) *Annual percentage rate.*◄

* * * * *

►(C) *Increased penalty rates.* If a rate may increase upon the occurrence of one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(4)(ii) of this section the increased penalty rate that may apply, a description of the types of balances to which the increased rate will apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If a temporary initial rate is lower than the rate that will apply after the temporary rate expires, the creditor must briefly disclose the circumstances under which any initial discounted rates may be revoked, and the rate that will apply after the initial discounted rate is revoked.◄

* * * * *

►(iii) *Fees.*

* * * * *

(D) *Minimum finance charge.* Any minimum or fixed finance charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on the June 1 of previous years equals or exceeds $1.00. The creditor may, at its option, disclose in the table minimum or fixed finance charges below the dollar threshold

(iv) *Grace period.* An explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring a finance charge. When disclosing in the tabular format whether or not there is a grace period, the phrase ''How to Avoid Paying Interest on [the applicable feature]'' or a substantially similar phrase, shall be used as the row heading when a feature on the account has a grace period. When disclosing in the tabular format the fact that no grace period exists for any feature of the account, the phrase ''Paying Interest'' or a substantially similar phrase shall be used as the row heading.◄

* * * * *

►(vii) *Available credit.* If a creditor requires fees for the issuance or availability of an open-end plan described in paragraph (b)(4)(iii)(A) of this section, or a security deposit, and the total amount of those required fees or security deposit that will be imposed when the account is opened and charged to the account equal 25 percent or more of the minimum credit limit offered with the plan, a creditor must disclose the amount of the available credit that a consumer will have remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 25 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, that is required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 25 percent threshold test is met, the creditor in providing the disclosure

must disclose the amount of available credit excluding those optional fees, and the available credit including those optional fees. The creditor shall also disclose that the consumer has the right to reject the plan and not be obligated to pay those fees or any other fee or charges until the consumer has used the account or made a payment on the account after receiving a billing statement.◄

* * * * *

5. Section 226.9 is amended by revising paragraph (b)(3), paragraph (c)(2)(iii), and paragraph (g)(3) to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

(b) *Disclosures for supplemental credit* ►*access*◄ *devices and additional features.*

* * * * *

►(3) *Checks that access a credit card account.* (i) *Disclosures.* For open-end plans not subject to the requirements of § 226.5b, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under § 226.6(b)(1) are given, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from disclosures previously given, the creditor shall disclose on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in appendix G:

(A) If an initial rate that applies to the checks is temporary and is lower than the rate that will apply after the temporary rate expires, the discounted initial rate and the time period during which the discounted initial rate will remain in effect;

(B) The type of rate that will apply to the checks (such as whether the purchase or cash advance rate applies) and the applicable annual percentage rate. If a discounted initial rate applies, a creditor must disclose the type of rate that will apply after the discounted initial rate expires, and the annual percentage rate that will apply after the discounted initial rate expires. In a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section;

(C) If a discounted initial rate applies to the checks, the date, if any, by which the consumer must use the checks in order to qualify for the discounted initial rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the discounted initial rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date;

(D) Any transaction fees applicable to the checks disclosed under § 226.6(b)(1); and

(E) Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase ''How to Avoid Paying Interest on Check Transactions'' or a substantially similar phrase, shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing in the tabular format the fact that no grace period exists for credit extended by use of the checks, the phrase ''Paying Interest'' or a substantially similar phrase shall be used as the row heading.

(ii) *Accuracy.* The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are given. A variable annual percentage rate is accurate if it was in effect within 30 days of when the disclosures are given.◄

* * * * *

* * * * *

(c) *Change in terms.*

* * * * *

►(2) *Rules affecting open-end (not home-secured) plans.*◄

* * * * *

►(iii) *Disclosure requirements.*

(A) *Changes to terms described in account-opening table.* If a creditor changes a term required to be disclosed pursuant under § 226.6(b)(4), the creditor must provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section:

(*1*) A summary of the changes made to terms described in § 226.6(b)(4);

(*2*) A statement that changes are being made to the account;

(*3*) A statement indicating the consumer has the right to opt-out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(*4*) The date the changes will become effective;

(*5*) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice;

(*6*) If the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate, and

(*7*) If the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied. If applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms.◄

* * * * *

►(g) *Increase in rates due to delinquency or default or as a penalty.*◄

* * * * *

►(3)(i) *Disclosure requirements for rate increases.* If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

(A) A statement that the consumer's actions have triggered the delinquency or default rate or penalty rate, as applicable;

(B) The date on which the delinquency or default rate or penalty rate will apply;

(C) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

(D) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied, including if applicable, the balances that would be affected if a consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment; and

(E) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment.◄

* * * * *

6. Section 226.10 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 226.10 Prompt crediting of payments.

* * * * *

(b) *Specific requirements for payments.*

►(1) *General rule.* A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.

(2) *Examples of reasonable requirements for payments.* Reasonable requirements for making payment may include:

(i) Requiring that payments be accompanied by the account number or payment stub;

(ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person, provided that it would not be reasonable for a creditor to set a cut-off time for payments by mail that is earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;

(iii) Specifying that only checks or money orders should be sent by mail;

(iv) Specifying that payment is to be made in U.S. dollars;

(v) Specifying one particular address for receiving payments, such as a post office box.

(3) *Nonconforming payments.*◄ If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

* * * * *

►(d) *Crediting of payments when creditor does not receive or accept payments on due date.* If the due date for payments is a day on which the creditor does not receive or accept payments by mail, for example if the U.S. Postal Service does not deliver mail on that date, the creditor may not treat a payment received by mail the next business day as late for any purpose.◄

* * * * *

7. Section 226.16 is amended by revising paragraph (e) and adding paragraph (h) to read as follows:

§ 226.16 Advertising.

* * * * *

►(e) *Promotional rates.*

(1) *Scope.* The requirements of this paragraph apply to any written or electronic advertisement of a consumer credit card account, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions.*

(i) *Promotional rate* means:

(A) Any annual percentage rate applicable to one or more balances or transactions on a consumer credit card account for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period; or

(B) Any annual percentage rate applicable to one or more transactions on a consumer credit card account that is lower than the annual percentage rate that applies to other transactions of the same type.

(ii) *Introductory rate* means a promotional rate offered in connection with the opening of an account.

(iii) *Promotional period* means the maximum time period for which the promotional rate may be applicable.

(3) *Stating the term ''introductory''.* If any annual percentage rate that may be applied to the account is an introductory rate, the term *introductory* or *intro* must be in immediate proximity to each listing of the introductory rate.

(4) *Stating the promotional period and post-promotional rate.* If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (e)(2)(i)(A) of this section, the following must be stated in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the promotional rate:

(i) The date the promotional rate will end or the promotional period; and

(ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.5a(c)(2), 226.5a(e)(4), or 226.16(b)(1)(ii) as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply.

(5) *Envelope excluded.* The requirements in paragraph (e)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.◄

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►(h) *Deferred interest offers.*

(1) *Scope.* The requirements of this paragraph apply to any written or electronic advertisement of a consumer credit card account, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions.* (i) ''Deferred interest'' means finance charges on balances or transactions that a consumer is not obligated to pay if those balances or transactions are paid in full by a specified date. ''Deferred interest'' does not mean any finance charges the creditor allows a consumer to avoid in connection with any recurring grace period.

(ii) The maximum period from the date the consumer becomes obligated for the balance or transaction until the date that the consumer must pay the balance or transaction in full in order to avoid finance charges on such balance or transaction is the ''deferred interest period.''

(3) *Stating the deferred interest period.* If a deferred interest offer is advertised, the deferred interest period or the date by which the consumer must pay the balance or transaction in full to avoid finance charges on such balance or transaction must be stated in a clear and conspicuous manner in immediate proximity to each statement of ''no interest,'' ''no payments,'' or ''deferred interest'' or similar term regarding interest or payments during the deferred interest period.

(4) *Stating the terms of the deferred interest offer.* If any deferred interest offer is advertised, the following must be stated in a prominent location closely proximate to the first statement of ''no interest,'' ''no payments,'' or ''deferred interest'' or similar term regarding interest or payments during the deferred interest period, in language similar to Sample G–22 in Appendix G:

(i) A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred interest offer if the balance or transaction is not paid in full within the deferred interest period;

(ii) A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred interest offer if the account is otherwise in default; and

(iii) If the minimum monthly payments do not fully amortize the balance or transaction during the deferred interest period, a statement that making only the minimum monthly payments will not pay off the balance or transaction in time to avoid interest charges.

(5) *Envelope excluded.* The requirements in paragraph (h)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.◄

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8. In Part 226, Appendix G is amended by:

A. Revising the table of contents at the beginning of the appendix;

B. Add paragraph (g) to Form (G–1)

C. Revising Forms G–19, G–20, and G–21; and

D. Adding new Forms G–1A, G–17(D), and G–22 in numerical order.

Appendix G to Part 226—Open-end Model Forms and Clauses

G–1 Balance Computation Methods Model Clauses ►(Home Equity Plans)◄ (§§ 226.6 and 226.7)

►G–1A Balance Computation Methods Model Clauses (Plans other than Home Equity Plans) (§§ 226.6 and 226.7)◄

G–2 Liability for Unauthorized Use Model Clause ►(Home Equity Plans)◄ (§ 226.12)

►G–2(A) Liability for Unauthorized Use Model Clause ►(Plans Other Than Home Equity Plans) (§ 226.12)◄

G–3 Long-Form Billing-Error Rights Model Form ►(Home Equity Plans)◄ (§§ 226.6 and 226.9)

►G–3(A) Long-Form Billing-Error Rights Model Form ►(Plans Other Than Home Equity Plans)◄ (§§ 226.6 and 226.9)◄

G–4 Alternative Billing-Error Rights Model Form ►(Home Equity Plans)◄ (§ 226.9)

►G–4(A) Alternative Billing-Error Rights Model Form (Plans Other Than Home Equity Plans) (§ 226.9)◄

G–5 Rescission Model Form (When Opening an Account) (§ 226.15)

G–6 Rescission Model Form (For Each Transaction) (§ 226.15)

G–7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)

G–8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)

G–9 Rescission Model Form (When Increasing the Security) (§ 226.15)

G–10(A) Applications and Solicitations Model Form (Credit Cards) (§ 226.5a(b))

G–10(B) Applications and Solicitations Sample (Credit Cards) (§ 226.5a(b))

G–10(C) Applications and Solicitations ►Sample (Credit Cards)◄ [Model Form (Charge Cards)] (§ 226.5a(b))

►G–10(D) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))◄

►G–10(E) Applications and Solicitations Sample (Charge Cards) (§ 226.5a(b))◄

G–11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))

G–12 ►Reserved◄ [Charge Card Model Clause (When Access to Plan Offered by Another) (§ 226.5a(f))]

G–13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))

G–13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))

G–14A Home Equity Sample

G–14B Home Equity Sample

G–15 Home Equity Model Clauses

►G–16(A) Debt Suspension Model Clause (§ 226.4(d)(3))◄

►G–16(B) Debt Suspension Sample (§ 226.4(d)(3))◄

►G–17(A) Account-opening Model Form (§ 226.6(b)(4))◄

►G–17(B) Account-opening Sample (§ 226.6(b)(4))◄

►G–17(C) Account-opening Sample (§ 226.6(b)(4))◄

►G–17(D) Account-opening Sample (§ 226.6(b)(4))◄

►G–18(A) Transactions; Interest Charges; Fees Sample (§ 226.7(b))◄

►G–18(B) Fee-inclusive APR Sample (§ 226.7(b))◄

►G–18(C) Late Payment Fee Sample (§ 226.7(b))◄

►G–18(D) Actual Repayment Period Sample Disclosure on Periodic Statement (§ 226.7(b))◄

►G–18(E) New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit cards) (§ 226.7(b))◄

►G–18(F) New Balance, Due Date, and Late Payment Sample (Open-end Plans (Non-credit-card Accounts)) (§ 226.7(b))◄

►G–18(G) Periodic Statement Form◄

►G–18(H) Periodic Statement Form◄

►G–19 Checks Accessing a Credit Card Account Sample (§ 226.9(b)(3))◄

►G–20 Change-in-Terms Sample (§ 226.9(c)(2))◄

►G–21 Penalty Rate Increase Sample (§ 226.9(g)(3))◄

►G–22 Deferred Interest Offer Clauses (§ 226.16(h)◄ XXX

G–1 Balance Computation Methods Model Clauses ►(Home Equity Plans)◄

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►(f) Daily Balance Method (Including Current Transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ''daily balance'' of your account for each day in the billing cycle. To get the ''daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid finance charges and] any payments or credits. This gives us the daily balance.◄

►G–1(A) Balance Computation Methods Model Clauses (Plans Other Than Home Equity Plans)

(a) Adjusted Balance Method

We figure the interest charge on your account by applying the periodic rate to the ''adjusted balance'' of your account. We get the ''adjusted balance'' by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid interest or other finance charges and] any payments and credits received during the present billing cycle.

(b) Previous Balance Method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle. We do not subtract any payments or credits received during the billing cycle.

(c) Average Daily Balance Method (Excluding Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the ''average daily balance'' of your account. To get the ''average daily balance'' we take the beginning balance of your account each day and subtract [any unpaid interest or other finance charges and] any payments or credits. We do not add in any new [purchases/advances/fees]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(d) Average Daily Balance Method (Including Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the ''average daily balance'' of your account. To get the ''average daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(e) Ending Balance Method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new [purchases/advances/fees] and deducting payments and credits made during the billing cycle).

(f) Daily Balance Method (Including Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the ''daily balance'' of your account for each day in the billing cycle. To get the ''daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance.◄

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G-17(D) Account-opening Sample (Line of Credit)

Interest Rate and Interest Charges	
APR for Cash Advances	**18.00%.**
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
Paying Interest	You will be charged interest from the transaction date.

Fees	
Annual Fee	**$20**
Penalty Fees	
• Late Payment	**$10**
• Over-the-Credit Limit	**$29**

G-19 Checks Accessing a Credit Card Sample

Interest and Fee Information	
APR for Check Transactions	1.7% (Promotional APR through your November 2008 billing cycle) After November 2008, you will be charged the APR for Cash Advances, currently 21.99%.
Use by Date	You must use the check by 4/1/08 for the promotional APR to apply. If you use the check after that date, we may still honor the check but you will not receive the promotional APR. Instead, the standard APR for Cash Advances will apply.
Fee	Either $5 or 3% of the amount of each transaction, whichever is greater.
Paying Interest	We will begin charging interest on these checks on the transaction date.

G-20 Change-in-Terms Sample

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms effective 2/15/08. You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement.

Beginning 2/15/08, any rate increases described below will apply to transactions made on or after 1/15/08. Current rates will continue to apply to transactions made before 1/15/08.

Note: The change to your APR for purchases described below will not go into effect at this time if you are already being charged a higher Penalty APR on purchases. This change will go into effect when the Penalty APR no longer applies.

Revised Terms, as of 2/15/08	
APR for Purchases	16.99%
Late Payment Fee	$32 if your balance is less than or equal to $1,000; $39 if your balance is more than $1,000

G-21 Penalty Rate Increase Sample

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99%. Beginning 2/15/08, we will apply this Penalty APR to any transactions made on or after 1/15/08 and may keep the APR at that level indefinitely. Current rates will continue to apply to transactions made before 1/15/08. However, if you become 30 days late on your account, the Penalty APR will apply to those balances as well.

If you have any low promotional APRs, you will lose them on 2/15/08. At that time, we will apply standard rates to any existing promotional balances.

►G–22 Deferred Interest Offer Clauses

Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if the account is otherwise in default. [Making only the minimum monthly payments on your account will not pay off the purchase in time to avoid interest.]◄

9. In Supplement I to Part 226:

A. Under *Section 226.5—General Disclosure Requirements:*

i. Under *5(a) Form of disclosures*, under revised heading *5(a)(1)—General.*, under new heading *5(a)(1)(ii)A).* paragraph 1. is added, and under new heading Paragraph 5(a)(1)(iii)., paragraph 1 is added.

ii. Under *5(b) Time of disclosures*, under revised heading *5(b)(1) Account-opening disclosures.*, under revised heading *5(b)(1)(i) General rule.*, paragraph 1. is revised, under revised heading *5(b)(1)(ii) Charges imposed as part of an open-end (not home-secured) plan.*, paragraph 1. is revised, and under new heading *5(b)(1)(iv) Membership fees.*, paragraphs 1., 2., 3. and 4. are added.

B. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations,* under *5a(b) Required Disclosures*, under revised heading *5a(b)(3) Minimum Finance Charge,* paragraph 2. is added, under *5a(b)(4) Transaction Charges,* paragraph 2. is added, and under *5a(b)(5) Grace Period,* paragraph 1. is revised and paragraph 2. is added.

C. Under revised heading *Section 226.6—Account-opening Disclosures,* under revised heading *6(b) Rules affecting open-end (not home-secured) plans.*, under revised heading *6(b)(2) Rules relating to rates for open-end (not home-secured) plans.*, under revised heading Paragraph *6(b)(2)(iii).*, paragraph 2. is revised, under revised heading *6(b)(4) Tabular Format requirements for open-end (not home-secured) plans.,* paragraph 3. is revised, under new headings *6(b)(4)(iii) Fees.* and *6(b)(4)(iii)(D) Minimum finance charge.*, paragraphs 1. and 2. are added, under new heading *6(b)(4)(iv) Grace period.*, paragraph 1. is added, and under new heading *6(b)(4)(vii) Available credit.*, paragraph 1. is added.

D. Under *Section 226.9 Subsequent Disclosure Requirements:*

i. Under revised heading *9(b) Disclosures for Supplemental Credit Access Devices and Additional Features.*, the heading for *Paragraph 9(b)(3) is revised, under the new heading Paragraph 9(b)(3)(E).*, paragraph 1. is added.

ii. Under *9(c) Change in Terms.*, under revised heading *9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans,* under revised heading *9(c)(2)(ii) Charges Not Covered by § 226.6(b)(4),* paragraph 1. is revised,

and under revised headings *9(c)(2)(iii) Disclosure Requirements* and *9(c)(2)(iii)(A) Changes to Terms Described in § 226.6(b)(4)*, paragraph 8. is revised.

iii. Under revised heading *9(g) Increase in Rates Due to Delinquency or Default or as a Penalty,* paragraph 1. is revised.

E. Under *Section 226.10—Prompt Crediting of Payments,* under *10(b) Specific requirements for payments.*, paragraphs 1. and 2. are revised.

F. Under *Section 226.12—Special Credit Card Provisions:*

i. Under *12(a) Issuance of credit cards.*, under *Paragraph 12(a)(2),* paragraph 2. is revised.

ii. Under *12(b) Liability of cardholder for unauthorized use.*, paragraph 3. is revised.

G. Under *Section 226.13—Billing-Error Resolution,* under *13(f) Procedures if different billing error or no billing error occurred.*, paragraph 3. is added.

H. Under *Section 226.16—Advertising:*

i. Paragraph 2. is revised.

ii. Under heading *16(b) Actually available terms.*, paragraph 4. is revised.

iii. Under revised heading *16(e) Promotional rates.*, paragraphs 1., 2., 3., 4. and 5.are revised and paragraph 6. is added.

iv. Under new heading *16(h) Deferred interest offers.*, paragraphs 1., 2., 3., 4. and 5.are added.

I. Under revised heading *APPENDICES G AND H—OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES,* under heading *APPENDIX G—OPEN-END MODEL FORMS AND CLAUSES,* paragraphs 1. and 5. are revised.

Supplement I to Part 226—Official Staff Intepretations

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Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of disclosures.

[Paragraph] 5(a)(1) ►*—General.*◄

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►*Paragraph 5(a)(1)(ii)(A).*◄

1. *Electronic disclosures.* Disclosures that need not be provided in writing under § 226.5(a)(1)(ii)(A) may be provided in writing, orally, or in electronic form. If the consumer requests the service in electric form, such as on the creditor's Web site, the specified disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

Paragraph 5(a)(1)(iii).

1. *Disclosures not subject to E-Sign Act.* See the commentary to § 226.5(a)(1)(ii)(A) regarding disclosures (in addition to those specified under § 226.5(a)(1)(iii)) that may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.◄

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5(b) Time of disclosures.

5(b)(1) [*Initial*] ►*Account-opening*◄ *disclosures.*

►5(b)(1)(i) General rule.◄

1. *Disclosure before the first transaction.* ►When disclosures must be furnished ''before the first transaction,'' account-opening disclosures must be delivered before the consumer becomes obligated on the plan. Examples include:

i. *Purchases.* The consumer makes the first purchase, such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store, except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously (see commentary to paragraph 5(b)(1)(iii) below).

ii. *Advances.* The consumer receives the first advance. If the consumer receives a cash advance check at the same time the account-opening disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).◄ [The rule that the initial disclosure statement must be furnished ''before the first transaction'' requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan. For example, the initial disclosures must be given before the consumer makes the first purchase (such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store) receives the first advance, or pays any fees or charges under the plan other than an application fee or refundable membership fee (see below). The prohibition on the payment of fees other than application or refundable membership fees before initial disclosures are provided does not apply to home equity plans subject to § 226.5b. See the commentary to § 226.5b(h) regarding the collection of fees for home equity plans covered by § 226.5b.

- If the consumer pays a membership fee before receiving the Truth in Lending account-opening disclosures, or the consumer agrees to the imposition of a membership fee at the time of application and the Truth in Lending disclosure statement is not given at that time, disclosures are timely as long as the consumer, after receiving the disclosures, can reject the plan. The creditor must refund the membership fee if it has been paid, or clear the account if it has been debited to the consumer's account.
- If the consumer receives a cash advance check at the same time the Truth in Lending disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).
- Initial disclosures need not be given before the imposition of an application fee under § 226.4(c)(1).
- If, after receiving the disclosures, the consumer uses the account, pays a fee, or negotiates a cash advance check, the creditor may consider the account not rejected for purposes of this section.]

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►*5(b)(1)(ii) Charges imposed as part of an open-end (not home-secured) plan.*

1. *Disclosing charges before the fee is imposed.* Creditors may disclose charges imposed as part of an open-end (not home-secured) plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under § 226.6(b)(4). (Such charges may alternatively be disclosed in electronic form; see the commentary to § 226.5(a)(1)(ii)(A).) Creditors meet the standard to provide disclosures at a relevant time if the oral, written, or electronic disclosure of such a charge is given when a consumer would likely notice it, such as when deciding whether to purchase the service that would trigger the charge. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call.◄

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►*5(b)(1)(iv) Membership fees.*

1. *Membership fees.* See § 226.5a(b)(2) and related commentary for guidance on fees for issuance or availability of a credit or charge card.

2. *Rejecting the plan.* If a consumer has paid or promised to pay a membership fee (other than an application fee excludable from the finance charge under § 226.4(c)(1)) before receiving account-opening disclosures, the consumer may, after receiving the disclosures, reject the plan and not be obligated for the membership fee or any other fee or charge (other than an application fee excludable from the finance charge under § 226.4(c)(1)). A consumer who has received the disclosures and uses the account, or makes a payment on the account after receiving a billing statement, is deemed not to have rejected the plan. A creditor may deem a plan to be rejected if, 60 days after the creditor mailed the account-opening disclosures, the consumer has not used the account or made a payment on the account.

3. *Using the account.* A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not ''use'' the account by activating the account, such as for security purposes. A consumer also does not ''use'' the account when the creditor assesses fees (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures) on the account. This includes, for example, when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances.

4. *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b are subject to the requirements of § 226.5b(h) regarding the collection of fees.

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Section 226.5a—Credit and Charge Card Applications and Solicitations

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►*5a(b)(3) Minimum Finance Charge.*

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2. *Adjustment of $1.00 threshold amount.* The $1.00 threshold amount will be adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on the June 1 of previous years equals or exceeds $1.00. The Board will publish adjustments, as appropriate.◄

►*5a(b)(4) Transaction Charges.*

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►2. *Foreign transaction fees.* A transaction charge imposed by the card issuer for the use of the card for purchases includes any fee imposed by the issuer for purchases in a foreign currency or that take place in a foreign country.◄

5a(b)(5) Grace Period.

1. *How* ►*grace period*◄ *disclosure is made.* ►The card issuer must state any conditions on the applicability of the grace period. An issuer that conditions the grace period on the consumer paying his or her balance in full by the due date each month, or on the consumer paying the previous balance in full by the due date the prior month will be deemed to meet these requirements by providing the following disclosure: ''Your due date is [at least]____days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance (excluding promotional balances) by the due date each month.'' ◄[The card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read ''30 days'' or ''30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date).'']

►2. *No grace period.* The issuer may use the following language to describe that no grace period is offered, as applicable: ''We will begin charging interest on purchases on the transaction date.''◄

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Section 226.6—►*Account-Opening Disclosures*◄ [*Initial Disclosure Statement*]

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►*6(b) Rules affecting open-end (not home-secured) plans*◄ [*Other charges*].

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►*6(b)(2) Rules relating to rates for open-end (not home-secured) plans.*◄

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►*Paragraph 6(b)(2)(iii).*◄

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►2. *Rate that will apply after initial rate changes.*

i. *Increased margins.* If the initial rate is based on an index and the rate may increase due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.

ii. *Risk-based pricing.* In some plans, the amount of the rate change depends on how the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. Creditors must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or by stating the highest rate that could be assessed. The creditor must disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments,'' or if there is no limitation, the fact that the increased rate may remain indefinitely.◄

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►*6(b)(4) Tabular format requirements for open-end (not home-secured) plans.*◄

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►3. *Terminology.* Section 226.6(b)(4)(i) generally requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the tables in Appendix G; but see § 226.5(a)(2) for special rules that apply to the penalty rate disclosure required by § 226.6(b)(4)(ii)(C), and to the disclosure of required insurance products or debt cancellation or suspension products pursuant to § 226.6(b)(4)(v).◄

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►*6(b)(4)(iii) Fees.*

6(b)(4)(iii)(D) Minimum finance charge.

1. *Example of brief statement.* See Samples G–17(B), G–17(C), and G–17(D) for guidance on how to provide a brief description of a minimum interest charge.

2. *Adjustment of $1.00 threshold amount.* The $1.00 threshold amount will be adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on the June 1 of previous years equals or exceeds $1.00. The Board will publish adjustments, as appropriate.

6(b)(4)(iv) Grace period.

1. *Grace period.* Creditors may use the following language to describe a grace period: ''Your due date is [at least] ____ days after the close of each billing cycle. We will not charge you interest on [applicable transactions] if you pay your entire balance (excluding promotional balances) by the due date each month.'' Creditors may use the following language to describe that no grace period is offered, as applicable: ''We will begin charging interest on [applicable transactions] on the transaction date.''◄

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6(b)(4)(vii) Available credit.

1. *Right to reject the plan.* Creditors may use the following language to describe consumers' right to reject a plan after receiving account-opening disclosures: ''You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges (other than [name of fee that is excludable from the finance charge under § 226.4(c)(1)]).''

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Section 226.9—Subsequent Disclosure Requirements

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9(b) Disclosures for Supplemental ►*Credit*◄ *Access Devices and Additional Features.*

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►*9(b)(3) Checks That Access a Credit Card Account.*◄

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►*Paragraph 9(b)(3)(E).*

1. *Grace period.* Creditors may use the following language to describe a grace period: ''Your due date is [at least] ____ days after the close of each billing cycle. We will not charge you interest when you use these checks if you pay your entire balance (excluding promotional balances) by the due date each month.'' Creditors may use the following language to describe that no grace period is offered, as applicable: ''We will begin charging interest on these checks on the transaction date.''◄

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9(c) Change in Terms.

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►*9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans.*◄

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►*9(c)(2)(ii) Charges Not Covered by § 226.6(b)(4).*◄

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►1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(1) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(4), the creditor may either, at its option (1) provide at least 45 days written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (2) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer any time before the consumer agrees to or becomes obligated to pay the charge. (See the commentary under § 226.5(a)(1)(ii)(A) regarding disclosure of such charges in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(1) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(4). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer any time before the consumer agrees to or becomes obligated to pay the charge.◄

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►*9(c)(2)(iii) Disclosure Requirements.*

9(c)(2)(iii)(A) Changes to Terms Described in § 226.6(b)(4).

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►8. *Content.* Sample G–20 contains an example of how to comply with the requirements in § 226.9(c)(2)(iii) when the following terms are being changed: (1) A variable rate is being changed to a non-variable rate of 16.99%; and (2) the late payment fee is being increased to $32 if the consumer's balance is less than or equal to $1,000 and $39 if the consumer's balance is more than $1,000. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply.◄

* * * * *

►*9(g) Increase in Rates Due to Delinquency or Default or as a Penalty.*

1. *Applicability.* i. *General.* Section 226.9(g) requires a creditor to provide written notice to a consumer when (1) a rate is increased due to the consumer's delinquency or default, or (2) a rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit. This notice must be provided after the occurrence of the event that triggered the imposition of the rate increase and at least 45 days prior to the effective date of the increase. For example, assume a credit card account agreement provides that the annual percentage rates on the account may increase to 28 percent if the consumer pays late once, and assume that the consumer pays late one month. If the creditor will increase the rates on the account because of this late payment, the creditor must provide the consumer written notice of the increase at least 45 days before the increase becomes effective.

ii. *Illustrations.* Under this section, creditors must provide written notice to a consumer when rates are increased due to the consumer's delinquency or default or as a penalty. The notice must be provided after the occurrence of the event that triggers the rate increase and at least 45 days prior to the effective date of the increase. Creditors subject to Regulation AA, 12 CFR 227.24 or similar law are generally prohibited from increasing the APR, as of the effective date of the increase, for balances outstanding at the end of 14 days after the date the notice of increased rates was provided, with certain exceptions, including, specifically, if the creditor fails to receive the consumer's minimum periodic payment within 30 days from the due date of that payment. For a creditor that is subject to Regulation AA, 12 CFR 227.24 or similar law that provides a notice of a rate increase due to the consumer's delinquency or default or as a penalty, and the creditor does not receive the consumer's minimum periodic payment within 30 days from the due date of the payment before the increased rate goes into effect, the creditor may apply the increased rate to all balances when the increased rate goes into effect. If, however, the consumer does not become 30 days late before the effective date of the rate increase, the creditor may only apply the increased rate to transactions made after the end of 14 days after the date the notice of increased rates was provided. Also, if the consumer becomes 30 days late after the increased rate becomes effective, the creditor must provide the consumer a written notice that the increased rate will now apply to all balances, and that notice must be given an least 45 days prior to the effective date of the increased rate applying to all balances. The following illustrate the timing requirements for rate increases under § 226.9(g) for creditors that are also subject to Regulation AA, 12 CFR 227.24 or similar law:

A. A credit card account agreement provides that the annual percentage rates on the account may increase to 28 percent if the consumer pays late once. The consumer's minimum periodic payment is due June 15 and the consumer pays late. On June 24 the creditor provides written notice of the increase. The notice provides that the penalty rate of 28 percent has been triggered and will apply as of August 9 to transactions made on or after July 9. The consumer's minimum periodic payment for June is received on June 30. On August 9, an increased rate of 28 percent may be applied to transactions made on or after July 9. The current rate will apply to balances existing on July 8.

B. Same facts as in paragraph 9(g) 1. ii.A., except the consumer fails to make any payment until July 20. On August 9, the increased rate of 28 percent may be applied to transactions made on or after that date, and to existing balances, as provided in Regulation AA, 12 CFR 227.24 or similar law.

C. The same result would apply if under the credit card agreement, the annual percentage rates on the account may increase to 28 percent if the consumer exceeds the credit limit once, the consumer exceeded his credit limit on June 5 and the creditor provides written notice of the increase on June 9. As in ii.B. above, the consumer fails to make the minimum periodic payment due June 15 until July 20. On July 25, the increased rate of 28 percent may be applied to transactions made on or after that date, and to existing balances, as provided in Regulation AA, 12 CFR 227.24 or similar law. See G–21 in Appendix G for language that complies with the requirements of § 226.9(g).

D. Same facts as in paragraph 9(g) 1. ii.A., except the following October, the consumer fails to make the minimum periodic payment due October 15 until November 20. The increased rate of 28 percent that has applied since August 9 continues to apply to transactions made on or after July 9. To apply the rate of 28 percent to the remaining outstanding balances that existed on July 8, the creditor would be required to send a new notice under § 226.9(g) after the consumer triggered the penalty rate for all balances. That is, if the creditor provides a written notice of the increase on November 26, the creditor could apply the penalty rate of 28% to all balances on January 11 of the following year.

E. A creditor currently assesses a non-variable annual percentage rate of 12.99 percent on purchases, and provides written notice on May 31 that a non-variable annual percentage rate will be increased to 15.99 percent as of July 16 for all purchase transactions on the account on or after June 15. Purchase balances existing on June 14 will remain at the current rate. The credit card account agreement indicates that the annual percentage rates on the account may increase to 28 percent if the consumer pays late once. The consumer's minimum periodic payment is due June 15 and the consumer pays late. On June 24 the creditor provides written notice of the increase to the penalty rate as a consequence of the consumer's late payment. The notice provides that the penalty rate of 28 percent has been triggered and will apply on August 9 to transactions made on or after July 9. The consumer's minimum periodic payment for June is received on June 30. On July 16, the new purchase annual percentage rate of 15.99 percent becomes effective for new purchases made on or after June 15. The current rate of 12.99 percent will apply to balances existing on June 14. On August 9, the 28 percent annual percentage rate will apply to transactions made on or after July 9. A rate of 12.99 percent will apply to the balances existing on June 14, and a rate of 15.99 percent will apply to purchases between June 15 and July 8.

F. Same facts as paragraph 9(g) 1. ii.E., except the consumer fails to make any payment until July 20. On July 15, the new purchase annual percentage rate of 15.99 percent becomes effective for new purchases made on or after June 15. The current rate of 12.99 percent will continue to apply to balances existing on June 14. On August 9, the increased rate of 28 percent may be applied to transactions that occur on or after July 9, and to existing balances, as provided in Regulation AA, 12 CFR 227.24 or similar law.◄

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Section 226.10—Prompt Crediting of Payments

* * * * *

10(b) Specific requirements for payments.

1. ❚*Payment requirements.* The creditor may specify requirements for making payments, such as:

- Requiring that payments be accompanied by the account number or the payment stub
- Setting a cutoff hour for payment to be received, or set different hours for payments by mail and payments made in person
- Specifying that only checks or money orders should be sent by mail
- Specifying that payment is to be made in U.S. dollars
- Specifying one particular address for receiving payments, such as a post office box❚

►*Payment by electronic fund transfer.*◄ A creditor may be prohibited❚, however,❚ from specifying payment for preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act.)

2. ►*Payment via creditor's web site.* If a creditor promotes electronic payment via its web site (such as by disclosing on the web site itself that payments may be made via the web site), any payments made via the creditor's web site would generally be conforming payments for purposes of § 226.10(b).◄❚*Payment requirements—limitations.* Requirements for making payments must be reasonable; it should not be difficult for most consumers to make

conforming payments. For example, it would not be reasonable to require that all payments be made in person between 10 a.m. and 11 a.m., since this would require consumers to take time off from their jobs to deliver payments.]

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Section 226.12—Special Credit Card Provisions

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12(a) Issuance of credit cards.

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Paragraph 12(a)(2).

* * * * *

2. *Substitution—examples.* Substitution encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:

i. Changed its name.

ii. Changed the name of the card.

iii. Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The substitution of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

iv. Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.

v. Changed the merchant base,► provided that◄ the new card ► is◄[must be] honored by at least one of the persons that honored the original card. ►However, unless the change in the merchant base is the addition of an affiliate of the existing merchant base, the substitution of a new card for another on an unsolicited basis is not permissible where the account is inactive and the consumer has not obtained an extension of credit with the existing merchant base within 24 months prior to the issuance of the new card. A credit card cannot be issued in these circumstances without a request or application. For purposes of § 226.12(a), an account is inactive if no credit has been extended and if the account has no outstanding balance for 24 months. See § 226.11(b)(2).◄

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12(b) Liability of cardholder for unauthorized use.

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3. *Reasonable investigation.* If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request►, including providing an affidavit or filing a police report◄; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

vi. Requesting a written, signed statement from the cardholder or authorized user. ►However, a creditor may not require an affidavit as a part of a reasonable investigation.◄

vii. Requesting a copy of a police report, if one was filed.

viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

* * * * *

Section 226.13—Billing-Error Resolution

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13(f) Procedures if different billing error or no billing error occurred.

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►3. *Reasonable investigation.* A creditor must conduct a reasonable investigation before it determines that no billing error occurred or that a different billing error occurred from that asserted. In conducting its investigation of an allegation of a billing error, the creditor may reasonably request the consumer's cooperation. The creditor may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report. However, if the creditor otherwise has no knowledge of facts confirming the billing error, the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the creditor reasonably to terminate the investigation. The procedures involved in investigating alleged billing errors may differ.

i. *Unauthorized transaction.* In conducting an investigation of a billing error notice alleging an unauthorized transaction under paragraph (a)(1) of this section, actions such as the following represent steps that a creditor may take, as appropriate, in conducting a reasonable investigation:

A. Reviewing the types or amounts of purchases made in relation to the consumer's previous purchasing pattern.

B. Reviewing where the purchases were delivered in relation to the consumer's residence or place of business.

C. Reviewing where the purchases were made in relation to where the consumer resides or has normally shopped.

D. Comparing any signature on credit slips for the purchases to the signature of the consumer (or an authorized user in the case of a credit card account) in creditor's records, including other credit slips.

E. Requesting documentation to assist in the verification of the claim.

F. Requesting a written, signed statement from the consumer (or authorized user, in the case of a credit card account). However, a creditor may not require an affidavit as a part of a reasonable investigation.

G. Requesting a copy of a police report, if one was filed.

H. Requesting information regarding the consumer's knowledge of the person who allegedly obtained an extension of credit on the account or of that person's authority to do so.

ii. *Nondelivery of property or services.* In conducting an investigation of a billing error notice alleging the nondelivery of property or services under paragraph (a)(3) of this section, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed.

iii. *Incorrect information.* In conducting an investigation of a billing error notice alleging that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card or otherwise accepting an access device for an open-end plan has made an incorrect report to the creditor, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the information was correct.◄

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Section 226.16—Advertising

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►2. *Clear and conspicuous standard—promotional rates and deferred interest offers.* For purposes of § 226.16(e), a clear and conspicuous disclosure means the required information in §§ 226.16(e)(4)(i) and (ii) must be equally prominent to the promotional rate to which it applies. If the information in §§ 226.16(e)(4)(i) and (ii) is the same type size as the promotional rate to which it applies, the disclosures would be deemed to be equally prominent. For purposes of § 226.16(h), a clear and conspicuous disclosure means the required information in § 226.16(h)(3) must be equally prominent to each statement of ''no interest'', ''no payments,'' or ''deferred interest'' or similar term regarding interest or payments during the deferred interest period. If the disclosure of the deferred interest period

required in §§ 226.16(h)(3) is the same type size as the statement of ''no interest'', ''no payments,'' or ''deferred interest'' or similar term regarding interest or payments during the deferred interest period, the disclosure would be deemed to be equally prominent.◄

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16(b) Advertisement of terms that require additional disclosures.

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►4. *Deferred interest programs or other similar deferment programs.* Statements such as ''Charge it—you won't be billed until May'' or ''You may skip your January payment'' are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under § 226.6. However, a statement such as ''No interest charges until May'' or any other statement regarding when interest or finance charges begin to accrue or are charged to the consumer is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing, deferred payment, or deferred interest program such as the examples above.◄

►*16(e) Promotional rates.*

1. *Rate in effect at the end of the promotional period.* If the annual percentage rate that will be in effect at the end of the promotional period (i.e., the post-promotional rate) is a variable rate, the post-promotional rate for purposes of § 226.16(e)(2)(i) is the rate that would have applied at the time the promotional rate was advertised if the promotional rate was not offered, consistent with the accuracy requirements in § 226.5a(c)(2) and § 226.5a(e)(4), as applicable.

2. *Example of promotional rate under § 226.16(e)(2)(i)(B).* A creditor generally offers a 15% rate of interest for purchases on a consumer credit card account. For purchases made during a particular month, however, the creditor offers a rate of 5% that will apply until the consumer pays those purchases in full. Under § 226.16(e)(2)(i)(B), the 5% rate is a ''promotional rate'' because it is lower than the 15% rate that applies to other purchases.

3. *Immediate proximity.* Including the term ''introductory'' or ''intro'' in the same phrase as the listing of the introductory rate is deemed to be in immediate proximity of the listing.

4. *Prominent location closely proximate.* Information required to be disclosed in §§ 226.16(e)(4)(i) and (ii) that is in the same paragraph as the first listing of the promotional rate is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the listing.

5. *First listing.* For purposes of § 226.16(e)(4), the first listing of the promotional rate is the most prominent listing of the rate on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the promotional rate is not listed on the principal promotional document or there is no principal promotional document, the first listing is the most prominent listing of the rate on the front side of the first page of each document listing the promotional rate. If the listing of the promotional rate with the largest type size on the front side of the first page of the principal promotional document (or each document listing the promotional rate if the promotional rate is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing.

6. *Post-promotional rate depends on consumer's creditworthiness.* For purposes of disclosing the rate that may apply after the end of the promotional rate period, at the advertiser's option, the advertisement may disclose the rates that may apply as either specific rates, or a range of rates. For example, if there are three rates that may apply (9.99%, 12.99% or 17.99%), an issuer may disclose these three rates as specific rates (9.99%, 12.99% or 17.99%) or as a range of rates (9.99%–17.99%).◄

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►*16(h) Deferred interest offers.*

1. *Deferred interest clarified.* Deferred interest offers do not include offers that allow a consumer to defer payments during a specified period of time, and the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. Deferred interest offers also do not include 0% annual percentage rate offers where a consumer is not obligated under any circumstances for interest attributable to the time period the 0% annual percentage rate is in effect, though such offers may be considered promotional rates under § 226.16(e)(2)(i).

2. *Immediate proximity.* Including the deferred interest period in the same phrase as the statement of ''no interest,'' ''no payments,'' or ''deferred interest'' or similar term regarding interest or payments during the deferred interest period is deemed to be in immediate proximity of the statement.

3. *Prominent location closely proximate.* Information required to be disclosed in §§ 226.16(h)(4)(i), (ii), and (iii) that is in the same paragraph as the first statement of ''no interest,'' ''no payments,'' or ''deferred interest'' or similar term regarding interest or payments during the deferred interest period is deemed to be in a prominent location closely proximate to the statement. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the statement.

4. *First listing.* For purposes of § 226.16(h)(4), the first statement of ''no interest,'' ''no payments,'' or ''deferred interest'' or similar term regarding interest or payments during the deferred interest period is the most prominent listing of one of these statements on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If one of the statements is not listed on the principal promotional document or there is no principal promotional document, the first listing of one of these statements is the most prominent listing of the statement on the front side of the first page of each document containing one of these statements. If the listing of one of these statements with the largest type size on the front side of the first page of the principal promotional document (or each document listing one of these statements if a statement is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)–1, a catalog or multiple-page advertisement is considered one document for purposes of § 226.16(h)(4).

5. *Additional information.* Consistent with comment 5(a)–2, the information required under § 226.16(h)(4) need not be segregated from other information regarding the deferred interest offer. Advertisements may also be required to provide additional information pursuant to § 226.16(b) though such information need not be integrated with the information required under § 226.16(h)(4).◄

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►Appendices◄ [Appendixes] G and H—Open-End and Closed-End Model Forms and Clauses

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Appendix G—Open-End Model Forms and Clauses

1. Model►s◄ G–1 ►and G–1A◄. The model disclosures in G–1 ►and G–1A◄ (different balance computation methods) may be used in both the ►account-opening◄ [initial] disclosures under § 226.6 and the periodic disclosures under § 226.7. As is clear from the models given, ''shorthand'' descriptions of the balance computation methods are not sufficient►, except where § 226.7(b)(5) applies. For creditors using model G–1,◄ the phrase ''a portion of'' the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate. [In addition,] If unpaid ►interest or◄ finance charges are subtracted in calculating the balance, that fact must be stated so that the disclosure of the computation method is accurate. Only model G–1(b) contains a final sentence appearing in brackets which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in model G–1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in model G–1(b).) (See the commentary to section 226.7►(a)(5) and 226.7(b)(5)◄[(e)].) ►For open-end plans subject to the requirements of § 226.5b, creditors may, at their option, use the clauses in G–1 or G–1A.◄

* * * * *

5. *Model G–10(A), sample►s◄ G–10(B) and [model] G–10(C)►, model G–10(D), sample G–10(E), model G–17(A), and samples G–17(B), 17(C) and 17(D)◄.*

i. Model G–10(A) and sample►s◄ G–10(B) ►and G–10(C)◄ illustrate, in the tabular format, [all of] the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. [Model G–10(B) is a sample disclosure illustrating an account with a lower introductory rate and penalty rate.] Model G–10►(D)◄ [(C)] ►and sample G–10(E)◄ illustrate[s] the tabular format disclosure for charge card applications and solicitations and reflects [all of] the disclosures in the table. ►Model G–17(A) and samples G–17(B), G–17(C) and G–17(D) illustrate, in the tabular format, the disclosures required under § 226.6(b)(4) for account-opening disclosures.◄

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms G–10(A)►, G–10(D)◄ and ►G–17(A)◄. [The disclosures may, however, be arranged vertically or horizontally and need not be highlighted aside from being included in the table.] While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use headings [and disclosures] other than those in the forms (with an exception relating to the use of [''grace period''] ►''penalty APR'', and in relation to required insurance, or debt cancellation or suspension coverage, the term ''required'' and the name of the product◄) if they are clear and concise and are substantially similar to the headings [and disclosures] contained in model forms.

►iii. Models G–10(A) and G–17(A) contain two alternative headings (''Minimum Interest Charge'' and ''Minimum Charge'') for disclosing a minimum finance charge under § 226.5a(b)(3) and § 226.6(b)(4)(iii)(D). If a creditor imposes a minimum finance charge in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor should disclose this charge under the heading ''Minimum Interest Charge.'' Other minimum finance charges should be disclosed under the heading ''Minimum Charge.''

iv. Models G–10(A), G–10(D) and G–17(A) contain two alternative headings (''Annual Fees'' and ''Set-up and Maintenance Fees'') for disclosing fees for issuance or availability of credit under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A). If the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) is an annual fee, a creditor should use the heading ''Annual Fee'' to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) other than, or in addition to, an annual fee, the creditor should use the heading ''Set-up and Maintenance Fees'' to disclose fees for issuance or availability of credit, including the annual fee.

v. Although creditors are not required to use a certain paper size in disclosing the §§ 226.5a or 226.6(b)(4) disclosures, samples G–10(B), G–10(C), G–17(B) and G–17(C) are designed to be printed on an 8½ x 14 sheet of paper. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Ariel font style, except for the purchase annual percentage rate which is shown in 16-point type)

B. Sufficient spacing between lines of the text;

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. For example, in the samples in the row of the tables with the heading ''APR for Balance Transfers,'' the forms disclose three components: The applicable balance transfer rate, a cross reference to the balance transfer fee, and a notice about payment allocation. The samples show these three components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late payment fee, the forms disclose two components: The late-payment fee, and the cross reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the tables.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type;

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text; and

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

vi. While the Board is not requiring creditors to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font requirement), the Board encourages creditors to consider these techniques when deciding how to disclose information in the table, to ensure that the information is presented in a readable format.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 2, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–10242 Filed 5–16–08; 8:45 am]

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Federal Register

Monday,
May 19, 2008

Part III

Federal Reserve System
12 CFR Part 227

Department of the Treasury
Office of Thrift Supervision

12 CFR Part 535

National Credit Union Administration
12 CFR Part 706

Unfair or Deceptive Acts or Practices; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Regulation AA; Docket No. R–1314]

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 535

[Docket ID. OTS–2008–0004]

RIN 1550–AC17

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 706

RIN 3133–AD47

Unfair or Deceptive Acts or Practices

AGENCIES: Board of Governors of the Federal Reserve System (Board); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board, OTS, and NCUA (collectively, the Agencies) are proposing to exercise their authority under section 5(a) of the Federal Trade Commission Act to prohibit unfair or deceptive acts or practices. The proposed rule would prohibit institutions from engaging in certain acts or practices in connection with consumer credit cards accounts and overdraft services for deposit accounts. This proposal evolved from the Board's June 2007 Notice of Proposed Rule under the Truth in Lending Act and OTS's August 2007 Advance Notice of Proposed Rulemaking under the Federal Trade Commission Act. The proposed rule relates to other Board proposals under the Truth in Lending Act and the Truth in Savings Act, which are published elsewhere in today's **Federal Register**.

DATES: Comments must be received on or before August 4, 2008.

ADDRESSES: Because paper mail in the Washington DC area and at the Agencies is subject to delay, we encourage commenters to submit comments by e-mail, if possible. We also encourage commenters to use the title ''Unfair or Deceptive Acts or Practices'' to facilitate our organization and distribution of the comments. Comments submitted to one or more of the Agencies will be made available to all of the Agencies. Interested parties are invited to submit comments as follows:

Board: You may submit comments, identified by Docket No. R–1314, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

OTS: You may submit comments, identified by OTS–2008–0004, by any of the following methods:

- *Federal eRulemaking Portal-* ''Regulations.gov'': Go to *http://www.regulations.gov*, under the ''more Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OTS–2008–0004'' to submit or view public comments and to view supporting and related materials for this proposed rulemaking. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2008–0004.
- *Facsimile:* (202) 906–6518.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2008–0004.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.
- *Viewing Comments Electronically:* Go to *http://www.regulations.gov*, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' Select Docket ID ''OTS–2008–0004'' to view public comments for this notice of proposed rulemaking.
- *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments, identified by number RIN 3133–AD47, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Proposed Rule Part 706'' in the e-mail subject line.
- *Facsimile:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT:

Board: Benjamin K. Olson, Attorney, or Ky Tran-Trong, Counsel, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667, Board of Governors of the Federal Reserve System, 20th and C Streets,

NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

OTS: April Breslaw, Director, Consumer Regulations, (202) 906–6989; Suzanne McQueen, Consumer Regulations Analyst, Compliance and Consumer Protection Division, (202) 906–6459; Glenn Gimble, Senior Project Manager, Compliance and Consumer Protection Division, (202) 906–7158; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, at Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA: Matthew J. Biliouris, Program Officer, Office of Examination and Insurance, (703) 518–6360; or Moisette I. Green or Ross P. Kendall, Staff Attorneys, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: The Federal Reserve Board (Board), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies) are proposing several new provisions intended to protect consumers against unfair or deceptive acts or practices with respect to consumer credit card accounts and overdraft services for deposit accounts. These proposals are promulgated pursuant to section 18(f)(1) of the Federal Trade Commission Act (FTC Act), which makes the Agencies responsible for prescribing regulations that prevent unfair or deceptive acts or practices in or affecting commerce within the meaning of section 5(a) of the FTC Act. *See* 15 U.S.C. 57a(f)(1), 45(a).

I. Background

A. The Board's June 2007 Regulation Z Proposal on Open-End (Non-Home Secured) Credit

On June 14, 2007, the Board requested public comment on proposed amendments to the open-end credit (not home-secured) provisions of Regulation Z, which implements the Truth in Lending Act (TILA), as well as proposed amendments to the corresponding staff commentary to Regulation Z. 72 FR 32948 (June 2007 Proposal). The purpose of TILA is to promote the informed use of consumer credit by providing disclosures about its costs and terms. *See* 15 U.S.C. 1601 *et seq.* TILA's disclosures differ depending on whether the consumer credit is an open-end (revolving) plan or a closed-end (installment) loan. The goal of the proposed amendments was to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account.

As part of this effort, the Board retained a research and consulting firm (Macro International) to assist the Board in conducting extensive consumer testing in order to develop improved disclosures that consumers would be more likely to pay attention to, understand, and use in their decisions, while at the same time not creating undue burdens for creditors. While the testing assisted the Board in developing improved disclosures, the testing also identified the limitations of disclosure, in certain circumstances, as a means of enabling consumers to make decisions effectively. *See* 72 FR at 32948–52.

In response to the June 2007 Proposal, the Board received more than 2,500 comments, including approximately 2,100 comments from individual consumers. Comments from consumers, consumer groups, a member of Congress, other government agencies, and some creditors were generally supportive of the proposed revisions to Regulation Z. A number of comments, however, urged the Board to take additional action with respect to a number of credit card practices, including late fees and other penalties resulting from perceived reductions in the amount of time consumers are given to make timely payments, allocation of payments to balances with the lowest annual percentage rate, application of increased annual percentage rates to pre-existing balances, and the so-called two-cycle method of computing interest.

B. The OTS's August 2007 FTC Act Advance Notice of Proposed Rulemaking

On August 6, 2007, OTS issued an ANPR requesting comment on its rules under section 5 of the FTC Act. *See* 72 FR 43570 (OTS ANPR). The purpose of OTS's ANPR was to determine whether OTS should expand on its current prohibitions against unfair and deceptive acts or practices in its Credit Practices Rule (12 CFR part 535).

OTS's ANPR discussed a very broad array of issues including:

- The legal background on OTS's authority under the FTC Act and the Home Owners' Loan Act (HOLA);
- OTS's existing Credit Practices Rule;
- Possible principles OTS could use to define unfair and deceptive acts or practices, including looking to standards the FTC and states follow;
- Practices that OTS, individually or on an interagency basis, has addressed through guidance;
- Practices that other federal agencies have addressed through rulemaking;
- Practices that states have addressed statutorily;
- Acts or practices OTS might target involving products such as credit cards, residential mortgages, gift cards, and deposit accounts; and
- OTS's existing Advertising Rule (12 CFR 563.27).

OTS recognized in its ANPR that the financial services industry and consumers have benefited from consistency in rules and guidance as the federal banking agencies and the NCUA have adopted uniform or very similar rules in many areas. 72 FR at 43571. OTS emphasized in its ANPR that it would be mindful of the goal of consistent interagency standards as it considered issues relating to unfair and deceptive acts or practices. *Id.*

OTS received 29 comment letters on its ANPR, including thirteen from financial institutions and their trade associations, three from consumer advocacy organizations, two from members of Congress, one from the FTC, and ten from others. Generally speaking, the commenters agreed on only one point . . . that OTS should adopt the same principles-based standards for unfairness and deception used by the FTC, the other federal banking agencies, and the NCUA.

Financial industry commenters opposed OTS taking any further action beyond issuing guidance along those lines. They argued that OTS must not create an unlevel playing field for OTS-regulated institutions and that uniformity among the federal banking agencies and the NCUA is essential. They questioned the need for any new OTS rules. They challenged the list of practices OTS had indicated it could consider targeting, arguing that the practices listed were neither unfair nor deceptive under the FTC standards. They explained the reasons they use the particular practices listed and how some benefit consumers. Some commenters urged OTS to await the Board's rulemaking under the Home Ownership and Equity Protection Act (HOEPA) on unfair or deceptive acts or practices and then follow the Board's lead.[1] They also opposed using state laws as a model or converting guidance to rules. Further, they opposed OTS expanding its advertising rules.

In contrast, the consumer commenters urged OTS to move ahead with a rule that would combine the FTC's principles-based standards with prohibitions on specific practices. They

[1] The Board issued its HOEPA proposed in January 2008. *See* 73 FR 1672 (Jan. 9, 2008).

urged OTS to ban numerous practices, including but not limited to those the ANPR indicated OTS might target. One emphasized that whatever OTS does must not preempt state laws on unfair and deceptive acts or practices.

A joint comment from House Financial Services Committee Chairman Barney Frank and Subcommittee on Financial Institutions and Consumer Credit Chairman Carolyn Maloney urged OTS to proceed promptly to adopt comprehensive regulations on unfair and deceptive acts or practices. A comment from Senator Carl Levin urged OTS to move ahead with rulemaking; he focused his comment on unfair or deceptive credit card practices.

A comment from the FTC summarized the FTC's interest and experience with respect to financial services, described how the FTC has used its unfairness and deception authority in rulemaking and law enforcement actions, and recommended that OTS consider the FTC's experience in determining whether to impose rules prohibiting or restricting particular acts and practices.

OTS received comments on several practices relevant to the specific credit card practices addressed in today's proposal:

• OTS received comments on the practice of ''universal default'' or ''adverse action pricing,'' which the OTS ANPR described as imposing an interest rate increase that is triggered by adverse information unrelated to the credit card account. The OTS ANPR contrasted this practice to long-established risk based pricing. Consumer groups supported prohibiting these practices as abusive and unfair to consumers. They cited inaccuracies in the credit reporting system and disparate racial impact as reasons to prohibit using credit reports or credit scores to impose penalty rates. On the other hand, several industry commenters defended these practices. They commented that credit cards should be priced to reflect their current risk. They argued that otherwise, credit card issuers would build a risk premium into all rates to the detriment of other customers.

• OTS received comments on the practice of applying payments first to balances subject to a lower rate of interest before applying payments to balances subject to higher rates of interest, as well as the practice of applying payments first to fees, penalties, or other charges before applying them to principal and interest. Consumer groups supported prohibiting these practices as abusive and unfair to consumers. On the other hand, several industry commenters defended these practices. They commented that if these practices were prohibited fewer products would be available to consumers such as zero or low-cost balance transfers. Some commented that applying payments in this manner was fundamental and would impose significant implementation costs to change.

• OTS received comments on the practice of imposing an over-the-credit-limit fee that is triggered by the imposition of a penalty fee (such as a late fee) and the practice of charging penalty fees in consecutive months based on previous late or over-the-credit-limit transactions, not on new actions. Consumer groups supported prohibiting these practices and prohibiting any over-the-credit-limit fee where the creditor approved the transaction or padded the credit limit, as abusive and unfair to consumers. On the other hand, several industry commenters defended these practices. They commented that the practices deter future defaults and are a way to charge a little more to a customer who has demonstrated higher risk without permanently raising the customer's borrowing costs. They argued that otherwise, these costs would be passed on to borrowers who do not go over their credit limit or pay late.

Consumer groups also commented on additional credit card practices of concern that are relevant to the practices addressed in today's proposal. They urged that payment cut-off times be prohibited and that payments be treated as timely if they are postmarked as of the due date. They also urged that subprime credit cards be prohibited if less than $300 of available credit is left after initial fees are subtracted or initial fees total more than 10% of the overall credit line.

C. Related Action by the Agencies

In addition to receiving information via comments, the Agencies have conducted outreach regarding credit card practices, including meetings and discussions with consumer group representatives, industry representatives, other federal and state banking agencies, and the FTC. On April 8, 2008, the Board hosted a forum on credit cards in which card issuers and payment network operators, consumer advocates, counseling agencies, and other regulatory agencies met to discuss relevant industry trends and identify areas that may warrant action or further study. Among the topics discussed were the Board's previously announced plan to issue a proposal under the FTC Act and the Board's June 2007 Proposal. In addition, the Agencies have reviewed consumer complaints received by each of the federal banking agencies and several studies of the credit card industry.[2] The Agencies' understanding of credit card practices and consumer behavior has also been informed by the results of consumer testing conducted on behalf of the Board in connection with its June 2007 Proposal under Regulation Z. Based on this and other information discussed below, the Agencies have developed proposed rules under the FTC Act prohibiting specific unfair acts or practices regarding consumer credit card accounts.

Finally, the Agencies have also gathered information from a number of recent Congressional hearings on consumer protection issues regarding credit cards.[3] In these hearings, members of Congress heard testimony from individual consumers,

[2] *See, e.g.*, Am. Bankers Assoc., *Likely Impact of Proposed Credit Card Legislation: Survey Results of Credit Card Issuers* (Spring 2008); Darryl E. Getter, Cong. Research Srvc., *The Credit Card Market: Recent Trends, Funding Cost Issues, and Repricing Practices* (Feb. 2008); Tim Westrich & Christian E. Weller, Ctr. for Am. Progress, *House of Cards: Consumers Turn to Credit Cards Amid the Mortgage Crisis, Delaying Inevitable Defaults* (Feb. 2008) (available at *http://www.americanprogress.org/issues/2008/02/pdf/house_of_cards.pdf*); Jose A. Garcia, Demos, *Borrowing to Make Ends Meet: The Rapid Growth of Credit Card Debt in America* (Nov. 2007) (available at *http://www.demos.org/pubs/borrowing.pdf*); Nat'l Consumer Law Ctr., *Fee-Harvesters: Low-Credit, High-Cost Cards Bleed Consumers* (Nov. 2007) (available at *http://www.consumerlaw.org/issues/credit_cards/content/FEE-HarvesterFinal.pdf*); Jonathan M. Orszag & Susan H. Manning, Am. Bankers Assoc., *An Economic Assessment of Regulating Credit Card Fees and Interest Rates* (Oct. 2007) (available at *http://www.aba.com/aba/documents/press/regulating_creditcard_fees_interest_rates92507.pdf*); Cindy Zeldin & Mark Rukavia, Demos, *Borrowing to Stay Healthy: How Credit Card Debt Is Related to Medical Expenses* (Jan. 2007) (available at *http://www.demos.org/pubs/healthy_web.pdf*); U.S. Gov't Accountability Office, *Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers* (Sept. 2006) (''GAO Credit Card Report'') (available at *http://www.gao.gov/new.items/d06929.pdf*); Board of Governors of the Federal Reserve System, *Report to Congress on Practices of the Consumer Credit Industry in Soliciting and Extending Credit and their Effects on Consumer Debt and Insolvency* (June 2006) (available at *http://www.federalreserve.gov/boarddocs/rptcongress/bankruptcy/bankruptcybillstudy200606.pdf*); Demos & Ctr. for Responsible Lending, *The Plastic Safety Net: The Reality Behind Debt in America* (Oct. 2005) (available at *http://www.demos.org/pubs/PSN_low.pdf*).

[3] *See, e.g., The Credit Cardholders' Bill of Rights: Providing New Protections for Consumers: Hearing before the H. Subcomm. on Fin. Instits. & Consumer Credit,* 110th Cong. (2007); *Credit Card Practices: Unfair Interest Rate Increases: Hearing before the S. Permanent Subcomm. on Investigations,* 110th Cong. (2007); *Credit Card Practices: Current Consumer and Regulatory Issues: Hearing before H. Comm. on Fin. Servs.,* 110th Cong. (2007); *Credit Card Practices: Fees, Interest Rates, and Grace Periods: Hearing before the S. Permanent Subcomm. on Investigations,* 110th Cong. (2007).

representatives of consumer groups, representatives of financial and credit card industry groups, and others. Consumer and community group representatives generally testified that certain credit card practices (including those discussed above) unfairly increase the cost of credit after the consumer has committed to a particular transaction. These witnesses further testified that these practices should be prohibited because they lead consumers to underestimate the costs of using credit cards and that disclosure of these practices under Regulation Z is ineffective. Financial services and credit card industry representatives agreed that consumers need better disclosures of credit card terms but testified that substantive restrictions on specific terms would lead to higher interest rates for all borrowers as well as reduced access to credit for some. Members of Congress have proposed several bills addressing consumer protection issues regarding credit cards.[4]

D. Agency Actions on Overdraft Services

Overdraft services are sometimes offered to transaction account customers as an alternative to traditional ways of covering overdrafts (*e.g.*, overdraft lines of credit or linked accounts). Coverage is generally ''automatically'' provided to consumers that meet a depository institution's criteria, and the service may extend to check as well as other transactions, such as automated teller machine (ATM) withdrawals, debit card transactions and automated clearinghouse (ACH) transactions. Most institutions state that payment of an overdraft is at their discretion. If an overdraft is paid, the consumer will be charged a flat fee for each item. A daily fee also may apply for each day the account remains overdrawn.

In response to the increased availability and customer use of these overdraft protection services, the FDIC, Board, OCC, OTS, and NCUA published guidance on overdraft protection programs in February 2005.[5] The Joint Guidance addresses three primary areas—safety and soundness considerations, legal risks, and best practices—while the OTS guidance focuses on safety and soundness considerations and best practices. The best practices focus on the marketing and communications that accompany the offering of overdraft services, as well as the disclosure and operation of program features, including the provision of a consumer election or opt-out of the overdraft service. The Agencies have also published a consumer brochure on overdraft services.[6]

In May 2005, the Board separately issued revisions to Regulation DD and the staff commentary pursuant to its authority under the Truth in Savings Act (TISA) to address concerns about the uniformity and adequacy of institutions' disclosure of overdraft fees generally, and to address concerns about advertised overdraft services in particular.[7] The goal of the final rule was to improve the uniformity and adequacy of disclosures provided to consumers about overdraft and returned-item fees to assist consumers in better understanding the costs associated with the payment of overdrafts. In addition, the final rule addressed some of the Board's concerns about institutions' marketing practices with respect to overdraft services.

In addition to regulatory actions, there has also been significant Congressional interest in overdraft services, with legislation introduced seeking to curb some of the perceived abusive practices associated with these services. In June 2007, a hearing was held to discuss the proposed legislation with testimony from consumer advocates and industry representatives.[8]

II. Statutory Authority Under the Federal Trade Commission Act To Address Unfair or Deceptive Acts or Practices

A. Rulemaking and Enforcement Authority Under the FTC Act

Section 18(f)(1) of the FTC Act provides that the Board (with respect to banks), OTS (with respect to savings associations), and the NCUA (with respect to federal credit unions) are responsible for prescribing ''regulations defining with specificity * * * unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices.'' 15 U.S.C. 57a(f)(1).[9]

The FTC Act allocates responsibility for enforcing compliance with regulations prescribed under section 18 with respect to banks, savings associations, and federal credit unions among the Board, OTS, and NCUA, as well as the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). *See* 15 U.S.C. 57a(f)(2)–(4). The FTC Act grants the FTC rulemaking and enforcement authority with respect to other persons and entities, subject to certain exceptions and limitations. *See* 15 U.S.C. 45(a)(2); 15 U.S.C. 57a(a). The FTC Act, however, sets forth specific rulemaking procedures for the FTC that do not apply to the Agencies. *See* 15 U.S.C. 57a(b)–(e), (g)–(j); 15 U.S.C. 57a–3.

B. Standards for Unfairness Under the FTC Act

Congress has codified standards developed by the Federal Trade Commission (FTC) for the FTC to use in determining whether acts or practices are unfair under section 5(a) of the FTC Act.[10] Specifically, the FTC Act provides that the FTC has no authority to declare an act or practice is unfair unless: (1) It causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers themselves; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition. In addition, the FTC may consider established public policy, but public policy may not serve as the primary basis for its determination that an act or practice is unfair. *See* 15 U.S.C. 45(n).

[4] *See, e.g.*, The Credit Card Reform Act of 2008, S. 2753, 110th Cong. (Mar. 12, 2008); The Credit Cardholders' Bill of Rights Act of 2008, H.R. 5244, 110th Cong. (Feb. 7, 2008); The Stop Unfair Practices in Credit Cards Act of 2007, H.R. 5280, 110th Cong. (Feb. 7, 2008); The Stop Unfair Practices in Credit Cards Act of 2007, S. 1395, 110th Cong. (May 15, 2007); The Universal Default Prohibition Act of 2007, H.R. 2146, 110th Cong. (May 3, 2007); The Credit Card Accountability Responsibility and Disclosure Act of 2007, H.R. 1461, 110th Cong. (Mar. 9, 2007).

[5] *See* Interagency Guidance on Overdraft Protection Programs (Joint Guidance), 70 FR 9127 (Feb. 24, 2005) and OTS Guidance on Overdraft Protection Programs, 70 FR 8428 (Feb. 18, 2005).

[6] The brochure, entitled ''Protecting Yourself from Overdraft and Bounced-Check Fees,'' can be found at: *http://www.federalreserve.gov/pubs/bounce/default.htm.*

[7] 70 FR 29582 (May 24, 2005). A substantively similar rule applying to credit unions was issued separately by the NCUA. 71 FR 24568 (Apr. 26, 2006). The NCUA issued an interim final rule in 2005. 70 FR 72895 (Dec. 8, 2005).

[8] H.R. 946, ''The Consumer Overdraft Protection Fair Practices Act.'' *See also Overdraft Protection: Fair Practices for Consumers: Hearing Before the House Subcomm. on Financial Institutions and Consumer Credit,* 110th Cong. (2007).

[9] The FTC Act refers to OTS's predecessor agency, the Federal Home Loan Bank Board (FHLBB), rather than to OTS. However, in section 3(e) of HOLA, Congress transferred this rulemaking power of the FHLBB, among others, to the Director of OTS. 12 U.S.C. 1462a(e). The FTC Act refers to ''savings and loan institutions'' in some provisions and ''savings associations'' in other provisions. Although ''savings associations'' is the term currently used in the HOLA, *see, e.g.*, 12 U.S.C. 1462(4), the terms ''savings and loan institutions'' and ''savings associations'' can be and are used interchangeably. OTS has determined that the outdated language does not affect OTS's rulemaking authority under the FTC Act.

[10] *See* 15 U.S.C. 45(n); FTC Policy Statement on Unfairness, Letter from the FTC to the Hon. Wendell H. Ford and the Hon. John C. Danforth, S. Comm. on Commerce, Science & Transp. (Dec. 17, 1980) (FTC Policy Statement on Unfairness) (available at *http://www.ftc.gov/bcp/policystmt/ad-unfair.htm*).

In proposing rules under section 18(f)(1) of the FTC Act, the Agencies have applied the statutory elements consistent with the standards articulated by the FTC. The Board, FDIC, and OCC have issued guidance generally adopting these standards for purposes of enforcing the FTC Act's prohibition on unfair or deceptive acts or practices.[11] Although the OTS has not taken similar action in generally applicable guidance,[12] the commenters on OTS's ANPR who addressed this issue overwhelmingly urged OTS to be consistent with the FTC's standards for unfairness.

According to the FTC, an unfair act or practice will almost always represent a market failure or imperfection that prevents the forces of supply and demand from maximizing benefits and minimizing costs.[13] Not all market failures or imperfections constitute unfair acts or practices, however. Instead, the central focus of the FTC's unfairness analysis is whether the act or practice causes substantial consumer injury.[14]

First, the FTC has stated that a substantial consumer injury generally consists of monetary, economic, or other tangible harm.[15] Trivial or speculative harms do not constitute substantial consumer injury.[16] Consumer injury may be substantial, however, if it imposes a small harm on a large number of consumers or if it raises a significant risk of concrete harm.[17]

Second, the FTC has stated that an injury is not reasonably avoidable when consumers are prevented from effectively making their own decisions about whether to incur that injury.[18] The marketplace is normally expected to be self-correcting because consumers are relied upon to survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory.[19] Accordingly, the test is not whether the consumer could have made a wiser decision but whether an act or practice unreasonably creates or takes advantage of an obstacle to the consumer's ability to make that decision freely.[20]

Third, the FTC has stated that the act or practice causing the injury must not also produce benefits to consumers or competition that outweigh the injury.[21] Generally, it is important to consider both the costs of imposing a remedy and any benefits that consumers enjoy as a result of the practice.[22] The FTC has stated that both consumers and competition benefit from prohibitions on unfair or deceptive acts or practices because prices may better reflect actual transaction costs and merchants who do not rely on unfair or deceptive acts or practices are no longer required to compete with those who do.[23]

C. Standards for Deception Under the FTC Act

The FTC has also adopted standards for determining whether an act or practice is deceptive under the FTC Act.[24] *Under the FTC's standards, an act or practice is deceptive where:* (1) There is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (2) that information is material to consumers.[25] Although these standards have not been codified, they have been applied by numerous courts.[26] Accordingly, in proposing rules under section 18(f)(1) of the FTC Act, the Agencies have applied the standards articulated by the FTC for determining whether an act or practice is deceptive.[27]

A representation or omission is deceptive if the overall net impression created is likely to mislead consumers.[28] The FTC conducts its own analysis to determine whether a representation or omission is likely to mislead consumers acting reasonably under the circumstances.[29] When evaluating the reasonableness of an interpretation, the FTC considers the sophistication and understanding of consumers in the group to whom the act or practice is targeted.[30] If a representation is susceptible to more than one reasonable interpretation, and if one such interpretation is misleading, then the representation is deceptive even if other, non-deceptive interpretations are possible.[31]

A representation or omission is material if it is likely to affect the consumer's conduct or decision regarding a product or service.[32] Certain types of claims are presumed to be material, including express claims and

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[11] *See* Board and FDIC, Unfair or Deceptive Acts or Practices by State-Chartered Banks (Mar. 11, 2004) (available at *http://www.federalreserve.gov/boarddocs/press/bcreg/2004/20040311/attachment.pdf*); OCC Advisory Letter 2002–3, Guidance on Unfair or Deceptive Acts or Practices (Mar. 22, 2002) (available at *http://www.occ.treas.gov/ftp/advisory/2002–3.doc*).

[12] *See* OTS ANPR, 72 FR at 43573.

[13] Statement of Basis and Purpose and Regulatory Analysis for Federal Trade Commission Credit Practices Rule (Statement for FTC Credit Practices Rule), 49 FR 7740, 7744 (Mar. 1, 1984).

[14] *Id.* at 7743.

[15] *See id.*; FTC Policy Statement on Unfairness at 3.

[16] *See* Statement for FTC Credit Practices Rule, 49 FR at 7743 (''[E]xcept in aggravated cases where tangible injury can be clearly demonstrated, subjective types of harm—embarrassment, emotional distress, etc.—will not be enough to warrant a finding of unfairness.''); FTC Unfairness Policy Statement at 3 (''Emotional impact and other more subjective types of harm * * * will not ordinarily make a practice unfair.'').

[17] *See* Statement for FTC Credit Practices Rules, 49 FR at 7743; FTC Policy Statement on Unfairness at 3 & n.12.

[18] *See* FTC Policy Statement on Unfairness at 3.

[19] *See* Statement for FTC Credit Practices Rule, 49 FR at 7744 (''Normally, we can rely on consumer choice to govern the market.''); FTC Policy Statement on Unfairness at 3.

[20] *See* Statement for FTC Credit Practices Rule, 49 FR at 7744 (''In considering whether an act or practice is unfair, we look to whether free market decisions are unjustifiably hindered.''); FTC Policy Statement on Unfairness at 3 & n.19 (''In some senses any injury can be avoided—for example, by hiring independent experts to test all products in advance, or by private legal actions for damages—but these courses may be too expensive to be practicable for individual consumers to pursue.'').

[21] *See* Statement for FTC Credit Practices Rule, 49 FR at 7744; FTC Policy Statement on Unfairness at 3; *see also* S. Rep. 103–130, at 13 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1776, 1788 (''In determining whether a substantial consumer injury is outweighed by the countervailing benefits of a practice, the Committee does not intend that the FTC quantify the detrimental and beneficial effects of the practice in every case. In many instances, such a numerical benefit-cost analysis would be unnecessary; in other cases, it may be impossible. This section would require, however, that the FTC carefully evaluate the benefits and costs of each exercise of its unfairness authority, gathering and considering reasonably available evidence.'').

[22] *See* FTC Public Comment on OTS–2007–0015, at 6 (Dec. 12, 2007) (available at *http://www.ots.treas.gov/docs/9/963034.pdf*).

[23] *See* FTC Public Comment on OTS–2007–0015, at 8 (citing Preservation of Consumers' Claims and Defenses, Statement of Basis and Purpose, 40 FR 53506, 53523 (Nov. 18, 1975) (codified at 16 CFR 433)); *see also* FTC Policy Statement on Deception, Letter from the FTC to the Hon. John H. Dingell, H. Comm. on Energy & Commerce (Oct. 14, 1983) (FTC Policy Statement on Deception) (available at *http://www.ftc.gov/bcp/policystmt/ad-decept.htm*) (''Deceptive practices injure both competitors and consumers because consumers who preferred the competitor's product are wrongly diverted.'').

[24] FTC Policy Statement on Deception.

[25] *Id.* at 1–2. The FTC views deception as a subset of unfairness but does not apply the full unfairness analysis because deception is very unlikely to benefit consumers or competition and consumers cannot reasonably avoid being harmed by deception. *Id.*

[26] *See, e.g.*, *FTC* v. *Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC* v. *Gill*, 265 F.3d 944, 950 (9th Cir. 2001); *FTC* v. *QT*, Inc., 448 F. Supp. 2d 908, 957 (N.D. Ill. 2006); *FTC* v. *Think Achievement*, 144 F. Supp. 2d 993, 1009 (N.D. Ind. 2000); *FTC* v. *Minuteman Press*, 53 F. Supp. 2d 248, 258 (E.D.N.Y. 1998).

[27] As noted above, the Board, FDIC, and OCC have issued guidance generally adopting these standards for purposes of enforcing the FTC Act's prohibition on unfair or deceptive acts or practices. As with the unfairness standard, comments on OTS's ANPR addressing this issue overwhelmingly urged the OTS to adopt the same deception standard as the FTC.

[28] *See, e.g.*, *FTC* v. *Cyberspace.com*, 453 F.3d 1196, 1200 (9th Cir. 2006); *Gill*, 265 F.3d at 956; *Removatron Int'l Corp.* v. *FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989).

[29] *See FTC* v. *Kraft, Inc.*, 970 F.2d 311, 319 (7th Cir. 1992); *QT, Inc.*, 448 F. Supp. 2d at 958.

[30] FTC Policy Statement on Deception at 3.

[31] *Id.*

[32] *Id.* at 2, 6–7.

claims regarding the cost of a product or service.[33]

D. Choice of Remedy

The Agencies have wide latitude to determine what remedy is necessary to prevent an unfair or deceptive act or practice so long as that remedy has a reasonable relation to the act or practice.[34] Thus, the Agencies are not required to adopt the most restrictive means of preventing the act or practice, nor are they required to adopt the least restrictive means.

III. Summary of Proposed Revisions

In order to best ensure that all entities that offer the products addressed in the proposed rule are treated in a like manner, the Board, OTS, and NCUA have joined together to issue today's proposal. This interagency approach is consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994. *See* 12 U.S.C. 4803. Section 303(a)(3), 12 U.S.C. 4803(a)(3), directs the federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. In today's proposal, two federal banking agencies—the Board and OTS—are primarily implementing the same statutory provision, section 18(f) of the FTC Act, as is the NCUA. Accordingly, the Agencies have endeavored to propose rules that are as uniform as possible. The Agencies also consulted with the two other federal banking agencies, OCC and FDIC, as well as with the FTC.

The effort to achieve an even playing field is also furthered by the Agencies' focus on unfair and deceptive acts or practices involving credit cards and overdraft services, which are generally provided only by depository institutions such as banks, savings associations, and credit unions. The Agencies recognize that state-chartered credit unions and any entities providing consumer credit card accounts independent of a depository institution fall within the FTC's jurisdiction and therefore would not be subject to these rules. The Agencies believe, however, that FTC-regulated entities represent a small percentage of the market for consumer credit card accounts and overdraft services. For OTS, addressing certain deceptive credit card practices in today's proposal, rather than through an interpretation or expansion of its Advertising Rule, also fosters consistency because the other Agencies do not have comparable advertising regulations.

Credit Practices Rule

The Agencies are proposing to make non-substantive, organizational changes to the Credit Practices Rule. Specifically, in order to avoid repetition, the Agencies would move the statement of authority, purpose, and scope out of the Credit Practices Rule and revise it to apply not only to the Credit Practices Rule but also to the proposed rules regarding consumer credit card accounts and overdraft services. OTS and NCUA have made additional, non-substantive changes to the organization of their versions of the Credit Practices Rule.

Consumer Credit Card Accounts

The Agencies are proposing seven provisions under the FTC Act regarding consumer credit card accounts. These provisions are intended to ensure that consumers have the ability to make informed decisions about the use of credit card accounts without being subjected to unfair or deceptive acts or practices.

First, institutions would be prohibited from treating a payment as late for any purpose unless consumers have been provided a reasonable amount of time to make that payment. The proposed rule would create a safe harbor for institutions that adopt reasonable procedures designed to ensure that periodic statements (which provide payment information) are mailed or delivered at least 21 days before the payment due date. Elsewhere in today's **Federal Register**, the Board has made two additional proposals under Regulation Z that would further ensure that consumers receive a reasonable amount of time to make payment. Specifically, the Board is proposing to revise 12 CFR 226.10(b) to prohibit creditors from setting a cut-off time for mailed payments that is earlier than 5 p.m. at the location specified by the creditor for receipt of such payments. The Board is also proposing to add 12 CFR 226.10(d), which would require that, if the due date for payment is a day on which the U.S. Postal Service does not deliver mail or the creditor does not accept payment by mail, the creditor may not treat a payment received by mail the next business day as late for any purpose.

Second, when different annual percentage rates apply to different balances, institutions would be required to allocate amounts paid in excess of the minimum payment using one of three specified methods or a method that is no less beneficial to consumers. The specified methods are applying the entire amount first to the balance with the highest annual percentage rate, splitting the amount equally among the balances, or splitting the amount pro rata among the balances. Furthermore, when an account has a discounted promotional rate balance or a balance on which interest is deferred, institutions would be required to give consumers the full benefit of that discounted rate or deferred interest plan by allocating amounts in excess of the minimum payment first to balances on which the rate is not discounted or interest is not deferred (except, in the case of a deferred interest plan, for the last two billing cycles during which interest is deferred). Institutions would also be prohibited from denying consumers a grace period on purchases (if one is offered) solely because they have not paid off a balance at a promotional rate or a balance on which interest is deferred.

Third, institutions would be prohibited from increasing the annual percentage rate on an outstanding balance. This prohibition would not apply, however, where a variable rate increases due to the operation of an index, where a promotional rate has expired or is lost (provided the rate is not increased to a penalty rate), or where the minimum payment has not been received within 30 days after the due date.

Fourth, institutions would be prohibited from assessing a fee if a consumer exceeds the credit limit on an account solely due to a hold placed on the available credit. If, however, the actual amount of the transaction would have exceeded the credit limit, then a fee may be assessed.

Fifth, institutions would be prohibited from imposing finance charges on balances based on balances for days in billing cycles that precede the most recent billing cycle. The proposed rule would prohibit institutions from reaching back to earlier billing cycles when calculating the amount of interest charged in the current cycle, a practice that is sometimes referred to as two-or double-cycle billing.

Sixth, institutions would be prohibited from financing security deposits or fees for the issuance or availability of credit (such as account-opening fees or membership fees) if those deposits or fees utilize the majority of the available credit on the

[33] *See* FTC Public Comment on OTS–2007–0015, at 21; FTC Policy Statement on Deception at 6; *see also FTC* v. *Pantron I Corp.*, 33 F.3d 1088, 1095–96 (9th Cir. 1994); *In re Peacock Buick*, 86 F.T.C. 1532, 1562 (1975), *aff'd* 553 F.2d 97 (4th Cir. 1977).

[34] *See Am. Fin. Servs. Assoc.* v. *FTC*, 767 F.2d 957, 988–89 (DC Cir. 1985) (*citing Jacob Siegel Co.* v. *FTC*, 327 U.S. 608, 612–13 (1946)).

account. The proposal would also require security deposits and fees exceeding 25 percent of the credit limit to be spread over the first year, rather than charged as a lump sum during the first billing cycle. In addition, elsewhere in today's **Federal Register**, the Board is proposing to revise Regulation Z to provide that a creditor that collects or obtains a consumer's agreement to pay a fee before providing account-opening disclosures must permit that consumer to reject the plan after receiving the disclosures and, if the consumer does so, must refund any fee collected or take any other action necessary to ensure the consumer is not obligated to pay the fee.

Seventh, institutions making firm offers of credit advertising multiple annual percentage rates or credit limits would be required to disclose in the solicitation the factors that determine whether a consumer will qualify for the lowest annual percentage rate and highest credit limit advertised.

Overdraft Services

The Agencies are proposing two provisions prohibiting unfair acts or practices related to overdraft services in connection with consumer deposit accounts. The proposed provisions are intended to ensure that consumers understand overdraft services and have the choice to avoid the associated costs where such services do not meet their needs.

The first would provide that it is an unfair act or practice for an institution to assess a fee or charge on a consumer's account for paying an overdraft unless the institution provides the consumer with the right to opt out of the institution's payment of overdrafts and a reasonable opportunity to exercise the opt out, and the consumer does not opt out. The proposed opt-out right would apply to all transactions that overdraw an account regardless of whether the transaction is, for example, a check, an ACH transaction, an ATM withdrawal, a recurring payment, or a debit card purchase at a point of sale.

The second proposal would prohibit certain acts or practices associated with assessing overdraft fees in connection with debit holds. Specifically, the proposal would prohibit an institution from assessing an overdraft fee if the overdraft is caused solely by a hold placed on funds that exceeds the actual purchase amount of the transaction, unless this purchase amount would have caused the overdraft.

Elsewhere in today's **Federal Register**, the Board is also proposing to address potentially misleading balance disclosures by generally requiring depository institutions to provide only balances that reflect the consumer's own funds (without funds added by the institution to cover overdrafts) in response to consumer inquiries received through an automated system such as a telephone response system, ATM, or an institution's Web site.

IV. Section-by-Section Analysis of the Credit Practices Subpart

On March 1, 1984, the FTC adopted its Credit Practices Rule pursuant to its authority under the FTC Act to promulgate rules that define and prevent unfair or deceptive acts or practices in or affecting commerce.[35] The FTC Act provides that, whenever the FTC promulgates a rule prohibiting specific unfair or deceptive practices, the Board, OTS (as the successor to the Federal Home Loan Bank Board), and NCUA must adopt substantially similar regulations imposing substantially similar requirements with respect to banks, savings and loan institutions, and federal credit unions within 60 days of the effective date of the FTC's rule unless the agency finds that such acts or practices by banks, savings associations, or federal credit unions are not unfair or deceptive or the Board finds that the adoption of similar regulations for banks, savings associations, or federal credit unions would seriously conflict with essential monetary and payment-systems policies of the Board. The Agencies have adopted rules substantially similar to the FTC's Credit Practices Rule.[36]

As part of this rulemaking, the Agencies are proposing to reorganize aspects of their respective Credit Practices Rules. Although the Agencies have approached these revisions differently in some respects, the Agencies do not intend to create any substantive difference among their respective rules.

Proposal

Subpart A—General Provisions

Subpart A contains general provisions that apply to the entire part. As discussed below, there are some differences among the Agencies' proposals.

____.1 Authority, Purpose, and Scope[37]

The provisions in proposed § ____.1 are largely drawn from the current authority, purpose, and scope provisions in the Agencies' respective Credit Practices Rules.

____.1(a) Authority

Proposed § ____.1(a) provides that the Agencies have issued this part under section 18(f) of the FTC Act. In OTS's proposed rule, this provision further provides that OTS is also exercising its authority under various provisions of HOLA, although the FTC Act is the primary authority for OTS's rule.

____.1(b) Purpose

Proposed § ____.1(b) provides that the purpose of the part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). It further provides that the part contains provisions that define and set forth requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices. The Agencies note that these provisions define and prohibit specific unfair or deceptive acts or practices within a single provision, rather than setting forth the definitions and remedies separately. Finally, it clarifies that the prohibitions in subparts B, C, and D do not limit the Agencies' authority to enforce the FTC Act with respect to other unfair or deceptive acts or practices.

____.1(c) Scope

Proposed § ____.1(c) describes the scope of each agency's rules. The Agencies have each tailored this paragraph to describe those entities to which their part applies. The Board's provision states that its rules would apply to banks and their subsidiaries, except savings associations as defined in 12 U.S.C. 1813(b). The Board's provision further explains that enforcement of its rules is allocated among the Board, OCC, and FDIC, depending on the type of institution. This provision has been updated to reflect intervening changes in law. The Board's Staff Guidelines to the Credit Practices Rule would be revised to remove questions 11(c)–1 and 11(c)–2 and the substance of the Board's answers would be updated and published as commentary under proposed § 227.1(c). *See* proposed Board comments 227.1(c)–1 and –2. The remaining questions and answers in the

[35] *See* 42 FR 7740 (Mar. 1, 1984) (codified at 16 CFR part 444); *see also* 15 U.S.C. 57a(a)(1)(B), 45(a)(1).

[36] *See* 12 CFR part 227, subpart B (Board); 12 CFR 535 (OTS); 12 CFR 706 (NCUA).

[37] The Board, OTS, and NCUA would place the proposed rules in, respectively, parts 227, 535, and 706 of title 12 of the Code of Federal Regulations. For each of reference, the discussion in this **Supplementary Information** uses the shared numerical suffix of each agency's rule. For example, proposed § ____.1 would be codified at 12 CFR 227.1 by the Board, 12 CFR 535.1 by OTS, and 12 CFR 706.1 by NCUA.

Board's Staff Guidelines would remain in place.

OTS's provision would state that its rules apply to savings associations and subsidiaries owned in whole or in part by a savings association. OTS also enforces compliance with respect to these institutions. The entire OTS part would have the same scope. OTS notes that this scope is somewhat different from the scope of its existing Credit Practices Rule. OTS's Credit Practices Rule currently applies to savings associations and service corporations that are wholly owned by one or more savings associations, which engage in the business of providing credit to consumers. Since the proposed rules would cover more practices than consumer credit, the reference to engaging in the business of providing credit to consumers would be deleted. The reference to wholly owned service corporations would be updated to refer instead to subsidiaries, to reflect the current terminology used in OTS's Subordinate Organizations Rule.[38]

The NCUA's provision would state that its rules apply to federal credit unions.

227.1(d) Definitions

Proposed § ____.1(d) of the Board's rule would clarify that, unless otherwise noted, the terms used in the Board's proposed § ____.1(c) that are not defined in the FTC Act or in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101). OTS and NCUA do not have a need for a comparable subsection so none is included in their proposed rules.

227.2 Consumer-Complaint Procedure

In order to accommodate the revisions discussed above, the Board would consolidate the consumer complaint provisions currently located in 12 CFR 227.1 and 227.2 in proposed § 227.2. OTS and NCUA do not currently have and do not propose to add comparable provisions.

Subpart B—Credit Practices

Each agency would place the substantive provisions of their current Credit Practices Rule in Subpart B. In order to retain the current numbering in its Credit Practices Rule, the Board would reserve 12 CFR 227.11, which currently contains the Board's statement of authority, purpose, and scope. The other provisions of the Board's Credit Practices Rule (§§ 227.12 through 227.16) would not be revised.

OTS is proposing the following notable changes to its version of Subpart B:

Section 535.11 Definitions (Existing Section 535.1)

OTS would delete the definitions of ''Act,'' ''creditor,'' and ''savings association'' as unnecessary. For the convenience of the user, OTS would incorporate the definition of ''consumer credit'' into this section, instead of using a cross-reference to a definition contained in a different part of OTS's rules. OTS would move the definition of ''cosigner'' to the section on unfair or deceptive cosigner practices. OTS would merge the definition of ''debt'' into the definition of ''collecting a debt'' contained in the section on late charges. OTS would move the definition of ''household goods'' to the section on unfair credit contract provisions.

Section 535.12 Unfair Credit Contract Provisions (Existing Section 535.2)

OTS would revise the title of this section to reflect its focus on credit contract provisions. OTS would delete the obsolete reference to extensions of credit after January 1, 1986.

Section 535.13 Unfair or Deceptive Cosigner Practices (Existing Section 535.3)

OTS would delete the obsolete reference to extensions of credit after January 1, 1986. OTS would substitute the term ''substantially similar'' for the term ''substantially equivalent'' in referencing a document that equates to the cosigner notice for consistency with the Board's rule and to avoid confusion with the term of art ''substantial equivalency'' used in the section on state exemptions. OTS would also clarify that the date that may be stated on the cosigner notice is the date of the transaction. NCUA would make similar amendments to its rule in § 706.13 (existing § 706.3).

Section 535.14 Unfair Late Charges (Existing Section 535.4)

OTS would revise the title of this section to reflect its focus on unfair late charges. OTS would delete the obsolete reference to extensions of credit after January 1, 1986. Similarly, NCUA would propose revisions to § 706.14 (existing § 706.4).

Section 535.15 State Exemptions (Existing Section 535.5)

OTS would revise the subsection on delegated authority to update the current title of the OTS official with delegated authority to make determinations under this section.

Request for Comment

The FTC's Credit Practices Rule included a provision allowing states to seek exemptions from the rule if state law affords a greater or substantially similar level of protection. *See* 16 CFR 444.5. The Agencies adopted similar provisions in their respective Credit Practices Rules. *See* 12 CFR 227.16; 12 CFR 535.5; 12 CFR 706.5. In the absence of any legal requirement, however, the Agencies do not propose to extend this provision to the proposed rules for consumer credit card accounts and overdraft services.[39] The Agencies note that only three states have been granted exemptions under the Credit Practices Rule.[40] Because the exemption is available when state law is ''substantially equivalent'' to the federal rule, an exemption may provide little relief from regulatory burden while undermining the uniform application of federal standards. Accordingly, the Agencies request comment on whether states should be permitted to seek exemption from the proposed rules on consumer credit card accounts and overdraft services if state law affords greater or substantially similar level of protection.

In addition, OTS also requests comment on whether the state exemption provision in its Credit Practices Rule should be retained.

V. Section-by-Section Analysis of the Consumer Credit Card Practices Subpart

Pursuant to their authority under 15 U.S.C. 57a(f)(1), the Agencies are proposing to adopt rules prohibiting specific unfair acts or practices with respect to consumer credit card accounts. The Agencies would locate these rules in a new Subpart C to their

[38] 12 CFR part 559. OTS has substantially revised this rule since promulgating its Credit Practices Rule. *See, e.g.*, Subsidiaries and Equity Investments: Final Rule, 61 FR 66561 (Dec. 18, 1996).

[39] The provision of the FTC Act addressing exemptions applies only to the FTC. *See* 12 U.S.C. 57a(g).

[40] The Board and the FTC have granted exemptions to Wisconsin, New York, and California. 51 FR 24304 (July 3, 1986) (FTC exemption for Wisconsin); 51 FR 28238 (Aug. 7, 1986) (FTC exemption for New York); 51 FR 41763 (Nov. 19, 1986) (Board exemption for Wisconsin); 52 FR 2398 (Jan. 22, 1987) (Board exemption for New York); 53 FR 19893 (June 1, 1988) (FTC exemption for California); 53 FR 29233 (Aug. 3, 1988) (Board exemption for California). OTS has granted an exemption to Wisconsin. 51 FR 45879 (Dec. 23, 1986). The NCUA has not granted any exemptions.

respective regulations under the FTC Act. These proposals should not be construed as a definitive conclusion by the Agencies that a particular act or practice is unfair or deceptive.

Section ____.21—Definitions

Proposed § ____.21 would define certain terms used in new Subpart C.

____.21(a) Annual Percentage Rate

Proposed § ____.21(a) defines ''annual percentage rate'' as the product of multiplying each periodic rate for a balance or transaction on a consumer credit card account by the number of periods in a year. This definition corresponds to the definition of ''annual percentage rate'' in 12 CFR 226.14(b). As discussed in the Board's official staff commentary to § 226.14(b), this computation does not reflect any particular finance charge or periodic balance. *See* comment 14(b)–1. This definition also incorporates the definition of ''periodic rate'' from Regulation Z. *See* 12 CFR 226.2.

____.21(b) Consumer

Proposed § ____.21(b) defines ''consumer'' as a natural person to whom credit is extended under a consumer credit card account or a natural person who is a co-obligor or guarantor of a consumer credit card account.

____.21(c) Consumer Credit Card Account

Proposed § ____.21(c) defines ''consumer credit card account'' as an account provided to a consumer primarily for personal, family, or household purposes under an open-end credit plan that is accessed by a credit or charge card. This definition incorporates the definitions of ''open-end credit,'' ''credit card,'' and ''charge card'' from Regulation Z. *See* 12 CFR 226.2. Under this definition, a number of accounts would be excluded consistent with exceptions to disclosure requirements for credit and charge card applications and solicitations. *See* proposed 12 CFR 226.5a(a)(5), 72 FR at 33045–46. For example, home-equity plans accessible by a credit card and lines of credit accessible by a debit card are not covered by proposed § ____.21(c).

____.21(d) Promotional Rate

Proposed § ____.21(d) is similar to the definition of ''promotional rate'' proposed by the Board in 12 CFR 226.16(e)(2) elsewhere in today's **Federal Register**. The first type of ''promotional rate'' covered by this definition is any annual percentage rate applicable to one or more balances or transactions on a consumer credit card account for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period. Proposed comment 21(d)(1)–1 clarifies that, for purposes of determining whether a rate is a ''promotional rate'' when the rate that will apply at the end of the specified period is a variable rate, the rate offered by the institution is compared to the variable rate that would have been disclosed at the time of the offer if the promotional rate had not been offered by the institution, subject to applicable accuracy requirements. *See, e.g.*, 12 CFR 226.5a(b)(1)(iii); proposed 12 CFR 226.5a(c)(2)(ii), 72 FR at 33047.

The second type of ''promotional rate'' encompassed by the definition is any annual percentage rate applicable to one or more transactions on a consumer credit card account that is lower than the annual percentage rate that applies to other transactions of the same type. This definition is meant to capture ''life of balance'' offers where a special rate is offered on a particular balance for as long as that balance exists. Proposed comment 21(d)(2)–1 provides an example of a rate that meets this definition.

Section ____.22—Unfair Acts or Practices Regarding Time To Make Payment

The Agencies are proposing to prohibit institutions from treating payments on a consumer credit card account as late for any purpose unless the institution has provided a reasonable amount of time for consumers to make payment. Currently, section 163(a) of TILA requires creditors to send periodic statements at least 14 days before expiration of any period during which consumers can avoid finance charges on purchases by paying the balance in full (*i.e.*, the ''grace period''). 15 U.S.C. 1666b(a). Federal law does not, however, mandate a grace period, and grace periods generally do not apply when consumers carry a balance from month to month. Regulation Z requires that creditors mail or deliver periodic statements 14 days before the date by which payment is due for purposes of avoiding additional finance charges or other charges, such as late fees. *See* 12 CFR 226.5(b)(2)(ii); comment 5(b)(2)(ii)–1.

In its June 2007 Proposal, the Board noted anecdotal evidence of consumers receiving statements relatively close to the payment due date, with little time remaining to mail their payments in order to avoid having those payments treated as late. The Board observed that it may take several days for a consumer to receive a statement after the close of a billing cycle. The Board also observed that consumers who pay by mail may need to mail their payments several days before the due date to ensure that the payment is received on or before that date. Accordingly, the Board requested comment on whether it should recommend to Congress that the 14-day requirement in section 163(a) of TILA be increased. *See* 72 FR at 32973.

The Board received comments from individual consumers, consumer groups, and a member of Congress indicating that consumers were not being provided with a reasonable amount of time to pay their credit card bills. Comments indicated that, because of the time required for periodic statements to reach consumers by mail and for consumers' payments to reach creditors by mail, consumers had little time in between to review their statements for accuracy before making payment. This situation can be exacerbated if the consumer is traveling or otherwise unable to give the statement immediate attention when it is delivered or if the consumer needs to compare the statement to receipts or other records. In addition, some comments indicated that consumers are unable to accurately predict when their payment will be received by a creditor due to uncertainties in how quickly mail is delivered. Some comments argued that, because of these difficulties, consumers' payments were received after the due date, leading to finance charges as a result of loss of the grace period, late fees, rate increases, and other adverse consequences.

Comments from industry, however, generally stated that consumers currently receive ample time to make payments, particularly in light of the increasing number of consumers who receive periodic statements electronically and make payments electronically or by telephone. These comments also stated that providing additional time for consumers to make payments would be operationally difficult and would reduce interest revenue, which would have to be recovered by raising the cost of credit elsewhere.

The Agencies understand that, although increasing numbers of consumers are receiving periodic statements and making payments electronically, a significant number still utilize mail. In addition, the Agencies recognize that, while first class mail is often delivered within three business days, in some cases it can take

significantly longer.[41] Indeed, some large credit card issuers recommend that consumers allow up to seven days for their payments to be received by the issuer via mail. Accordingly, in some cases, a statement sent 14 days before the payment due date may not provide consumers with a reasonable amount of time to pay in order to avoid interest charges, late fees, or other adverse consequences.

The Agencies recognize that, in enacting § 163(a) of TILA, Congress set the minimum amount of time between sending the periodic statement and expiration of any grace period offered by the creditor at 14 days. At the time of its June 2007 Proposal, the Board believed that consumers might benefit from receiving additional time to make payment. The Board understands that most creditors currently offer grace periods and that they use a single due date, which is both the expiration of the grace period and the date after which a payment will be considered late for other purposes (such as the assessment of late fees). For that reason, the Board sought comment on whether it should request that Congress increase the 14-day minimum mailing requirement with respect to grace periods. Based on the comments and other information discussed herein, however, the Agencies are concerned that a separate rule may be needed that specifically addresses harms other than loss of the grace period when institutions do not provide a reasonable amount of time for consumers to make payment. This harm includes late fees and rate increases as a penalty for late payment. The Agencies' proposal does not affect the requirements of TILA § 163(a).

Legal Analysis

Treating a payment on a consumer credit card account as late for any purpose (other than expiration of a grace period) unless the consumer has been provided a reasonable amount of time to make that payment appears to be an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC.

Substantial consumer injury. An institution's failure to provide consumers a reasonable amount of time to make payment appears to cause substantial monetary and other injury. When a payment is received after the due date, institutions may impose late fees, increase the annual percentage rate on the account as a penalty, or report the consumer as delinquent to a credit reporting agency.

Injury is not reasonably avoidable. It appears that consumers cannot reasonably avoid this injury unless they have been provided a reasonable amount of time to pay. Although what constitutes a reasonable amount of time may vary based on the circumstances, it may be unreasonable to expect consumers to make payment if they are not given a reasonable amount of time to do so after receiving a periodic statement. TILA and Regulation Z provide consumers with the right to dispute transactions or other items that appear on their periodic statements. In order to exercise certain of these rights, consumers must have a reasonable opportunity to review their statements. *See* 15 U.S.C. 1666i; 12 CFR 226.12(c). Furthermore, in some cases, travel or other circumstances may prevent the consumer from reviewing the statement immediately upon receipt. Finally, as discussed above, consumers cannot control when a mailed payment will be received by the institution. Thus, a payment mailed well in advance of the due date may nevertheless arrive after that date.

Injury is not outweighed by countervailing benefits. The injury does not appear to be outweighed by any countervailing benefits to consumers or competition. The Agencies are not aware of any direct benefit to consumers from receiving too little time to make their payments. Although a longer time to make payment could result in additional finance charges for consumers who do not receive a grace period, the consumer would have the choice whether to wait until the due date to make payment. The Agencies are also aware that, as a result of the proposed rule, some institutions may be required to incur costs to alter their systems and will, directly or indirectly, pass those costs on to consumers. It does not appear, however, that these costs would outweigh the benefits to consumers of receiving a reasonable amount of time to make payment.

Proposal

Proposed § ____.22(a) prohibits institutions from treating a payment as late for any purpose unless the consumer has been provided a reasonable amount of time to make that payment. Proposed comment 22(a)–1 clarifies that treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within the amount of time provided under this section. Although the proposed rule does not mandate a specific amount of time, the commentary to the proposal states that reasonableness would be evaluated from the perspective of the consumer, not the institution. *See* proposed comment 22(a)–2.

Proposed § ____.22(b) provides a safe harbor for institutions that have adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date. Compliance with this safe harbor would allow seven days for the periodic statement to reach the consumer by mail, seven days for the consumer to review the statement and make payment, and seven days for that payment to reach the institution by mail. As noted above, some institutions already recommend that consumers allow seven days for receipt of mailed payments. The Agencies believe 21 days to be reasonable because it allows sufficient time for even delayed mail to be delivered while also allowing most consumers at least a week to review their bill and make payment.

In order to minimize burden and facilitate compliance, proposed comment 22(b)–1 clarifies that an institution with reasonable procedures in place designed to ensure that statements are mailed or delivered within a certain number of days from the closing date of the billing cycle may utilize the safe harbor by adding that number to the 21-day safe harbor for purposes of determining the payment due date on the periodic statement. For example, if an institution had reasonable procedures in place designed to the ensure that statements are mailed or delivered within three days of the closing date of the billing cycle, the institution could comply with the safe harbor by stating a payment due date on its periodic statements that is 24 days from the close of the billing cycle (*i.e.*, 21 days plus three days). Similarly, if an institution's procedures reasonably ensured that payments would be sent within five days of the close of the billing cycle, the institution could comply with the safe harbor by setting the due date 26 days from the close of the billing cycle. Proposed comment 22(b)–2 further clarifies that the payment due date is the date by which the institution requires the consumer to make payment in order to avoid being treated as late for any purpose (except with respect to expiration of a grace period).

[41] *See, e.g.*, Testimony of Jody Berenblatt, Senior Vice President—Postal Strategy, Bank of America, before the S. Subcomm. on Fed. Fin. Mgmt., Gov't Info., Fed. Srvs., and Int'l Security (Aug. 2, 2007).

Finally, in order to avoid any potential conflict with section 163(a) of TILA, proposed § ____.22(c) provides that proposed § ____.22(a) does not apply to any time period provided by the institution within which the consumer may repay the new balance or any portion of the new balance without incurring finance charges (*i.e.*, a grace period).

Request for Comment

The Agencies request comment on:

- The percentages of consumers who receive periodic statements by mail and electronically.
- The percentages of consumers who make payment by mail, electronically, by telephone, and through other methods.
- The number of days after the closing date of the billing cycle that institutions typically mail or deliver periodic statements.
- Whether the proposed 21-day safe harbor period between mailing or delivery of the periodic statement and the due date would give consumers sufficient time to review their statements and make payment and is otherwise a reasonable amount of time to make payment.
- The cost to institutions of altering their systems to comply with the proposed rule and to mail or deliver periodic statements 21 days in advance of the payment due date.
- Whether the Agencies should adopt a rule that prohibits institutions from treating a payment as late if received within a certain number of days after the due date and, if so, the number of days that would be appropriate.
- Whether the Agencies should adopt a rule that requires institutions, upon the request of a consumer, to reverse a decision to treat a payment mailed before the due date as late and, if so, what evidence the institution could require the consumer to provide (*e.g.*, a receipt from the U.S. Postal Service or other common carrier) and what time frame would be appropriate (*e.g.*, payment mailed at least five days before the due date, payment received no more than two business days late).
- The impact of the proposed rule on the availability of credit.

Section __.23—Unfair Acts or Practices Regarding Allocation of Payments

The Agencies are proposing to prohibit certain unfair acts or practices regarding the allocation of payments on consumer credit card accounts with multiple balances at different interest rates. In its June 2007 Proposal, the Board discussed the practice among some creditors of allocating payments first to balances that are subject to the lowest interest rate. 72 FR at 32982–83. Because many creditors offer different rates for purchases, cash advances, and balance transfers, this practice can result in consumers who do not pay the balance in full each month incurring higher finance charges than they would under a different allocation method. The Board was particularly concerned that, when the consumer has responded to a promotional rate offer, the allocation of payments to balances with the lowest interest rate often prevents the consumer from receiving the full benefit of the promotional rate if the consumer uses the card for other transactions.

For example, assume that a consumer responds to an offer of 5% on transferred balances for six months by opening an account and transferring $3,000. Then, during the same billing cycle, the consumer uses the account for a $300 cash advance (to which an interest rate of 20% applies) and a $500 purchase (to which an interest rate of 15% applies). If the consumer makes an $800 payment, most creditors would apply the entire payment to the promotional rate balance and the consumer would incur interest on the more costly cash advance and purchase balances. Under these circumstances, the consumer is effectively denied the benefit of the 5% promotional rate for six months if the card is used for transactions because the consumer must pay off the entire transferred balance in order to avoid paying a higher rate on the transactions. Indeed, the only way for the consumer to receive the benefit of the 5% promotional rate is to not use the card for purchases, which would effectively require the consumer to use an open-end credit account as a closed-end installment loan.

Deferred interest plans raise the same basic concerns. Many creditors offer deferred interest plans where consumers may avoid paying interest on purchases if the balance is paid in full by the end of the deferred interest period. If the balance is not paid in full when the deferred interest period ends, these deferred interest plans often require the consumer to pay interest that has accrued during the deferred interest period. A consumer whose payments are applied to a balance on which interest is deferred instead of a balance on which interest is not deferred incurs additional finance charges and therefore does not receive the benefit of the deferred interest plan.

In addition, creditors typically offer a grace period for purchases if a consumer pays in full each month but do not typically offer a grace period on balance transfers or cash advances. Because payments will be allocated to the transferred balance first, a consumer cannot take advantage of both a promotional rate on balance transfers or cash advances and a grace period on purchases. Under these circumstances, the only way for a consumer to avoid paying interest on purchases is to pay off the entire balance, including the transferred balance or cash advance balance subject to the promotional rate.

In preparing its June 2007 Proposal, the Board sought to address issues regarding payment allocation by developing disclosures explaining payment allocation methods on accounts with multiple balances at different annual percentage rates so that consumers could make informed decisions about card usage, particularly in regard to promotional rates. For example, if consumers knew that they would not receive the full benefit of a promotional rate on a particular credit card account if they used that account for purchases during the promotional period, they might use a different account for purchases and pay that account in full every month to take advantage of the grace period. The Board conducted extensive consumer testing in an effort to develop disclosures that would enable consumers to understand typical payment allocation practices and make informed decisions regarding the use of credit cards. In this testing, many participants did not understand that they could not take advantage of the grace period on purchases and the discounted rate on balance transfers at the same time. Model forms were tested that included a disclosure notice attempting to explain this to consumers. Nonetheless, testing showed that a significant percentage of participants still did not fully understand how payment allocation can affect their interest charges, even after reading the disclosures tested. In the supplementary information accompanying the June 2007 Proposal, the Board indicated its plans to conduct further testing of the disclosure to determine whether the disclosure could be improved to more effectively communicate to consumers how payment allocation can affect their interest charges. 72 FR at 33047, 33050.

In the June 2007 Proposal, the Board did, however, propose to add § 226.5a(b)(15) to require a creditor to explain payment allocation to consumers. Specifically, the Board proposed that creditors explain how payment allocation would affect consumers, if an initial discounted rate was offered on balance transfers or cash advances but not purchases. The Board proposed that creditors must disclose to

consumers that (1) the initial discounted rate applies only to balance transfers or cash advances, as applicable, and not to purchases; (2) that payments will be allocated to the balance transfer or cash advance balance, as applicable, before being allocated to any purchase balance during the time the discounted initial rate is in effect; and (3) that the consumer will incur interest on the purchase balance until the entire balance is paid, including the transferred balance or cash advance balance, as applicable. 72 FR at 32948, 33047.

In response to the June 2007 Proposal, several commenters recommended the Board test a simplified payment allocation disclosure that covers situations other than low rate balance transfers offered with cards. One credit card issuer, however, stated that, because creditors almost uniformly apply payments to the balance with the lowest annual percentage rate, consumers could not shop for a better payment allocation method even if an effective disclosure could be developed. Furthermore, comments from consumers and consumer groups urged the Board to go further and prohibit payment allocation methods that applied payments to the lowest rate balance before other balances.

In consumer testing conducted for the Board in March 2008, the Board tested a revised payment allocation disclosure.[42] Some participants understood from earlier experience that creditors typically will apply payments to lower rate balances first and that this method causes them to incur higher interest charges. For those participants, however, that did not know about payment allocation methods from earlier experience, the disclosure tested was still not effective in communicating payment allocation methods.

Accordingly, the Agencies propose to address the foregoing concerns regarding payment allocation by prohibiting specific unfair acts or practices under the FTC Act. To the extent the Agencies' proposals are ultimately adopted, the Board would withdraw its proposal under Regulation Z to require a creditor to explain payment allocation to consumers.

Legal Analysis

Proposed § ____.23 would prohibit three unfair acts or practices. First, when different annual percentage rates apply to different balances on a consumer credit card account, the Agencies would prohibit allocation among the balances of any amount paid by the consumer in excess of the required minimum periodic payment in a manner that is less beneficial to consumers than one of three listed methods. Second, when a consumer credit card account has one or more promotional rate balances or balances on which interest is deferred, the Agencies would prohibit allocation of amounts paid by the consumer in excess of the minimum payment to such balances before other balances. Third, the Agencies would prohibit institutions from requiring consumers to repay any portion of a promotional rate balance or deferred interest balance in order to receive any grace period offered for purchases. As discussed below, these acts or practices appear to meet the definition of unfairness under 15 U.S.C. 45(n) and the standards articulated by the FTC.

Substantial consumer injury. Each of the three practices described above appear to cause substantial monetary injury to consumers in the form of higher interest charges than would be incurred if institutions did not engage in these practices. Specifically, as discussed above, consumers who do not pay the balance in full and whose payments in excess of the minimum payment are first applied to the balance with the lowest annual percentage rate incur higher interest charges than they would under other payment allocation methods, such as division of the amount among the balances or application of the amount to the balance with the highest rate first. Similarly, consumers who do not receive a grace period offered on a purchase balance solely because they also have a promotional rate balance or deferred interest balance incur higher interest charges than they would if they received the grace period.

Injury is not reasonably avoidable. Several factors appear to prevent consumers from reasonably avoiding these additional interest charges. First, consumers generally have no control over the institution's allocation of payments or provision of grace periods. Second, the Board's consumer testing indicates that disclosures may not enable consumers to understand sufficiently the effects of payment allocation or the loss of the grace period. Even if disclosures were effective, it appears that consumers still could not avoid the injury by selecting a credit card account with more favorable terms because institutions almost uniformly apply payments to the balance with the lowest rate and do not provide a grace period when a consumer has a promotional rate balance or deferred interest balance.[43] Third, although a consumer could avoid the injury by paying the balance in full each month, this may not be a reasonable expectation as many consumers are unable to do so. Similarly, it may be unreasonable to expect a consumer to avoid the injury by, for example, taking a cash advance or transferring a balance in response to a promotional rate offer and then using a different account for purchases because this would effectively require the consumer to use an open-end credit account as a closed-end installment loan.

Injury is not outweighed by countervailing benefits. The prohibited practices do not appear to create benefits for consumers and competition that outweigh the injury. The Agencies understand that, if implemented, the proposal may reduce the revenue that institutions receive from interest charges, which may in turn lead institutions to increase rates generally or to offer higher promotional rates or fewer deferred interest plans. As a result, consumers who, for example, do not use an account for purchases after transferring a balance would lose the benefit of the lower promotional rate. This effect should be muted, however, because the Agencies' proposal prohibits only the practices that are most harmful to consumers and leaves institutions with considerable flexibility in the allocation of payments, particularly with regard to the minimum payment. Furthermore, the Agencies believe that the proposal would enhance transparency and enable consumers to better assess the costs associated with using their credit card accounts at the time they engage in transactions. To the extent that upfront costs have been artificially reduced because many consumers cannot reasonably avoid paying higher interest charges later, the reduction does not represent a true benefit to consumers as a whole. Finally, it appears that the Agencies' proposal should enhance rather than harm competition because institutions offering rates that reflect the institution's costs (including the cost to the institution of borrowing funds and

[42] This disclosure stated: ''Payments may be applied to balances with lower APRs first. If you have balances at higher APRs, you may pay more in interest because these balances cannot be paid off until all lower-APR balances are paid in full (including balance transfers you make at the introductory rate).''

[43] *See* Statement for FTC Credit Practices Rule, 48 FR at 7746 (''If 80 percent of creditors include a certain clause in their contracts, for example, even the consumer who examines contract[s] from three different sellers has a less than even chance of finding a contract without the clause. In such circumstances relatively few consumers are likely to find the effort worthwhile, particularly given the difficulties of searching for contract terms * * *'' (footnotes omitted)).

operational expenses) would no longer be forced to compete with institutions that offer artificially reduced rates.

Proposal

Proposed § ____.23(a) would establish a general rule governing payment allocation on accounts that do not have a promotional rate balance or a balance on which interest is deferred. Proposed § ____.23(b) would establish special rules for accounts that do have a promotional rate balance or a deferred interest balance.

Proposed § ____.23 does not limit or otherwise address the institution's ability to determine the amount of the minimum payment or how that payment is allocated. See proposed comment 23–1. Furthermore, an institution may adjust amounts to the nearest dollar when allocating. *See* proposed comment 23–2.

____.23(a) General Rule for Accounts Within Different Annual Percentage Rates on Different Balances

Proposed § ____.23(a) would require the institution to allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances in a manner that is no less beneficial to consumers than one of three listed methods. Although the proposed rule does not prohibit institutions from using allocation methods other than those listed, the method used must be no less beneficial to consumers than one of the listed methods. A method is no less beneficial to consumers if the method results in the assessment of the same or a lesser amount of interest charges than would be assessed under the listed method. For example, an institution may not reasonably allocate the entire amount paid by the consumer in excess of the required minimum periodic payment to the balance with the lowest annual percentage rate because this method would result in higher interest charges than any of the methods listed in proposed § ____.23(a). *See* proposed comment 23(a)–1. An example of an allocation method that is no less beneficial to consumers than a listed method is provided in proposed comment 23(a)–2.

Proposed § ____.23(a) lists three permissible payment allocation methods. First, proposed § ____.23(a) would allow an institution to apply the entire amount paid in excess of the minimum payment first to the balance with the highest annual percentage rate and any remaining amount to the balance with the next highest annual percentage rate and so forth. Although this method could result in none of the amount being applied to some balances, the Agencies believe that institutions should be able to use this approach because it will generally minimize interest charges. An example of this allocation method is provided in proposed comment 23(a)(1)–1.

Second, proposed § ____.23(a) would allow an institution to allocate equal portions of the amount paid in excess of the minimum payment to each balance. Third, the proposal would allow an institution to allocate the amount among the balances in the same proportion as each balance bears to the total balance (*i.e.*, pro rata). Examples of these allocation methods are provided in proposed comments 23(a)(2)–1 and 23(a)(3)–1.

____.23(b) Special Rules for Accounts With Promotional Rate Balances or Deferred Interest Balances

The Agencies believe that separate requirements may be warranted for accounts with promotional rate balances or balances on which interest is deferred because, in many cases, the consumer will have engaged in transactions based on representations made by the institution regarding a promotional rate or a deferred interest plan. Proposed § ____.23(b) seeks to ensure that consumers receive the benefit of promotional rates and deferred interest plans.

____.23(b)(1)(i) Rule Regarding Payment Allocation

Proposed § ____.23(b)(1)(i) would ensure that consumers receive the benefit of a promotional rate or deferred interest plan by requiring that amounts paid in excess of the minimum payment would be allocated to the promotional rate balance or the deferred interest balance only if other balances have been fully paid. Specifically, the proposal would require that amounts paid by the consumer in excess of the minimum payment be allocated first among balances that are not promotional rate balances or deferred interest balances, consistent with proposed § ____.23(a). If there is any remaining amount, proposed § ____.23(b)(1)(i) would require the institution to allocate the remaining amount to each promotional rate balance or deferred interest balance, consistent with proposed § ____.23(a). Proposed comment 23(b)(1)(i)–1 would provide illustrative examples of how payments must be allocated under proposed § ____.23(b)(1)(i).

____.23(b)(1)(ii) Exception for Balances on Which Interest Is Deferred

Proposed § ____.23(b)(1)(ii) would create an exception to the payment allocation rule in proposed § ____.23(b)(1)(i) during the last two billing cycles of a deferred interest plan. The Agencies understand that currently some institutions begin to apply consumers' payments to the deferred interest balance during the last two billing cycles of a deferred interest plan because doing so will reduce or eliminate that balance and thereby reduce or eliminate the deferred interest that may be charged when the deferred interest plan expires. Because this practice appears to be beneficial to consumers, the Agencies propose to permit institutions to utilize this practice, at their option. Proposed comment 23(b)(1)(ii)–1 provides illustrative examples of how payments may be allocated under this exception. As noted below, the Agencies request comment on whether this exception is appropriate and, if so, whether it should apply during the last two billing cycles of the deferred interest plan or a different period of time.

____.23(b)(2) Rule Regarding Grace Period

Proposed § ____.23(b)(2) would prohibit institutions from requiring consumers who are otherwise eligible for a grace period to repay any portion of a promotional rate balance or deferred interest balance in order to receive the benefit of any grace period on other balances. Under the provision, a consumer would not be denied the benefits of a grace period solely because the consumer carries a balance covered by a promotional rate or deferred interest plan. Proposed comment 23(b)(2)–1 provides an example of when this prohibition would apply.

Request for Comment

The Agencies request comment on:

- Whether other methods of allocation should be listed in proposed § ____.23(a).
- Whether proposed § ____.23(a) should permit institutions to apply amounts in excess of the minimum payment first to balances on which the institution is prohibited from increasing the rate (pursuant to proposed § ____.24).
- Whether the requirement in proposed § ____.23(b)(1)(i) that amounts in excess of the minimum payment be applied to other balances before deferred interest balances may prevent consumers from paying the deferred interest balance in full by the end of the deferred interest period.
- The need for the exception regarding deferred interest balances in proposed § ____.23(b)(1)(ii).

• Whether the exception regarding deferred interest balances in proposed § ____.23(b)(1)(ii) should apply during the last two billing cycles of the deferred interest plan or during a different time period.

• Whether consumers should be permitted to instruct the institution regarding allocation of amounts in excess of the required minimum periodic payment.

• The cost to institutions of the proposed rule and the impact on the availability of credit.

Section ____.24—Unfair Acts and Practices Regarding Application of Increased Rates to Outstanding Balances

The Agencies are proposing to prohibit the application of increased rates to pre-existing balances, except in certain limited circumstances. Currently, § 226.9(c) of Regulation Z requires 15 days advance notice of certain changes to the terms of an open-end plan as well as increases in the minimum payment. However, advance notice is not required if an interest rate or other finance charge increases due to a consumer's default or delinquency. *See* 12 CFR 226.9(c)(1); comment 9(c)(1)–3. Furthermore, no change-in-terms notice is required if the creditor set forth the specific change in the account-opening disclosures. *See* 12 CFR 226.9(c), comment 9(c)–1.

In its June 2007 Proposal, the Board expressed concern that the imposition of penalty pricing can come as a costly surprise to consumers who are not aware of, or do not understand, what behavior is considered a ''default'' under their agreement. *See* 72 FR at 33009–13. The Board noted that penalty rates can be more than twice as much as the consumer's normal rate on purchases and may apply to all of the balances on the consumer's account for several months or longer.[44]

Consumer testing conducted for the Board indicated that some consumers do not understand what factors can trigger penalty pricing, such as the fact that one late payment may constitute a ''default.'' In addition, some participants did not appear to understand that penalty rates can apply to all of their balances, including existing balances. Some participants also did not appear to understand how long a penalty rate could remain in effect. The Board observed that account-opening disclosures may be provided to the consumer too far in advance for the consumer to recall the circumstances that may cause his or her rates to increase. In addition, the consumer may not have retained a copy of the account-opening disclosures and may not be able to effectively link the information disclosed at account opening to the current repricing of his or her account.

The Board's June 2007 Proposal included revisions to Regulation Z and its commentary designed to improve consumers' awareness about changes in their account terms and increased rates, including rate increases imposed as a penalty for delinquency or other acts or omissions constituting default under the account agreement. These revisions were also intended to enhance consumers' ability to shop for alternative financing before such changes in terms or increased rates become effective. Specifically, the Board proposed to give consumers 45 days advance notice of a change in terms or an increased rate imposed as a penalty and to make the disclosures about changes in terms and increased rates more effective. *See* proposed 12 CFR 226.9(c), (g), 72 FR at 33056–58.[45] The Board also proposed to require that periodic statements for credit card accounts disclose the annual percentage rate or rates that may be imposed as a result of late payment. *See* proposed 12 CFR 226.7(b)(11)(i)(C), 72 FR at 33053.

When developing the June 2007 Proposal, the Board considered, but did not propose, a prohibition on so-called ''universal default clauses'' or similar practices under which a creditor raises a consumer's interest rate to the penalty rate if, for example, the consumer makes a late payment on an account with a different creditor. The Board also considered but did not propose a requirement similar to that in some state laws providing consumers with the right to reject a change in terms.

In response to its June 2007 Proposal, the Board received comments from individual consumers, consumer groups, another federal banking agency, and a member of Congress stating that notice alone was not sufficient to protect consumers from the harm caused by rate increases. These comments argued that many consumers would not read or understand the proposed disclosures and, even if they did, many would be unable to transfer the balance to a new credit card account with comparable terms before the increased rate went into effect. Some of these comments argued that creditors should be prohibited from increasing the rate on an existing balance in all instances. Others argued that consumers should be given the right to reject application of an increased rate to an existing balance by closing the account, but only if the increase was not triggered by a late payment or other violation of the terms of that account. This approach was also endorsed by some creditors. On the other hand, comments from the majority of creditors stated that the 45-day notice requirement would delay creditors from increasing rates to reflect a consumer's increased risk of default, requiring creditors to account for that risk by, for example, charging higher annual percentage rates at the outset of the account relationship. These comments also noted that, because creditors use rate increases to pass on the costs of funds the creditors themselves pay, delays in the imposition of increased rates could result in higher costs of credit or less available credit.

The Agencies are concerned that disclosure alone may be insufficient to protect consumers from the harm caused by the application of increased rates to pre-existing balances. Accordingly, the Agencies are proposing to prohibit this practice except in certain limited circumstances.

Legal Analysis

The Agencies propose to prohibit institutions from increasing the annual percentage rate applicable to the outstanding balance before the effective date of the rate increase, except in certain circumstances. As discussed below, this practice appears to meet the test for unfairness under 15 U.S.C. 45(n) and the standards articulated by the FTC.

Substantial consumer injury. Application of an increased annual percentage rate to an outstanding balance appears to cause substantial monetary injury by increasing the interest charges assessed to a consumer's credit card account.

Injury is not reasonably avoidable. Although the injury resulting from increases in the annual percentage rate may be avoidable by some consumers under certain circumstances, this injury does not appear to be reasonably avoidable by consumers as a general matter. As discussed above, the Board's consumer testing indicates that many consumers are not aware of the circumstances under which their rates

[44] *See also* GAO Credit Card Report at 24 (noting that, for the 28 credit cards it reviewed, ''[t]he default rates were generally much higher than rates that otherwise applied to purchases, cash advances, or balance transfers. For example, the average default rate across the 28 cards was 27.3 percent in 2005—up from the average of 23.8 in 2003—with as many as 7 cards charging rates over 30 percent'').

[45] The Board has proposed additional revisions to these provisions elsewhere in today's **Federal Register**.

may increase.[46] Thus, when deciding whether to use a credit card for a particular transaction or whether to pay off a credit card balance versus some other obligation, the consumer is likely to consider only the annual percentage rate in effect at that time. Although the disclosures proposed by the Board under Regulation Z should, if implemented, improve consumers' understanding, disclosures alone may not be sufficient to enable consumers to avoid injury. Consumers may ignore the disclosures because they overestimate their ability to avoid the penalty triggers.[47] Furthermore, although the Board's proposed 45 days advance notice of a rate increase would enable some consumers to transfer the balance to another account with a comparable annual percentage rate and terms, consumers who are not able to do so cannot avoid the resulting injury. For these reasons, disclosures alone may not enable consumers to avoid the injury caused by an increase in rate on an existing balance.

Consumers also lack control over many of the circumstances under which an institution increases an annual percentage rate. First, an institution may increase a rate for reasons that are completely unrelated to any individual consumer. For instance, an institution may increase rates to increase revenues or in response to changes in the cost to the institution of borrowing funds. Consumers lack any control over these increases and therefore cannot reasonably avoid the resulting injury. Furthermore, consumers cannot be reasonably expected to predict when such repricing will occur because many institutions reserve the right to change the terms of the consumer's account at any time for any reason.

Second, an institution may increase an annual percentage rate based on consumer behavior that is unrelated to the consumer's performance on the credit card account with that institution. For example, an institution may increase a rate due to a drop in a consumer's credit score or a default on an account with a different creditor even though the consumer has paid the credit card account with the institution according to the terms of the cardholder agreement.[48] As noted above, this type of increase is sometimes referred to as ''universal default.'' The consumer may or may not have been aware of or able to control the factor that caused the drop in the consumer's credit score, and the consumer cannot control what factors are considered or how those factors are weighted in creating the credit score. For example, a consumer may be unaware that using a certain amount of the available credit on open-end credit accounts can lead to a reduction in credit score. Furthermore, as discussed below, a default may not be reasonably avoidable in some instances. Nor can the consumer control how the institution uses credit scores or other information to set interest rates.

Third, an institution may increase an annual percentage rate based on consumer behavior that is related to the consumer's credit card account with the institution but does not violate the account terms. For example, an institution may increase the annual percentage rates of consumers who are close to (but not over) the credit limit on the account or who make the minimum payment set by the institution for several consecutive months.[49] Although this type of activity may be within the consumer's control, the consumer may not be able to reasonably avoid the resulting injury because the consumer is not aware that this behavior may be used by the institution's internal risk models as a basis for increasing the rate on the account. Indeed, the institution's provision of a specific credit limit or minimum payment, for example, may be reasonably interpreted by the consumer as an implicit representation that the consumer will not be penalized if the credit limit is not exceeded or the minimum payment is made.

Fourth, an institution may increase an annual percentage rate based on consumer behavior that violates the account terms. What violates the account terms can vary from institution to institution and from account to account. The Agencies understand that the most common violations of the account terms that result in an increase in rate are exceeding the credit limit, a payment that is returned for insufficient funds, and a late payment.[50] In some cases, it appears that individual consumers may have been able to avoid these events by taking reasonable precautions. In other cases, however, it appears that the event may not be reasonably avoidable.

For example, consumers who carefully track their transactions may still exceed the credit limit because of charges of which they were not aware (such as the institution's imposition of interest or fees) or because of the institution's delay in replenishing the credit limit following payment. Similarly, although consumers can reduce the risk of making a payment that will be returned for insufficient funds by carefully tracking the credits and debits on their deposit account, consumers still lack sufficient information about key aspects on their accounts, including how holds will affect the availability of funds and when funds from a deposit or a credit will be made available by the depository institution.[51] Finally, although the Agencies' proposed §____.22 would, if implemented, ensure that consumers' payments will not be treated as late for any reason (including for purposes of triggering an increase in rate) unless they receive a reasonable amount of time to make payment, there may be other reasons why consumers pay late or miss a payment.[52]

[46] *See also* GAO Credit Card Report at 6 (''[O]ur interviews with 112 cardholders indicated that many failed to understand key terms or conditions that could affect their costs, including when they would be charged for late payments or what actions could cause issuers to raise rates.'').

[47] *See* Statement for FTC Credit Practices Rule, 49 FR at 7744 (''Because remedies are relevant only in the event of default, and default is relatively infrequent, consumers reasonably concentrate their search on such factors as interest rates and payment terms.''). This behavior is commonly referred to as ''hyperbolic discounting.'' *See, e.g.*, Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 80 Tex. L. Rev. 451, 467–478 (2008) (discussing consumers' tendency to underestimate their future credit card usage when they apply for a card and thereby failing to adequately anticipate the costs of the product); Shane Frederick, *et al.*, *Time Discounting and Time Preference: A Critical Review*, 40 J. Econ. Literature 351, 366–67 (2002) (reviewing the literature on hyperbolic discounting); Ted O'Donoghue & Matthew Rabin, *Doing It Now or Later*, 89 Am. Econ. Rev. 103, 103, 111 (1999) (explaining people's preference for delaying unpleasant activities and accepting immediate rewards despite their knowledge that the delay may lessen potential future rewards or increase potential adverse consequences).

[48] *See, e.g.*, Statement of Janet Hard before S. Perm. Subcomm. on Investigations, *Hearing on Credit Card Practices: Unfair Interest Rate Increases* (Dec. 4, 2007) (available at *http://www.senate.gov/~govt-aff/index.cfm?Fuseaction=Hearings.Detail&HearingID=509*).

[49] *See, e.g.*, Statement of Bruce Hammonds, President, Bank of America Card Services before S. Perm. Subcomm. on Investigations, *Hearing on Credit Card Practices: Unfair Interest Rate Increases* at 5 (Dec. 4, 2007) (available at *http://hsgac.senate.gov/public/_files/STMTHammondsBOA.pdf*).

[50] *See* GAO Credit Card Report at 25.

[51] *See* discussion of overdrafts and debit holds in relation to proposed §____.32 below.

[52] *See, e.g.*, Statement for FTC Credit Practices Rule, 49 FR at 7747–48 (finding that ''the majority [of defaults] are not reasonably avoidable by consumers'' because of factors such as loss of income or illness); Testimony of Gregory Baer, Deputy General Counsel, Bank of America before the H. Fin. Servs. Subcomm. on Fin. Instit. & Consumer Credit at 4 (Mar. 13, 2008) (''If a customer falls behind on an account, our experience tells us it is likely due to circumstances outside his or her control.''); Sumit Agarwal & Chunlin Liu, *Determinants of Credit Card Delinquency and Bankruptcy: Macroeconomic Factors*, 27 J. of Econ. & Finance 75, 83 (2003) (finding ''conclusive evidence that unemployment is critical in determining delinquency''); *Fitch: U.S. Credit Card & Auto ABS Would Withstand Sizeable*

Accordingly, although the injury resulting from the application of increased annual percentage rates to existing balances may be avoidable in some individual cases, it appears that, as a general matter, this injury is not reasonably avoidable. It does not appear, however, that this reasoning extends to the application of increased rates to new transactions. The Board's proposal under Regulation Z would, if implemented, require creditors to provide notice 45 days in advance of an increase in the annual percentage rate. *See* proposed 12 CFR 226.9(c), (g), 72 FR at 33056–58.[53] In addition, as discussed below, proposed ____.24 would not permit the institution to increase the rate on purchases made up to 14 days after provision of the 45-day notice. These proposals would enable consumers to reasonably avoid any injury caused by application of an increased rate to new transactions by providing consumers sufficient time to receive and review the 45-day notice and to decide whether to continue using the card. Finally, as also discussed below, it does not appear that, when a consumer has violated the account terms, application of an increased rate to an existing balance is an unfair practice in all circumstances.

Injury is not outweighed by countervailing benefits. It appears that the proposal will result in a net benefit to consumers because some consumers are likely to benefit substantially while the adverse effects on others are likely to be small. The Agencies are aware that some institutions may offer lower annual percentage rates to consumers at the outset of an account relationship knowing that the rate can be subsequently adjusted to compensate for an increase in the cost of funds or in the risk of default. The Agencies are also aware that, if institutions are prohibited from increasing rates on existing balances, they may charge higher rates or set lower credit limits initially or curtail credit availability to higher risk consumers. As discussed below, however, the Agencies have crafted the proposal to protect consumers from the substantial injury caused by rate increases on existing balances while, to the extent possible, minimizing the impact on institutions' ability to adjust to market conditions and price for risk.

As an initial matter, because the prohibition on applying an increased annual percentage rate to an existing balance does not extend to variable rates, an institution can guard against increases in the cost of funds by utilizing a variable rate that reflects market conditions. Furthermore, the Agencies do not propose to prohibit institutions from increasing the annual percentage rate on an existing balance if a consumer becomes 30 days delinquent. Although the delinquency may not have been reasonably avoidable in certain individual cases, the consumer will have received notice of the delinquency (in the periodic statement and likely in other notices as well) and had an opportunity to cure before becoming 30 days delinquent. A consumer is unlikely, for example, to become 30 days delinquent due to a single returned item or the loss of a payment in the mail. Thus, even when the delinquency was not reasonably avoidable, it appears that the harm in such cases is outweighed by the benefit to consumers as a whole (in the form of lower annual percentage rates and broader access to credit) from allowing institutions to reprice for risk once a consumer has become significantly delinquent.[54]

Accordingly, although the proposal could ultimately result in higher upfront costs and less available credit for some consumers, it appears that consumers and competition may benefit as a whole. Consumers will not only be protected against unexpected increases in the cost of transactions that have already been completed but will also be able to more accurately assess the cost of using their credit card accounts at the time they engage in new transactions. Furthermore, as discussed in regard to payment allocation, upfront annual percentage rates that are artificially reduced based on the expectation of future increases do not represent a true benefit to consumers as a whole. Similarly, competition may be enhanced because institutions that offer annual percentage rates that realistically reflect risk and market conditions will no longer be forced to compete with institutions offering artificially reduced rates.

The Agencies considered the suggestion raised in some comments that consumers be permitted to reject (or opt out of) the application of an increased rate to an existing balance by closing the account. As formulated in some of those comments, this proposal would not have addressed the injury to consumers whose rates were increased due to an unavoidable violation of the account terms. Even if consumers were given a right to reject application of an increased rate to an existing balance in all circumstances and were provided timely notice of that right (for example, in the Board's proposed 45-day notice under Regulation Z), it appears that the benefits to consumers of such a right do not outweigh the injury caused by application of an increased rate to an existing balance.

In most cases, it would not be economically rational for a consumer to choose to pay more for credit that has already been extended, particularly when the increased rate is significantly higher than the prior rate. Accordingly, assuming consumers understand their right to reject a rate increase, most would rationally exercise that right.[55] As a result, the costs associated with prohibiting application of an increased rate to an existing balance and providing consumers with the right to reject such application should be similar. However, providing consumers with notice and a means to exercise an opt-out right (*e.g.*, a toll-free telephone number) would create additional costs and burdens for institutions and consumers. Furthermore, a right to reject application of an increased rate to an existing balance would provide fewer benefits to consumers as a whole than the proposed rule because, no matter how well the right is disclosed, a substantial number of consumers might inadvertently forfeit that right by failing to read, understand, or act on the notice. In a 2006 report, the U.S. Government Accountability Office (GAO) noted that, although state laws applying to four of the six largest credit card issuers require an opt-out, representatives of those issuers stated that few consumers exercise that right.[56] Thus, a right to reject application of an increased rate to an existing balance could create similar

Unemployment Stress, Reuters (Mar. 24, 2008) (''According to analysis performed by Fitch, increases in the unemployment rate are expected to cause auto loan and credit card loss rates to increase proportionally with subprime assets experiencing the highest proportional rate.'') (available at *http://www.reuters.com/article/pressRelease/idUS94254+24-Mar-2008+BW20080324*).

[53] The Board has proposed additional revisions to these provisions elsewhere in today's **Federal Register**.

[54] The Agencies also note that, although some consumers may not have been able to avoid fees for violating the account terms (for example, late payment fees or fees for exceeding the credit limit), this injury does not appear to outweigh the countervailing benefit to consumers or competition. The application of an increased rate to an existing balance increases consumers' costs until the balance is paid in full or is transferred to an account with more favorable terms. The assessment of a fee, however, is generally an isolated cost that will not be repeated unless the account terms are violated again.

[55] A consumer who cannot obtain a lower rate elsewhere may not reject application of an increased rate to an existing balance. This choice, however, may not enable the consumer to reasonably avoid injury.

[56] GAO Credit Card Report at 26–27.

or greater costs while producing fewer benefits than the proposed rule.

Proposal

____.24(a) General Rule

Proposed § ____.24(a)(1) prohibits institutions from increasing the annual percentage rate applicable to any outstanding balance on a consumer credit card account, except in the circumstances set forth in proposed § ____.24(b). Proposed § ____.24(a)(2) defines ''outstanding balance'' as meaning the amount owed on a consumer credit card account at the end of the fourteenth day after the institution provides a notice required by proposed 12 CFR 226.9(c) or (g) as set forth in the Board's June 2007 Proposal.

As discussed above, the Board's June 2007 Proposal would require a creditor to provide consumers with a written notice of a rate increase at least 45 days before the effective date of that increase. *See* proposed 12 CFR 226.9(c) and (g), 72 FR at 33056, 33058. The definition of ''outstanding balance'' in proposed § ____.24(a)(2) is intended to prevent the Board's 45-day notice requirement from creating an extended period following receipt of that notice during which new transactions can be made at the prior rate. Although institutions could address this concern by denying additional extensions of credit after sending the 45-day notice, that outcome may not be beneficial to consumers who have received the notice and wish to use the account for new transactions. Accordingly, under proposed § ____.24(a), the balance to which an institution could not apply an increased rate is the balance 14 days after the institution has provided the 45-day notice. Consistent with the safe harbor in proposed § ____.23(b), 14 days would allow seven days for the notice to reach the consumer and seven days for the consumer to review that notice.

Proposed comment 24(a)–1 provides the following example of the application of proposed § ____.24(a): Assume that on December 30 a consumer credit card account has a balance of $1,000 at an annual percentage rate of 15%. On December 31, the institution mails or delivers a notice required by proposed 12 CFR 226.9(c) informing the consumer that the annual percentage rate will increase to 20% on February 15. The consumer uses the account to make $2,000 in purchases on January 10 and $1,000 in purchases on January 20. Assuming no other transactions, the outstanding balance for purposes of proposed § ____.24 is the $3,000 balance as of the end of the day on January 14. Therefore, under proposed § ____.24(a), the institution cannot increase the annual percentage rate applicable to that balance. The institution can apply the 20% rate to the $1,000 in purchases made on January 20 but, consistent with proposed 12 CFR 226.9(c), it cannot do so until February 15.

Proposed comment 24(a)–2 clarifies that, consistent with the approach in proposed § ____.22(b), an institution is not required to determine the specific date on which a notice required by proposed 12 CFR 226.9(c) or (g) was provided. For purposes of proposed § ____.24(a)(2), if the institution has adopted reasonable procedures designed to ensure that notices required by proposed 12 CFR 226.9(c) or (g) are provided to consumers no later than, for example, three days after the event giving rise to the notice, the outstanding balance is the balance at the end of the seventeenth day after such event.

____.24(b) Exceptions

Proposed § ____.24(b) provides that an institution may apply an increased annual percentage rate to an outstanding balance in three circumstances. First, when the rate is increased due to the operation of an index that is not under the institution's control and is available to the general public, the increased rate may be applied to the outstanding balance. This exception is similar to that in 12 CFR 226.5b(f)(1) and would apply to variable rates. Proposed comment 24(b)(1)–1 clarifies that an institution may not increase the rate on an outstanding balance based on its own prime rate but may use a published prime rate, such as that in the *Wall Street Journal*, even if the institution's prime rate is one of several rates used to establish the published rate. This comment would also clarify that an institution may not increase the rate on an outstanding balance by changing the method used to determine the indexed rate. Proposed comment 24(b)(1)–2 clarifies when a rate is considered ''publicly available.''

Second, when a promotional rate expires or is lost for a reason specified in the account agreement (*e.g.*, late payment), an increased rate may be applied to the outstanding balance, provided that the institution increases the rate to the standard rate rather than the penalty rate. For example, as set forth in proposed comment 24(b)(2)–1, assume that a consumer credit card account has a balance of $1,000 at a 5% promotional rate and that the institution also charges an annual percentage rate of 15% for purchases and a penalty rate of 25%. If the consumer does not make payment by the due date and the account agreement specifies that event as a trigger for applying the penalty rate, the institution may increase the annual percentage rate on the $1,000 from the 5% promotional rate to the 15% annual percentage rate for purchases. The institution may not, however, increase the rate on the $1,000 from the 5% promotional rate to the 25% penalty rate, except as otherwise permitted under proposed § ____.24(b)(3).

Third, an institution may apply an increased rate to the outstanding balance if the consumer's minimum payment has not been received within 30 days after the due date. An example is provided in proposed comment 24(b)(3)–1. As discussed above, a consumer will generally have notice and an opportunity to cure the delinquency before becoming 30 days past due.

____.24(c) Treatment of Outstanding Balances Following a Rate Increase

Proposed § ____.24(c) prohibits institutions that have increased the annual percentage rate applicable to a category of transactions on a consumer credit card account with an outstanding balance in that category from requiring payment of that outstanding balance using a method that is less beneficial to the consumer than one of two listed methods and from assessing fees or charges solely on an outstanding balance. Proposed comment 24(c)–1 clarifies that proposed § ____.24(c) does not apply if the account does not have an outstanding balance or if the rate on an outstanding balance is increased pursuant to proposed § ____.24(b). Proposed comment 24(c)–2 clarifies that proposed § ____.24(c) does not apply to balances in categories of transactions other than the category for which an institution has increased the annual percentage rate. For example, if an institution increases the annual percentage rate that applies to purchases but not the rate that applies to cash advances, proposed § ____.24(c) applies to an outstanding balance consisting of purchases but not an outstanding balance consisting of cash advances.

Proposed § ____.24(c)(1) would address the amount of time provided to the consumer in which to pay off the outstanding balance. While there may be circumstances in which institutions would accelerate repayment of the outstanding balance to manage risk, proposed § ____.24(a) would provide little effective protection if consumers did not receive a reasonable amount of time to pay off the outstanding balance. Accordingly, proposed § ____.24(c)(1) would require institutions to provide consumers with a method of paying the outstanding balance that is no less beneficial to the consumer than the

methods listed in proposed § ____.24(c)(1)(i) and (ii). *See* proposed comment 24(c)(1)–1. Proposed § ____.24(c)(1)(i) would also allow an institution to amortize the outstanding balance over a period of no less than five years, starting from the date on which the increased rate went into effect.[57] Proposed § ____.24(c)(1)(ii) would allow the percentage of the outstanding balance that was included in the required minimum periodic payment before the rate increase to be doubled. Proposed comment 24(c)(1)(ii)–1 clarifies that this provision does not limit or otherwise address an institution's ability to determine the amount of the minimum payment on other balances. Proposed comment 24(c)(1)(ii)–2 provides an example of how an institution could adjust the minimum payment on the outstanding balance.

The protections of proposed § ____.24(a) could also be undercut if institutions were permitted to assess fees or other charges as a substitute for an increase in the annual percentage rate. Accordingly, proposed § ____.24(c)(2) would prohibit institutions from assessing any fee or charge based solely on the outstanding balance. As explained in proposed comment 24(c)(2)–1, this proposal would prohibit, for example, an institution from assessing a monthly maintenance fee on the outstanding balance. The proposal would not, however, prohibit an institution from assessing fees such as late payment fees or fees for exceeding the credit limit that are based in part on the outstanding balance.

Request for Comment

The Agencies request comment on:

- The extent to which institutions raise rates on pre-existing card balances.
- The extent to which credit cards are offered pursuant to agreements that do not permit institutions to raise rates on pre-existing card balances.
- The extent to which credit cards are offered pursuant to agreements that permit consumers to reject application of increased rates to pre-existing balances and the extent to which consumers take advantage of this opportunity.
- What consumer behavior with respect to an account institutions consider when determining whether to increase the rate on existing balances (other than late payment, returned payment for insufficient funds, or exceeding the credit limit).
- The reasons institutions currently increase rates on existing balances and, for each reason, what percentage it represents of all rate increases.
- What effect the restrictions in proposed § ____.24(a) would have on outstanding securitizations and institutions' ability to securitize credit card assets in the future.
- Whether the restrictions in proposed § ____.24(a) would limit an institution's ability to effectively manage risk if the default rate on credit cards is greater than anticipated in light of the exceptions in proposed § ____.24(b).
- Whether the 14-day period in proposed § ____.24(a)(2) is an appropriate amount of time to enable consumers to receive and review notice of a rate increase.
- Whether other means of protecting consumers from application of increased rates to existing balances (*e.g.*, an opt-out) are more appropriate.
- Whether the exceptions in proposed § ____.24(b) are appropriate or necessary and whether other exceptions would be appropriate. In particular, the Agencies seek comment on whether: (1) Additional exceptions are needed to address safety and soundness concerns; (2) additional exceptions are needed for a consumer's failure to pay the account as agreed under the account terms, such as conduct that results in imposition of a penalty rate (including late payment, returned payment for insufficient funds, or exceeding the credit limit); and (3) 30 days is the appropriate measure of a serious delinquency.
- Whether additional or different approaches to the repayment of outstanding balances should be considered.
- Whether restrictions similar to those in proposed § ____.24(c) should apply when, rather than increasing the rate on future transactions, an institution declines to extend additional credit to the consumer. For example, the Agencies seek comment on whether, if an institution responds to an increased risk of default by declining to extend additional credit to a consumer, the consumer should receive the protections in proposed § ____.24(c) with respect to any balance on the account.

§ ____.25—Unfair Acts or Practices Regarding Fees for Exceeding the Credit Limit Caused by Credit Holds

Although the Board's June 2007 Proposal did not directly address over-the-credit-limit (OCL) fees, the Board received comments from consumers, consumer groups, and members of Congress expressing concern about the penalties imposed by creditors for exceeding the credit limit. Specifically, commenters were concerned that consumers may unknowingly exceed their credit limit and incur significant rate increases and fees as a result. The Agencies' proposal to prohibit the application of increased rates to existing balances addresses consumer harm resulting from rate increases imposed as a penalty for exceeding the credit limit. The Agencies also have concerns, however, about the imposition of OCL fees in connection with credit holds. This proposal is consistent with a parallel proposal in Subpart D with respect to overdraft fees assessed in connection with debit holds.

As further discussed below in Subpart D, some merchants place a temporary ''hold'' on an account when a consumer uses a credit or debit card for a transaction in which the actual purchase amount is not known at the time the transaction is authorized. For example, when a consumer uses a credit card to obtain a hotel room, the hotel often will not know the total amount of the transaction at the time because that amount may depend on, for example, the number of days the consumer stays at the hotel or the charges for incidental services the hotel may provide to the consumer during the stay (*e.g.*, room service). Therefore, to cover against its risk of loss, the hotel may place a hold on the available credit on the consumer's account in an amount sufficient to cover the expected length of the stay plus an additional amount for potential purchases of incidentals. In these circumstances, the institution may authorize the hold but does not know the amount of the transaction until the hotel submits the actual purchase amount for settlement.

Typically, the hold is kept in place until the transaction amount is presented to the institution for payment and settled, which may take place a few days after the transaction occurred. During this time between authorization and settlement, the hold remains in place on the consumer's account. The Agencies are concerned that consumers unfamiliar with credit hold practices may inadvertently exceed the credit limit and incur an OCL fee because they assumed that only the actual purchase

[57] This amortization period is consistent with guidance issued by the Board, OCC, FDIC, and OTS, under the auspices of the Federal Financial Institutions Examination Council, noting that credit card workout programs should generally strive to have borrowers repay debt within 60 months. *See, e.g.*, Board Supervisory Letter SR 03–1 on Account Management and Loss Allowance Methodology for Credit Card Lending (Jan. 8, 2003) (available at *http://www.federalreserve.gov/boarddocs/srletters/2003/sr0301.htm*).

amount of the transaction was unavailable for additional transactions.

Legal Analysis

Assessing an OCL fee when the credit limit is exceeded as a result of a credit hold appears to be an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC. First, an OCL fee constitutes substantial monetary injury. Second, this injury does not appear to be reasonably avoidable because consumers are generally unaware that a hold has been placed on their account. The Agencies do not believe that enhanced disclosures would enable consumers to avoid the injury because, even if consumers were to receive notice of the amount of the hold at point of sale, they could not know the length of time the hold will remain in place. Third, there do not appear to be countervailing benefits to consumers or competition. The proposal does not prohibit the use of holds, only the assessment of an OCL fee caused by a hold. The Agencies note that there is little risk to the institution from an authorized transaction until the transaction is presented for settlement by the merchant. At that point, the risk of loss is not for the amount of the hold, but rather for the actual purchase amount of the transaction. The Agencies do not, however, propose to prohibit institutions from assessing an OCL fee if there is insufficient available credit to cover the actual purchase amount.

Proposal

Proposed § ____.25 would prohibit institutions from assessing an OCL fee if the credit limit was exceeded due to a hold unless the actual amount of the transaction for which the hold was placed would have resulted in the consumer exceeding the credit limit. Proposed comments 25–2 and 25–3 provide examples of two situations in which this prohibition would apply. The first is where the amount of the hold for an authorized transaction exceeds the credit limit. Assume that a consumer has a credit limit of $2,000 and a balance of $1,500 on a consumer credit card account. The consumer uses the credit card to reserve a hotel room for five days. When the consumer checks in, the hotel obtains authorization from the institution for a $750 ''hold'' on the account to ensure there is adequate available credit to cover the total cost of the anticipated stay. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Assuming that there is no other activity on the account, § ____.25 prohibits the institution from assessing an OCL fee with respect to the $750 hold. If, however, the total cost of the stay had been more than $500, § ____.25 would not prohibit the institution from assessing an OCL fee.

Another situation in which an institution would be prohibited from assessing an OCL fee is when the hold for a transaction causes a subsequent transaction to exceed the credit limit. Assume that a consumer has a credit limit of $2,000 and a balance of $1,400 on a consumer credit card account. The consumer uses the credit card to reserve a hotel room for five days. When the consumer checks in, the hotel obtains authorization from the institution for a $750 hold on the account to ensure there is adequate available credit to cover the total cost of the anticipated stay. While the hold remains in place, the consumer uses the credit card to make a $150 purchase. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Assuming that there is no other activity on the account, § ____.25 would prohibit the institution from assessing an OCL fee with respect to either the $750 hold or the $150 purchase. If, however, the total cost of the stay had been more than $450, § ____.25 would not prohibit the institution from assessing an OCL fee.

Proposed comments 25–4 and 25–5 provide additional examples of the operation of this rule.

Request for Comment

The Agencies are concerned about other potentially unfair practices regarding the assessment of fees for exceeding the credit limit. In order to gather information for purposes of determining whether additional prohibitions are warranted, the Agencies solicit comment on:

- The extent to which institutions assess more than one fee per billing cycle for exceeding the credit limit and, if so, what factors determine whether a fee is assessed (*e.g.*, one fee for each transaction while the account is over the credit limit).
- The extent to which institutions tier or otherwise vary the fee for exceeding the credit limit based on the number or dollar amount of transactions while the account is over the credit limit.
- The extent to which institutions assess fees for exceeding the credit limit when the transaction that exceeded the credit limit occurred in an earlier billing cycle and the consumer has not engaged in subsequent transactions.

Section____.26—Unfair Balance Computation Method

The Agencies propose to prohibit institutions, as an unfair act or practice, from imposing finance charges on consumer credit card accounts based on balances for days in billing cycles that precede the most recent billing cycle. Currently, TILA requires creditors to explain as part of the account-opening disclosures the method used to determine the balance to which rates are applied. 15 U.S.C. 1637(a)(2). In its June 2007 Proposal, the Board proposed that the balance computation method be disclosed outside the account-opening table because explaining lengthy and complex methods may not benefit consumers. 72 FR at 32991–92. That proposal was based on the Board's consumer testing, which indicated that consumers did not understand explanations of balance computation methods. Nevertheless, the Board observed that, because some balance computation methods are more favorable to consumers than others, it was appropriate to highlight the method used, if not the technical computation details.

In response to its proposal, the Board received comments from consumers, consumer groups, and members of Congress urging the Board to prohibit the balance computation method sometimes referred to as ''two-cycle'' or ''double-cycle.'' This method has several permutations but, generally speaking, an institution using the two-cycle method assesses interest not only on the balance for the current billing cycle but also on the balance for the preceding billing cycle. This method generally does not result in additional finance charges for a consumer who consistently carries a balance from month to month because interest is always accruing on the balance. Nor does the two-cycle method affect consumers who pay their balance in full within the grace period every month because interest is not imposed on their balances. The two-cycle method does, however, result in greater interest charges for consumers who pay their balance in full one month but not the next month.

The following example illustrates how the two-cycle method results in higher costs for these consumers than other balance computation methods. A consumer has a zero balance on a credit card account on January 1, which is the start of the billing cycle. The consumer uses the credit card for a $500 purchase on January 15. The consumer makes no other purchases and the billing cycle closes on January 31. The consumer

pays $400 on the due date (February 25), leaving a $100 balance. Under the average daily balance computation method that is used by most credit card issuers, because the consumer did not pay the balance in full on February 25, the periodic statement showing February activity would reflect interest charged on the $500 purchase from the start of the billing cycle (February 1) through February 24 and interest on the remaining $100 from February 25 through the end of the billing cycle (February 28). Under the two-cycle method, however, interest would also be charged on the $500 purchase from the date of purchase (January 15) to the end of the January billing cycle (January 31).

Legal Analysis

Imposing finance charges on consumer credit card accounts based on balances for days in billing cycles that precede the most recent billing cycle appears to be an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC.

First, as described above, computing finance charges based on balances preceding the most recent billing cycle appears to cause substantial consumer injury because consumers incur higher interest charges than they would under a balance computation method that focuses only on the most recent billing cycle. Second, it does not appear that consumers can reasonably avoid this injury because, once they use the card, they have no control over the methods used to calculate the finance charges on their accounts. Furthermore, as noted above, the Board's consumer testing indicates that disclosures are not successful in helping consumers understand balance computation methods. Accordingly, a disclosure will not enable the consumer to avoid that method when comparing credit card accounts or to avoid its effects when using a credit card.

Third, there do not appear to be any significant benefits to consumers or competition from computing finance charges based on balances preceding the most recent billing cycle. The Agencies understand that many institutions no longer use the two-cycle computation method. Although prohibition of the two-cycle computation method may reduce revenue for the institutions that currently use it and those institutions may replace that revenue by charging consumers higher annual percentage rates or fees, it appears that this result would nevertheless benefit consumers because it will result in more transparent pricing.

Proposal

____.26(a) General Rule

Proposed § ____.26(a) would prohibit institutions from imposing finance charges on balances on consumer credit card accounts based on balances for days in billing cycles preceding the most recent billing cycle. Proposed comment 26(a)–1 cites the two-cycle average daily balance computation method as an example of balance computation methods that would be prohibited by the proposed rule and tracks commentary under Regulation Z. *See* 12 CFR 226.5a cmt. 5a(g)–2. Proposed comment 26(a)–2 provides an example of the application of the two-cycle method.

____.26(b) Exceptions

Proposed § ____.26(b) would create two exceptions to the general prohibition in proposed § ____.26(a). First, institutions would not be prohibited from charging consumers for deferred interest even though that interest may have accrued over multiple billing cycles. Thus, if a consumer did not pay a balance or transaction in full by the specified date under a deferred interest plan, the institution would be permitted to charge the consumer for interest accrued during the period the plan was in effect.

Second, institutions would not be prohibited from adjusting finance charges following resolution of a billing error dispute. For example, if after complying with the requirements of 12 CFR 226.13 an institution determines that a consumer owes all or part of a disputed amount, the institution would be permitted to adjust the finance charge accordingly, even if that requires computing finance charges based on balances in billing cycles preceding the most recent billing cycle.

Section____.27—Unfair Acts or Practices Regarding Security Deposits and Fees for the Issuance or Availability of Credit

The Agencies propose to prohibit institutions from charging to a consumer credit card account security deposits and fees for the issuance or availability of credit during the twelve months after the account is opened that, in the aggregate, constitute the majority of the credit limit for that account. In addition, the proposal would prohibit institutions from charging to the account during the first billing cycle security deposits and fees for the issuance or availability of credit that total more than 25 percent of the credit limit. Finally, if security deposits and fees for the issuance or availability of credit total more than 25 percent but less than the majority of the credit limit during the first year, the institution would be required to spread that amount equally over the eleven billing cycles following the first billing cycle.

As the Board noted in its June 2007 Proposal, subprime credit cards often have substantial fees related to the issuance or availability of credit. *See* 72 FR at 32980, 32983. For example, these cards may impose an annual fee and a monthly maintenance fee for the card. In other cases, a security deposit may be charged to the account. These cards may also impose multiple one-time fees when the consumer opens the card account, such as an application fee and a program fee. Those amounts are often billed to the consumer as part of the first statement and substantially reduce the amount of credit that the consumer has available to make purchases or other transactions on the account. For example, after security deposits or fees have been billed to accounts with a minimum credit line of $250, the consumer may have less than $100 of available credit with which to make purchases or other transactions unless the consumer pays the deposits or fees. In addition, consumers will pay interest on security deposits and fees until they are paid in full.

The federal banking agencies have received many complaints from consumers with respect to cards of this type. Consumers often say that they were not aware of how little available credit they would have after the assessment of security deposits and fees. In an effort to address these concerns, the Board's June 2007 Proposal included several proposed amendments to Regulation Z's solicitation and application disclosures for credit and charge cards.

Specifically, the Board proposed to require creditors to disclose both the annualized and the periodic amount of the fee and how often the periodic fee will be imposed. *See* proposed 12 CFR 226.5a(b)(2), 72 FR at 33046; *see also* 72 FR at 32980. The Board also proposed to require creditors to disclose the impact of security deposits and fees for the issuance or availability of credit on consumers' initial available credit. *See* proposed 12 CFR 226.5a(b)(16), 72 FR at 33047. Specifically, the Board proposed that, if the total amount of any security deposit or required fees for the issuance or availability of credit that will be charged against the card at account opening equals 25 percent or more of the minimum credit limit offered for the card, the creditor must disclose an example of the amount of available credit a consumer would have

remaining, assuming that the consumer receives the minimum credit limit offered on the account. For example, if the minimum credit limit on an account is $250 and security deposits and covered fees total $150, the creditor would be required to disclose that the consumer may receive only $100 in available credit.

Elsewhere in today's **Federal Register**, the Board is proposing to clarify the circumstances in which a consumer who has received account-opening disclosures, but has not yet used the account or paid a fee, may reject the plan and not be obligated to pay upfront fees. Under proposed 12 CFR 226.5(b)(1)(iv), the right to reject an open-end (not home-secured) plan would apply when any fee (other than an application fee that is charged to all applicants whether or not they receive the credit) is charged or agreed to be paid before the consumer receives the account-opening disclosures. Similarly, under proposed 12 CFR 226.6(b)(4)(vii), creditors that require substantial fees at account opening and leave consumers with a limited amount of available credit would be required to provide a notice of the consumer's right to reject the plan and not pay fees (other than an application fee, as discussed above) unless the consumer uses the account or pays the fees after receiving a billing statement. As discussed below, however, the Agencies are proposing additional, substantive protections.

Legal Analysis

Charging to a consumer credit card account security deposits and fees for the issuance or availability of the credit during the first year that total a majority of the credit limit appears to be an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC. Similarly, charging to the account in the first billing cycle security deposits and fees for the issuance or availability of credit that total more than 25 percent of the credit limit also appears to be an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC.

Substantial consumer injury. Consumers incur substantial monetary injury when security deposits and fees for the issuance or availability of credit are charged to a consumer credit card account, both in the form of the charges themselves and in the form of interest on those charges. Even in cases where the institution provides a grace period, many consumers may not be able to pay the charges in full during that grace period. The potential injury from interest charges increases when security deposits and fees for the issuance or availability of credit are charged to the account in the first billing cycle rather than over a longer period of time. In addition, when security deposits and fees for the issuance or availability of credit are charged to the consumer's account, they diminish the value of that account by reducing the credit available to the consumer for purchases or other transactions.[58]

Injury is not reasonably avoidable. It does not appear that consumers are able to avoid the injury caused by the financing of security deposits and fees for the issuance or availability of credit. As an initial matter, disclosures may not be effective in allowing consumers to avoid these charges, particularly where deceptive sales practices mislead consumers about the amount of credit available.[59] For example, in one recent case, the court found that credit card marketing materials sent to consumers who were otherwise unable to qualify for credit ''did not represent an accurate estimation of a consumer's credit limit'' and that, ''at all times, it appeared that the confusion was purposely fostered by [the defendant's] telemarketers.'' [60] In these circumstances, consumers may lack the information necessary to avoid harm.

Furthermore, because cards with high security deposits and fees are typically targeted at subprime consumers whose credit histories or other characteristics may prevent them from obtaining a credit card elsewhere, those consumers may not be able to avoid financing the fees associated with these cards because they lack the funds to pay the charges up front.[61] Furthermore, because the Board's proposals under Regulation Z focus on amounts charged when the account is opened, those disclosures could be evaded by subsequent charges, leaving consumers with less available credit than they anticipated. Thus, consumers may not reasonably be able to avoid the injury caused by the financing of security deposits and fees for the issuance or availability of credit.

Injury is not outweighed by countervailing benefits. The Agencies understand that, in some cases, consumer credit card accounts with financed security deposits and fees can provide benefits to consumers who are unable to obtain a credit card without such charges and who lack the available funds to pay the security deposit and fees at or before account opening. Once, however, security deposits and fees for the issuance or availability of credit consume a majority of the credit limit, it appears that the benefit to consumers from access to available credit is outweighed by the high cost of paying for that credit. The Agencies have sought to narrowly tailor the proposal by allowing institutions to charge to the account security deposits and fees that total less than a majority of the credit limit during the first year and by allowing institutions to charge amounts totaling no more than 25 percent of the credit limit during the first billing cycle. Security deposits and fees paid from separate funds would not be affected by the proposal.

Finally, although public policy does not serve a primary basis for the Agencies' determination, the established public policy in favor of the safety and soundness of financial institutions appears to support the proposed limitations on the financing of security deposits and fees for the issuance or availability of credit because that practice appears to create a greater risk of default.[62]

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[58] *See* OCC Advisory Letter 2004–4, at 3 (Apr. 28, 2004) (stating that a finding of unfairness with respect to subprime cards with financed security deposits could be based on the fact that ''because charges to the card by the issuer utilize all or substantially all of the nominal credit line assigned by the issuer, they eliminate the card utility and credit availability applied and paid for by the cardholder'') (available at *http://www.occ.treas.gov/ftp/advisory/2004-4.txt*).

[59] *See, e.g.*, OCC Advisory Letter 2004–4, at 2–3 (finding that ''solicitations and other marketing materials used for [subprime] credit card programs have not adequately informed consumers of the costs and other terms, risks, and limitations of the product being offered'' and that, ''[i]n a number of cases, disclosures problems associated with secured credit cards and related products have constituted *deceptive* practices under the applicable standards of the FTC Act'' (emphasis in original)); *In re* First Nat'l Bank in Brookings, No. 2003–1 (Dept. of the Treasury, OCC) (Jan. 17, 2003) (available at *www.occ.treas.gov/ftp/eas/ea2003-1.pdf*); *In re* First Nat'l Bank of Marin, No. 2001–97 (Dept. of the Treasury, OCC Dec. 3, 2001) (available at *www.occ.treas.gov/ftp/eas/ea2001-97.pdf*).

[60] *People* v. *Applied Card Sys., Inc.,* 805 N.Y.S.2d 175, 178 (App. Div. 2005).

[61] *See* Statement for FTC Credit Practices Rule, 48 FR at 7746 (''If 80 percent of creditors include a certain clause in their contracts, for example, even the consumer who examines contract[s] from three different sellers has a less than even chance of finding a contract without the clause. In such circumstances relatively few consumers are likely to find the effort worthwhile, particularly given the difficulties of searching for contract terms. * * *'' (footnotes omitted)).

[62] *See* OCC Advisory Letter 2004–4, at 4 (''[P]roducts carrying fee structures that are significantly higher than the norm pose a greater risk of default. * * * This is particularly true when the security deposit and fees deplete the credit line so as to provide little or no card utility or credit availability upon issuance. In such circumstances, when the consumer has no separate funds at stake, and little or no consideration has been provided in exchange for the fees and other amounts charged to the consumer, the product may provide a disincentive for responsible credit behavior and adversely affect the consumer's credit standing.'').

Proposal

____.27(a) Annual Rule

Proposed § ____.27(a) prohibits institutions from financing security deposits and fees for the issuance or availability of credit during the twelve months following account opening if, in the aggregate, those fees constitute a majority of the initial credit limit. Proposed § ____.27(a) would not, however, apply to security deposits and fees for the issuance or availability of credit that are not charged to the account. For example, an institution would not be prohibited from providing a credit card account that requires a consumer to pay a security deposit equal to the amount of credit extended if that deposit is not charged to the account. Proposed comment 27–1 clarifies that the ''initial credit limit'' for purposes of this section is the limit in effect when the account is opened. Proposed comment 27(a)–1 clarifies that the total amount of security deposits and fees for the issuance or availability of credit constitutes a majority of the initial credit limit if that total is greater than half of the limit. For example, assume that a consumer credit card account has an initial credit limit of $500. Under proposed § ____.27(a), an institution may charge to the account security deposits and fees for the issuance or availability of credit totaling no more than $250 during the twelve months after the date on which the account is opened (consistent with proposed § ____.27(b)).

____.27(b) Monthly Rule

Proposed § .27(b) prohibits institutions from charging to the account during the first billing cycle security deposits and fees for the issuance or availability of credit that, in the aggregate, constitute more than 25 percent of the initial credit limit. Any additional security deposits and fees must be spread equally among the eleven billing cycles following the first billing cycle. Proposed comment 27(b)–1 clarifies that, when dividing amounts pursuant to proposed § ____.27(b)(2), the institution may adjust amounts by one dollar or less. For example, if an institution is dividing $125 over eleven billing cycles, it may charge $12 for four months and $11 for seven months. Proposed comment 27(b)–2 provides the following example of the application of proposed § ____.27(b): Assume that a consumer credit card account opened on January 1 has an initial credit limit of $500 and that an institution charges to the account security deposits and fees for the issuance or availability of credit that total $250 during the twelve months after the date on which the account is opened. Assume also that the billing cycles for this account begin on the first day of the month and end on the last day of the month. Under proposed § ____.27(b), the institution may charge to the account no more than $250 in security deposits and fees for the issuance or availability of credit. If it charges $250, the institution may charge as much as $125 during the first billing cycle. If it charges $125 during the first billing cycle, it may then charge $12 in any four billing cycles and $11 in any seven billing cycles during the year.

____.27(c) Fees for the Issuance or Availability of Credit

Proposed § ____.27(c) defines ''fees for the issuance or availability of credit'' as including any annual or other periodic fee, any fee based on account activity or inactivity, and any non-periodic fee that relates to opening an account. This definition is based on the definition of ''fees for the issuance or availability of credit'' in proposed 12 CFR 226.5a(b)(2). *See* 72 FR at 33046. This definition does not include fees such as late fees, fees for exceeding the credit limit, or fees for replacing a card. Proposed comments 27(c)–1, 2, and 3 are based on similar commentary to proposed 12 CFR 226.5a(b)(2) and clarify the meaning of ''fees for the issuance or availability of credit.'' *See* 72 FR at 33108.

Request for Comment

The Agencies seek comment on:

- The dollar amount of security deposits and fees for the issuance or availability of credit typically charged to the account in the first billing cycle.
- The percentage of the initial credit line that is typically made unavailable due to security deposits and fees charged to the account during the first billing cycle.
- The degree to which consumers (including consumers with limited or damaged credit histories) can secure credit cards without high fees for the issuance or availability of credit.
- Whether the proposal would inappropriately curtail consumers' access to credit.
- Whether the final rule should impose additional, specific restrictions on charges on credit card accounts that a creditor can impose without the consumer's advance authorization.
- Whether the twelve-month time period in the proposal is the appropriate time period to consider in determining how much of the credit limit is consumed by security deposits and fees.
- Whether disclosure of security deposits and fees enables consumers to understand the impact of those charges on the availability of credit.
- Whether alternatives to proposed § ____.27(b) are appropriate.

Section ____.28—Deceptive Acts or Practices Regarding Firm Offers of Credit

Proposed § ____.28 applies when institutions make firm offers of credit for consumer credit card accounts that contain a range of or multiple annual percentage rates or credit limits. When the rate or credit limit that a consumer responding to such an offer will receive depends on specific criteria bearing on creditworthiness, § ____.28 requires that the institution disclose the types of eligibility criteria in the solicitation. The disclosure must be provided in a manner that is reasonably understandable to consumers and designed to call attention to the nature and significance of the eligibility criteria for the lowest annual percentage rate or highest credit limit stated in the solicitation. Under the proposal, an institution may use the following disclosure to meet these requirements, if it is presented in a manner that calls attention to the nature and significance of the eligibility information, as applicable: ''If you are approved for credit, your annual percentage rate and/or credit limit will depend on your credit history, income, and debts.''

Legal Analysis

The Fair Credit Reporting Act (FCRA) limits the purposes for which consumer reports can be obtained. It permits consumer reporting agencies to furnish consumer reports only for one of the ''permissible purposes'' enumerated in the statute.[63] One of the permissible purposes set forth in the FCRA relates to prescreened firm offers of credit or insurance.[64] In a typical use of prescreening for firm offers of credit, a creditor submits a request to a consumer reporting agency for the contact information of consumers meeting certain pre-established criteria that will be reflected in the consumer reporting agency's records, such as credit scores in a certain range. The creditor then sends offers of credit targeted to those consumers, which state certain terms under which credit may be provided. For example, a firm offer of credit may contain statements regarding the annual percentage rate or credit limit that may be provided.

[63] *See* 15 U.S.C. 1681b. Similarly, persons obtaining consumer reports may do so only with a permissible purpose. *See* 15 U.S.C. 1681b(f).

[64] *See* 15 U.S.C. 1681a(l) (defining ''firm offer of credit or insurance'').

The FCRA requires that a firm offer of credit state, among other things, that (1) information contained in the consumer's credit report was used in connection with the transaction; (2) the consumer received the firm offer because the consumer satisfied the criteria for creditworthiness under which the consumer was selected for the offer; and (3) if applicable, the credit may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any other applicable criteria bearing on creditworthiness or does not furnish any required collateral.[65] The creditor may apply certain additional criteria to evaluate applications from consumers that respond to the offer, such as the consumer's income or debt-to-income ratio.[66] As discussed below, the Agencies are concerned that consumers receiving firm offers of credit may not understand that they are not necessarily eligible for the lowest annual percentage rate and the highest credit limit stated in the offer.

It appears to be a deceptive act or practice under the standards articulated by the FTC to make a firm offer of credit for a consumer credit card account without disclosing that consumers may not receive the lowest annual percentage rate and highest credit limit offered.

Likely to mislead consumers acting reasonably under the circumstances. As discussed above, the FCRA requires that firm offers of credit state that the consumer was selected for the offer based on certain criteria for creditworthiness.[67] Indeed, firm offers of credit often state that consumers have been ''pre-selected'' for credit or make similar statements. Thus, in the absence of an affirmative statement to the contrary, consumers may reasonably believe that they can receive the lowest annual percentage rate and highest credit limit stated in the offer even though that is not the case.[68] For example, assume that an institution obtains from a consumer reporting agency a list of consumers with credit scores of 650 or higher for purposes of sending those consumers a solicitation for a firm offer of credit. The solicitation sent by the institution states that the consumer has been ''pre-selected'' for credit and advertises ''rates from 8.99% to 19.99%'' and ''credit limits from $1,000 to $10,000.'' But under the criteria established by the institution before the selection of the consumers for the offer, the institution will only provide an interest rate of 8.99% and a credit limit of $10,000 to those consumers responding to the solicitation who are verified to have a credit score of 650 or higher, who have a debt-to-income ratio below a certain amount, and who meet other specific criteria bearing on creditworthiness. Because the consumers receiving the offer are not informed of these requirements, consumers who do not meet one or more of the requirements could reasonably interpret the offer as stating that they may receive an interest rate of 8.99% or a credit limit of $10,000 when, in fact, they will not.[69]

As noted above, the FCRA requires that firm offers of credit state, where applicable, that credit may not be extended if the consumer no longer meets the criteria used to select the consumer for the offer or does not meet any other applicable criteria bearing on creditworthiness.[70] This statement, however, only informs the consumer that there may be circumstances in which the consumer will not be eligible to receive *any* credit. This statement does not enable consumers to evaluate whether they will be eligible for the lowest annual percentage rate and highest credit limit if they respond to the firm offer.

Materiality. Statements in firm offers of credit that the consumer has been selected for the offer based on certain criteria for creditworthiness or that the consumer has been ''pre-selected'' for credit are material because they are likely to affect a consumer's decision about whether to respond to the offer of credit.[71] Furthermore, statements in firm offers of credit regarding credit terms are presumptively material because they relate to the cost of a product or service.[72]

Proposal

____.28(a) Disclosure of Criteria Bearing on Creditworthiness

Proposed § ____.28(a) provides that, if an institution offers a range or multiple annual percentage rates or credit limits when making a solicitation for a firm offer of credit for a consumer credit card account, and the annual percentage rate or credit limit that consumers approved for credit will receive depends on specific criteria bearing on creditworthiness, the institution must disclose the types of criteria in the solicitation. The disclosure must be provided in a manner that is reasonably understandable to consumers and designed to call attention to the nature and significance of the information regarding the eligibility criteria for the lowest annual percentage rate or highest credit limit offered.

Under the proposal, an institution may use the following disclosure to meet these requirements, if it is presented in a manner that calls attention to the nature and significance of the eligibility information: ''If you are approved for credit, your annual percentage rate and credit limit will depend on your credit history, income, and debts.'' Proposed comment .28(a)(1)–1 explains that whether a disclosure has been provided in a manner that is designed to call attention to the nature and significance of required information depends on where the disclosure is placed in the solicitation and how it is presented, including whether the disclosure uses a typeface and type size that are easy to read and uses boldface or italics. Placing the disclosure in a footnote would not satisfy this requirement. Proposed comment .28(a)–2 clarifies that, to the extent that disclosures required by proposed § ____.28(a) are provided electronically, the institution must comply with the requirements in 12 CFR 226.5a(a)(2)–8 and –9.

Proposed comment .28(a)–3 clarifies that a firm offer of credit solicitation that states an annual percentage rate or credit limit for a credit card feature and a different annual percentage rate or credit limit for a different credit card feature does not offer multiple annual percentage rates or credit limits. For example, if a firm offer of credit solicitation offers a 15% annual percentage rate for purchases and a 20% annual percentage rate for cash

[65] *See* 15 U.S.C. 1681m(d)(1); *see also* 16 CFR 642.1–642.4 (Prescreen Opt-Out Notice Rule).

[66] *See, e.g.*, 15 U.S.C. 1681a(l).

[67] *See* 15 U.S.C. 1681m(d)(1)(B).

[68] *See* FTC Policy Statement on Deception at 3 (''To be considered reasonable, the interpretation or reaction does not have to be the only one. When a seller's representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation.'' (footnotes omitted)). In consumer testing conducted in relation to the Board's June 2007 Proposal, almost all participants understood that the credit limit for which they would qualify depended on their creditworthiness, such as credit history. *See* 72 FR at 32984. This testing did not, however, specifically focus on firm offers of credit, which, as discussed above, contain statements that the consumer has been selected for the offer.

[69] *See FTC* v. *U.S. Sales Corp.*, 785 F. Supp. 737, 751 (N.D. Ill. 1992) (concluding that express representations that consumers would not be turned down for a secured credit card were misleading because applicants could be denied a card if they had a poor credit history).

[70] *See* 15 U.S.C. 1681m(d)(1)(C).

[71] FTC Policy Statement on Deception at 6–7 (''A 'material' misrepresentation or practice is one which is likely to affect a consumer's choice of or conduct regarding a product. In other words, it is information that is important to consumers.'' (footnotes omitted)).

[72] *See id.* at 6.

advances, the solicitation does not offer multiple annual percentage rates for purposes of proposed § ____.28(a). Proposed comment .28(a)–4 provides an example of the operation of proposed § ____.28(a).

Proposed comment .28(a)–5 clarifies that, when making a disclosure under proposed § ____.28, an institution may only disclose the criteria it uses in evaluating whether consumers who are approved for credit will receive the lowest annual percentage rate or the highest credit limit. For example, if an institution does not consider the consumer's debts when determining whether the consumer should receive the lowest annual percentage rate or highest credit limit, the disclosure must not refer to ''debts.''

.28(b) Firm Offer of Credit Defined

Proposed § ____.28(c) provides that, for purposes of this section, ''firm offer of credit'' has the same meaning as that term has under the definition of ''firm offer of credit or insurance'' in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)).

Request for Comment

The Agencies are concerned that the disclosure in proposed § ____.28(a) may not be effective unless it is provided in close proximity to the annual percentage rate and/or credit limit in the firm offer of credit. However, the Agencies also recognize that the annual percentage rate and/or credit limit may be stated multiple times in the offer. Accordingly, the Agencies request comment on whether proposed § ____.28 should contain a proximity requirement. If a proximity requirement were to be adopted, the Agencies request comment on whether the disclosure should be proximate to the first statement of the annual percentage rate or credit limit or the most prominent statement of the annual percentage rate or credit limit.

The Agencies also request comment on:

- Whether consumers who receive firm offers of credit offering a range of or multiple annual percentage rates or credit limits understand that there may be no possibility that they will be eligible for the lowest annual percentage rate and the highest credit limit stated in the offer.
- Whether the proposed disclosure would be effective in informing consumers that they may not receive the best terms advertised.

Other Credit Card Practices

The Agencies are also concerned about the potentially deceptive use of the term ''interest free'' in connection with deferred interest plans for credit cards. While consumers may benefit from making payments over a period of time, the Agencies are concerned that some consumers may not be adequately informed that accrued interest charges will be added to the principal owed if they fail to make payment in full by the end of the deferred interest term or otherwise default on the agreement. Because the Board is addressing this concern in a separate proposal under Regulation Z in today's **Federal Register**, the Agencies are not proposing to address the issue in this rulemaking. Under the Board's Regulation Z proposal, creditors that describe deferred interest plans by using ''no interest'' or similar terms in regard to interest during the deferred interest period would be required to disclose in close proximity to the first listing of such terms: (1) A statement that interest will be charged from the date of purchase if the balance is not paid in full by the end of the deferred interest period; and (2) if applicable, a statement that making only the minimum payment will not pay off the balance or transaction in time to avoid interest charges.

VI. Section-By-Section Analysis of Overdraft Services Subpart

Introduction

Historically, if a consumer engaged in a transaction that overdrew his or her account, depository institutions used their discretion on an ad hoc basis to pay the overdraft, usually imposing a fee. The Board recognized this longstanding practice when it initially adopted Regulation Z in 1969 to implement TILA. The regulation provided that these transactions are generally not covered under Regulation Z where there is no written agreement between the consumer and institution to pay an overdraft and impose a fee. *See* 12 CFR § 226.4(c)(3). The treatment of overdrafts in Regulation Z was designed to facilitate depository institutions' ability to accommodate consumers' transactions on an ad hoc basis.

Over the years, most institutions have largely automated the overdraft payment process, including setting specific criteria for determining whether to honor overdrafts and limits on the amount of the coverage provided. From the industry's perspective, the benefits of overdraft, or bounced check, services include a reduction in the costs of manually reviewing individual items, as well as the consistent treatment for all customers with respect to overdraft payment decisions. Moreover, industry representatives assert that overdraft services are valued by consumers, particularly for check transactions, as they allow consumers to avoid additional fees that would be charged by the merchant if the item was returned unpaid, and other adverse consequences, such as the furnishing of negative information to a consumer reporting agency.[73]

In contrast, consumer advocates believe overdraft transactions are a high-cost form of lending that traps low- and moderate-income consumers (particularly students and the elderly) into paying high fees. They also note that consumers are enrolled in overdraft services automatically, often with no chance to opt out. In addition, consumer advocates believe that by honoring check and other types of overdrafts, institutions encourage consumers to rely on this service and thereby consumers incur greater costs. Consumer advocates also express concerns about debit card overdrafts where the dollar amount of the fee may far exceed the dollar amount of the overdraft, and multiple fees may be assessed in a single day for a series of small-dollar transactions.[74]

According to a recent report from the GAO, the average cost of overdraft and insufficient funds fees has increased roughly 11 percent between 2000 and 2007 to just over $26 per item.[75] The GAO also reported that large institutions charged between $4 and $5 more for overdraft and insufficient fund fees compared to smaller institutions. In addition, the GAO Bank Fees Report noted that a small number of institutions (primarily large banks) apply tiered fees to overdrafts, charging higher fees as the number of overdrafts in the account increases.[76]

[73] *See, e.g., Overdraft Protection: Fair Practices for Consumers: Hearing before the House Subcomm. on Financial Institutions and Consumer Credit, House Comm. on Financial Services,* 110th Cong. (2007) (*Overdraft Protection Hearing*) (available at *http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr0705072.shtml*).

[74] *See, e.g., Overdraft Protection Hearing* at n.42; Jacqueline Duby, Eric Halperin & Lisa James, *High Cost and Hidden From View: The $10 Billion Overdraft Loan Market,* Ctr. for Responsible Lending (May 26, 2005) (noting that the bulk of overdraft fees are incurred by repeat users) (available at *www.responsiblelending.org*).

[75] *See Bank Fees: Federal Banking Regulators Could Better Insure That Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts,* GAO Report 08–281 (January 2008) (GAO Bank Fees Report); *see also Bankrate 2007 Checking Account Study,* posted Sep. 26, 2007 (reporting an average overdraft fee of over $28 per item) (available at: *www.bankrate.com/brm/news/chk/chkstudy/20070924_bounced_check_fee_a1.asp?caret=2e*).

[76] According to the GAO, of the financial institutions that applied up to three tiers of fees in 2006, the average overdraft fees were $26.74, $32.53

Continued

Overdraft services vary among institutions but typically share certain characteristics. Coverage is ''automatic'' for consumers who meet the institution's criteria (*e.g.*, the account has been open a certain number of days, the account is in ''good standing,'' deposits are made regularly). While institutions generally do not underwrite on an individual account basis in determining whether to enroll the consumer in the service initially, most institutions will review individual accounts periodically to determine whether the consumer continues to qualify for the service, and the amounts that may be covered.

Most overdraft program disclosures state that payment of an overdraft is discretionary on the part of the institution, and disclaim any legal obligation of the institution to pay any overdraft. Typically, the service is extended to also cover non-check transactions, including withdrawals at ATMs, automated clearinghouse (ACH) transactions, debit card transactions at point-of-sale, pre-authorized automatic debits from a consumer's account, telephone-initiated funds transfers, and on-line banking transactions. A flat fee is charged each time an overdraft is paid and, commonly, institutions charge the same amount for paying the overdraft as they would if they returned the item unpaid. A daily fee also may apply for each day the account remains overdrawn.

Where institutions vary most in their provision of overdraft services is the extent to which institutions inform consumers about the existence of the service or otherwise promote the use of the service. For those institutions that choose to promote the existence and availability of the service, they may also disclose to consumers, typically in a brochure or welcome letter, the aggregate dollar limit of overdrafts that may be paid under the service.

Notwithstanding the Agencies' issuance in February 2005 of guidance on overdraft protection programs, the Board's May 2005 final rule under Regulation DD, and NCUA's 2006 final rule under part 707,[77] the Agencies remain concerned about certain aspects of the marketing, disclosure, and implementation of some overdraft services. For example, many consumers may be automatically enrolled in their institution's overdraft service, without being given an adequate opportunity to opt out of the service and avoid the costs associated with the service. While the February 2005 overdraft guidance recommended that consumers be given an opportunity to opt out, this practice may not be uniform across institutions and the opt-out right may not be adequately disclosed to consumers. In addition, the Agencies remain concerned about the adequacy of disclosures provided to consumers regarding the costs of overdraft services.

Thus, pursuant to their authority under 15 U.S.C. 57a(f)(1), the Agencies are proposing to adopt rules prohibiting specific unfair acts or practices with respect to overdraft services. The Agencies would locate these rules in a new Subpart D to their respective regulations under the FTC Act. These proposals should not be construed as a definitive conclusion by the Agencies that a particular act or practice is unfair. The Board is also publishing a separate proposal addressing overdraft services in today's **Federal Register** using its authority under TISA and Regulation DD.

Section ____.31—Definitions

Proposed § ____.31 sets forth certain key definitions to clarify the scope and intent of the provisions addressing unfair acts or practices involving overdraft services.

Account

The Agencies would limit the scope of the overdraft services provisions to ''accounts'' as defined in TISA, Regulation DD, and part 707. Thus, the proposal uses a definition of ''account'' that is limited to ''a deposit account at a depository institution that is held by or offered to a consumer.'' *See* proposed § ____.31(a); 12 CFR 230.2(a) and 707.2(a). Although the Agencies are aware that overdraft services are sometimes provided for prepaid cards, such card products are beyond the scope of this rulemaking.

Consumer

The term ''consumer'' refers to a person who holds an account primarily for personal, family, or household purposes.[78] Thus, the proposal would not cover overdraft services that are provided for business accounts, including sole proprietorships. *See* proposed § ____.31(b).

Overdraft Service

Proposed § ____.31(c) defines ''overdraft service'' to mean a service under which an institution charges a fee for paying a transaction (including a check, point-of-sale debit card transaction, ATM withdrawal and other electronic transaction, such as a preauthorized electronic fund transfer or an ACH debit) that overdraws an account. The term covers circumstances when an institution pays an overdraft pursuant to a promoted program or service or under an undisclosed policy or practice and charges a fee for that service. The term does not, however, include services in which an institution pays an overdraft pursuant to a line of credit subject to the Board's Regulation Z, including transfers from a credit card account, a home equity line of credit or an overdraft line of credit. The term also excludes any overdrafts paid through a service that transfers funds from another account of the consumer held at the institution.

Section ____.32—Unfair Acts or Practices Regarding Overdraft Services

____.32(a) Consumer Right To Opt Out

In the February 2005 overdraft guidance, the FDIC, Board, OCC, OTS, and NCUA recommended as a best practice that institutions should obtain a consumer's affirmative consent to receive overdraft protection. Alternatively, where the consumer is automatically enrolled in overdraft protection, these agencies stated that institutions should provide consumers the opportunity to ''opt out'' of the overdraft program and provide a clear consumer disclosure of this option. 70 FR at 9132; 70 FR at 8431.

While many institutions voluntarily provide consumers the right to opt out of overdraft services,[79] this may not be a uniform practice across all institutions. Moreover, institutions vary significantly in the manner in which they provide notice of the opt-out, leading to the Agencies' concern that the opt-out may not be adequately disclosed to consumers. For instance, some institutions may disclose the opt-out in a clause in their deposit agreement, which many consumers are unlikely to read, or the clause may not be written in clearly understandable language. Others may disclose a consumer's right to opt out in a welcome letter or brochure that highlights the potential benefits of the overdraft service, while minimizing or obscuring either the fees associated with the service or that there may be less costly alternatives to the service.

In addition, opt-out notices may not be provided to consumers at a time

and $34.74, respectively. *See* GAO Bank Fees Report at 14.

[77] See **Background** section of the **SUPPLEMENTARY INFORMATION** for discussion of February 2005 Joint Guidance and OTS Guidance, the 2005 final amendments under Regulation DD, and the 2006 final amendments to part 707.

[78] For purposes of this rulemaking, as it relates to federal credit unions, the term ''consumer'' refers to natural person members.

[79] *See, e.g.,* American Bankers Association, ''Overdraft Protection: A Guide for Bankers'' at 18.

when the consumer is most likely to act. For example, institutions may provide notice of a consumer's right to opt out solely at account opening or when the service is initially added to the consumer's account. Subsequently, however, after experiencing an overdraft and incurring the associated fees, the consumer will typically not receive additional notice of the opt-out right, even though it may be the time at which the consumer is most likely to focus on the merits and cost of the service.

In light of these concerns, the Agencies are proposing to create a new substantive right for consumers to opt out of an institution's overdraft service to ensure that they have a meaningful opportunity to decline the service.

Legal Analysis

Assessing overdraft fees before the consumer has been provided with notice and a reasonable opportunity to opt out of the institution's overdraft service appears to be an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC.

Substantial consumer injury. Consumers incur substantial monetary injury due to the fees assessed in connection with the payment of overdrafts. These fees may include per item fees as well as additional fees that may be imposed for each day the account remains overdrawn. As noted above, the GAO Bank Fees Report indicates that the cost to consumers resulting from overdraft loans has grown over the past few years to just over $26 per item.[80] While the payment of overdrafts may allow consumers to avoid merchant fees for a returned check or ACH transaction, there are no similar consumer benefits for ACH withdrawals and point-of-sale debit card transactions. Moreover, consumers relying on overdraft services may be more likely to overdraw their accounts, thereby incurring more overdraft fees in the long run.

Injury is not reasonably avoidable. It appears that consumers cannot reasonably avoid this injury if they are automatically enrolled in an institution's overdraft service without having an opportunity to opt out. Although consumers can reduce the risk of overdrawing their accounts by carefully tracking their credits and debits, consumers often lack sufficient information about key aspects of their account. For example, a consumer cannot know with any degree of certainty when funds from a deposit or a credit for a returned purchase will be made available.

Injury is not outweighed by countervailing benefits. The benefits to consumers and competition from not providing an opt-out do not appear to outweigh the injury. This is particularly the case for ATM withdrawals and POS debit card transactions where, but for the overdraft service, the transaction would typically be denied and the consumer would be given the opportunity to provide other forms of payment without incurring any fees.[81]

Moreover, for many POS debit card transactions, the amount of the fee assessed may substantially exceed the amount of the overdraft loan.[82] This injury to consumers is further aggravated when multiple fees are charged in a single day due to multiple small-dollar overdrafts. Even in the case of check and ACH transactions, where payment of the check or ACH overdraft may allow the consumer to avoid a second fee assessed by the merchant for a returned item as well as possible negative reporting consequences, consumers may prefer instead not to have the overdraft paid to avoid additional daily fees. Furthermore, consumers who have overdraft services may be more likely to rely on the existence of the service and overdraw their accounts and thereby incur substantial fees.[83]

Thus, while many consumers may derive some benefit from having overdraft transactions paid, the proposed rule would allow each consumer to decide whether this benefit sufficiently compensates for the cost of the overdraft fees that will be assessed against his or her account.

Proposal

____.32(a)(1) General Rule

Under § ____.32(a)(1), institutions would be prohibited from assessing any fees on a consumer's account in connection with an overdraft service unless the consumer is given notice and a reasonable opportunity to opt out of the service, and the consumer does not opt out. The consumer's right to opt out of an institution's overdraft service would apply to all methods of payment, including check, ACH and other electronic methods of payment, such as ATM withdrawals and POS debit card transactions. Institutions would also be required to provide consumers with the option of opting out only of overdrafts at ATMs and for POS debit card transactions under proposed § ____.32(a)(2), discussed below.

The proposal would require notice of the opt-out to be provided both before the institution's assessment of any fee or charge for paying an overdraft to allow consumers to avoid overdraft fees altogether, and subsequently at least once during or for each periodic statement cycle in which any overdraft fee or charge is assessed to the consumer's account. The subsequent notice requirement is intended to ensure that consumers are given notice of their right to opt out at a time that may be most relevant to them, that is, after they have been assessed fees or other charges for the service. The institution would have flexibility with respect to the means by which it provides notice of

[80] *See* GAO Bank Fees Report at 13–14; *see also* Marc Fusaro, *Hidden Consumer Loans: An Analysis of Implicit Interest Rates on Bounced Checks,* J. of Fam. & Econ. Issues (forthcoming June 2008) *(Hidden Consumer Loans)* (citing a Moebs $ervices estimate that 60% of service charge income comes from insufficient funds fees) (available at: *http://personal.ecu.edu/fusarom/fusarobpinterestrates.pdf);* Eric Halperin and Peter Smith, *Out of Balance: Consumers Pay $17.5 Billion Per Year in Fees for Abusive Overdraft Loans,* Center for Responsible Lending (July 11, 2007) (available at: *http://www.responsiblelending.org/pdfs/out-of-balance-report-7-10-final.pdf*) (estimating that consumers paid over $17 billion in fees for overdraft loans in 2006); Howard Mason, *The Criminal Risk of Actively-Marketed Bounce Protection Programs,* Bernstein Research Call (Feb. 18, 2005) (suggesting that bounce protection programs account for 2/3 or more of industry NSF fees of an estimated $12–14 billion); Howard Mason, *Impact of Regulatory Best Practices on Bounce Protection Services and NSF Fees,* Bernstein Research Call (Feb. 17, 2005) (estimating that overdraft and NSF fees make up approximately half of service charge income).

[81] According to one consumer group survey, most respondents preferred that their debit card be declined for insufficient funds at the checkout rather than having the overdraft paid and being assessed a fee. Eric Halperin, Lisa James and Peter Smith, *Debit Card Danger,* Center for Responsible Lending at 9 (Jan. 25, 2007) (available at: *http://responsiblelending.org/pdfs/Debit-Card-Danger-report.pdf).*

[82] *See* Eric Halperin, *Testimony on Overdraft Protection: Fair Practices for Consumers Before the House Comm. on Financial Services, Subcomm. on Fin. Instits. & Consumer Credit* at 6 (July 11, 2007) (stating that consumers pay $1.94 in fees for every one dollar borrowed to cover a debit card POS overdraft) (available at: *http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr0705072.shtml*).

[83] Some economic research suggests that when a bank pays overdrafts through an overdraft program, consumers overdraw their accounts more often. *See* Fusaro, *Hidden Consumer Loans* at 6. This finding is consistent with assertions by some third-party vendors of overdraft protection services that implementation of overdraft protection can result in a substantial increase in fee income from overdraft and insufficient funds fees. *See, e.g., http://www.banccommercegroup.com/aarp.html* (''guaranteeing'' that use of overdraft protection can increase revenue from insufficient funds income by at least 50%) (visited Mar. 21, 2008); *http://www.cetoandassociates.com/index.php?option=com_content&task=view&id=147&Itemid=102* (representing that overdraft protection can increase insufficient funds revenue by 200%) (visited Mar. 21, 2008); *http://www.jmfa.com/pageContent.aspx?id=126* (reporting an increase of 50–300% in insufficient funds revenue for clients) (visited Mar. 21, 2008).

the consumer's opt-out right following the payment of the overdraft.

For example, the consumer may be given notice on a periodic statement that reflects the imposition of fees associated with payment of an overdraft. Alternatively, the opt-out right may be disclosed on a notice that the institution may send promptly after the payment of an overdraft to alert the consumer of the overdraft, as is the practice of many institutions. (Under the latter option, institutions need only provide the opt-out notice once during a statement period, even if multiple fees are charged in a single period.) The requirement to provide subsequent notice of the opt-out would terminate if the consumer has exercised this right. *See* proposed § ____.32(a)(1). Of course, if the consumer opts out after having incurred an overdraft fee, the opt-out would apply only to subsequent transactions and the consumer would remain responsible for the fee.

The Agencies are nevertheless aware that an opt-out will not provide a meaningful consumer protection if the notice of the opt-out right is not presented in a clear and conspicuous manner to a consumer, or if the notice does not contain sufficient information for the consumer to make an informed choice. Thus, in a separate proposal under TISA and Regulation DD in today's **Federal Register**, the Board is proposing additional amendments regarding the form, content and timing requirements for the opt-out notice. *See* proposed comment 32(a)(1)–1.[84] As part of the rulemaking process, the Board intends to conduct consumer testing on the proposed opt-out form to ensure that the notice is presented effectively to consumers in a format they can easily understand and use. The Agencies anticipate issuing any final rules simultaneously after reviewing comments received on both proposals.

____.32(a)(2) Partial Opt-Out

Some consumers may want their institution to pay overdrafts by check and ACH, but do not want overdrafts paid in other circumstances, such as for ATM withdrawals and debit card transactions at a point-of-sale.[85] Thus, the proposed rule requires institutions to provide consumers with the option of opting out only of the payment of overdrafts at ATMs and for debit card transactions at the point-of-sale. *See* § ____.32(a)(2). As previously stated, the Agencies note that a consumer that opts out of an overdraft protection service typically also incurs a cost when the check is returned and an insufficient funds fee is charged by the institution (and possibly also by the merchant). Accordingly, the partial opt-out requirement in § ____.32(a)(2) is intended to allow consumers the ability to determine for themselves whether they prefer that their institution deny the payment of all overdrafts, or to have overdrafts paid for check and ACH transactions in order to avoid potential merchant fees for returned items or other adverse consequences. While the Agencies understand that some processors do not currently have systems capable of paying overdrafts for some, but not all, payment channels, it appears that the benefits of providing consumers a choice regarding the transaction types for which they want to have overdrafts paid outweighs the potential programming costs associated with this requirement.

As further discussed below, in light of the potential benefits to consumers if overdrafts for check and ACH transactions are paid, the Agencies seek comment on whether the consumer's right to opt out should be limited to overdrafts caused by ATM withdrawals and debit card transactions at a point-of-sale. Under this alternative approach, institutions would be permitted, but not required, to provide consumers the option of opting out of the payment of overdrafts for check and ACH transactions.

____.32(a)(3) Exceptions

In some cases, an institution may not be able to avoid paying a transaction that overdraws an account. Under the proposal, if the institution does pay an overdraft, the consumer's decision to opt out of the institution's overdraft service would not prohibit institutions from paying overdrafts in all cases. Rather, if the institution does pay an overdraft, the consumer's decision to opt out would generally prohibit the institution from assessing a fee for the service. The Agencies recognize, however, that, in certain narrow circumstances, it may be appropriate to allow institutions to assess a fee or charge for paying an overdraft even where the consumer has elected to opt out.

Section ____.32(a)(3)(i) would permit an institution to charge an overdraft fee for a debit card transaction if the purchase amount presented at settlement by a merchant exceeds the amount that was originally requested for pre-authorization.[86] This exception is intended to cover circumstances in which the settlement amount exceeds the authorization amount because the precise transaction amount is not known to the consumer at the time of the transaction. (This situation is distinct from the circumstances discussed below with respect to the proposed prohibition of assessing an overdraft fee in connection with debit holds in which the authorization amount exceeds the actual purchase amount presented at settlement.)

For example, for some fuel purchases, the consumer may swipe his or her debit card and the merchant may seek a $1 pre-authorization that is primarily intended to verify whether the consumer's account is valid. After the consumer has completed the fuel purchase, the merchant will submit the actual amount of the purchase for settlement, which may cause the consumer to incur an overdraft. Similarly, for restaurant meals, the settlement amount may not match the amount submitted for pre-authorization if the consumer elects to add a tip to the amount of the bill. Proposed comments 32(a)(3)(i)–1 and –2 illustrate this exception for fuel purchases and restaurant transactions.

The second exception is intended to address circumstances in which a merchant or other payee presents a debit card transaction for payment by paper-based means, rather than electronically using a card terminal, and in which the payee does not obtain authorization from the card issuer at the time of the transaction. For example, the merchant may use a card imprinter to take an imprint of the consumer's card and later submit the sales slip with the imprint to its acquirer for payment. In this circumstance, the card issuer does not learn about the transaction, and thus cannot verify whether the consumer has sufficient funds, until it receives the sales slip presenting the transaction for payment. Section ____.32(a)(3)(ii) would permit an institution to assess an overdraft fee or charge if the transaction causes the consumer to overdraw his or her account, despite the consumer's election to opt out. Proposed comment 32(a)(3)(ii)–1 illustrates this exception.

The Agencies considered, but are not proposing, an exception that would

[84] While NCUA is not proposing amendments to its 12 CFR part 707 in today's **Federal Register**, TISA requires NCUA to promulgate regulations substantially similar to Regulation DD. Accordingly, NCUA will issue amendments to part 707 following the Board's adoption of final rules under Regulation DD.

[85] *See* Haperin, *et al.*, *Debit Card Danger* at 3 (concluding that debit card POS overdraft loans are more costly than overdraft loans from other sources, such as overdrafts by check).

[86] Pre-authorization describes the dollar amount of funds that are held on a consumer's account (or against a credit line) when a card is swiped to initiate a transaction. This typically occurs in connection with debit and credit card transactions in which the actual dollar amount of the transaction is not known until the end of the transaction.

allow an institution to impose an overdraft fee despite a consumer's opt-out election as long as the institution did not ''knowingly'' authorize a transaction that resulted in an overdraft. The Agencies are concerned, however, that given the difficulty in determining a consumer's ''real-time'' account balance at any given time, such an exception would undercut the protections provided by a consumer's election to opt out. At the same time, the Agencies recognize that a rule that generally prohibits institutions from imposing an overdraft fee if the consumer has opted out could adversely impact small institutions that use a daily batch balance method for authorizing transactions. Because such institutions do not update the balance during the day to reflect other authorizations or settlements for transactions that occurred before the authorization request, their authorization decisions would be based upon the same dollar amount throughout the day. Accordingly, it would be infeasible for these institutions to determine at any given point in time whether the consumer in fact has a sufficient balance to cover the requested transaction. Similarly, institutions that use a stand-in processor because, for example, the ATM network is temporarily off-line, would also be unable to determine at the time of the transaction whether the consumer's balance is sufficient to cover a requested transaction. In both of these cases, a transaction could result in an overdraft but the institution would not be able to assess a fee for that service. Thus, as discussed below in the request for comment, the Agencies seek comment on whether exceptions are necessary to address these circumstances, and if so, how such exceptions may be narrowly tailored so as not to undermine protections afforded by a consumer's election to opt out. Comment is also requested on whether there are additional circumstances in which an exception may be appropriate to allow an institution to impose a fee in connection with paying an overdraft, notwithstanding a consumer's election to opt out.

____.32(a)(4)–(6)

Section ____.32(a)(4) provides that institutions must comply with a consumer's opt-out request as soon as reasonably practicable after the institution receives it. Proposed § ____.32(a)(5) provides that a consumer may opt out of an institution's overdraft service at any time since consumers may decide later in the account relationship not to have overdrafts paid. Once exercised, the consumer's opt-out remains in effect unless subsequently revoked by the consumer in writing or, if the consumer agrees, electronically. See § ____.32(a)(6).

Request for Comment

The Agencies request comment on:

- Whether the scope of the consumer's opt-out right under § ____.32(a)(1) should be limited to ATM transactions and debit card transactions at the point-of-sale. Under this alternative approach, institutions would be permitted, but not required, to provide consumers the option of opting out of the payment of overdrafts for check and ACH transactions.
- The potential costs and consumer benefits for implementing a partial opt-out that applies only to ATM transactions and debit card transactions at the point-of-sale.
- Whether there are other circumstances in which an exception may be appropriate to allow an institution to impose a fee or charge for paying an overdraft even if the consumer has opted out of the institution's overdraft service, and if so how to narrowly craft such an exception so as not to undermine protections provided by a consumer's opt-out election.

Debit Holds

____.32(b) Debit Holds

Debit holds occur when a consumer uses a debit card for a transaction in which the actual purchase amount is not known at the time the transaction is authorized, causing the merchant (and in some cases the card-issuing bank) to place a hold on the consumer's account for an amount that may be in excess of the actual purchase amount in order to protect against potential risk of loss. For example, this may occur at a pay-at-the pump fuel dispenser, restaurant, or hotel. For example, for fuel purchases, card network rules may allow the merchant to place a pre-authorization hold of up to $75 on the consumer's account in certain types of debit card transactions.[87] Similarly, a hotel may place a hold on the consumer's account in an amount sufficient to cover the length of the stay, plus an additional amount for incidentals, such as anticipated room service charges.

While the merchant generally determines the hold amount based on limits imposed by the card network, it is the card-issuing financial institution that determines how long the hold remains in place, also subject to any limits imposed by the card network rules. Typically, the hold is kept in place until the transaction amount is presented to the financial institution for payment and settled. While PIN-based debit card transactions typically settle on the same day the card is used by the consumer (assuming the transaction takes place before the processing cut-off time that day), settlement for signature-based transactions may take up to three days following authorization. During the time between authorization and settlement, the hold remains in place on the consumer's account. In some cases, where the merchant does not use the same transaction number for both the authorization and the settlement, both the authorization amount and the settlement amount are held on the consumer's account until the institution is able to reconcile the transactions.

The Agencies are concerned that consumers unfamiliar with debit hold practices may inadvertently incur considerable overdraft fees on the assumption that the available funds in their account will only be reduced by the actual purchase amount of the transaction. For example, a consumer who purchases $20 worth of gas, but has a debit hold of $75 placed on the funds in the consumer's account, may not realize that $55 has been made unavailable to the consumer to use until the merchant presents the transaction for payment. During that time, the consumer engaging in a subsequent transaction in the belief that they have only ''spent'' $20, may inadvertently spend more than the available amount in the consumer's account, incurring overdraft fees in the process.

Legal Analysis

Assessing an overdraft fee when the overdraft would not have occurred but for a hold placed on funds in the consumer's account that is in excess of the actual purchase or transaction amount appears to be an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC.

Substantial consumer injury. There is substantial injury to consumers from incurring overdraft fees resulting from debit hold amounts that exceed the amount of the transaction. The effect can be compounded if the consumer conducts more than one transaction overdrawing his or her account, as a fee is generally charged each time the consumer overdraws the account.

Injury is not reasonably avoidable. It appears that consumers cannot reasonably avoid this injury as they are generally unaware of the practice of debit holds. Even if the consumer were

[87] Other merchants may instead only place a pre-authorization hold of $1 in order to verify that the consumer's account is valid.

to receive notice at point of sale that a hold, including the amount, will be placed on the consumer's funds, the consumer cannot know the length of time the hold will remain in place. As discussed above, the length of a hold will vary depending on how fast the transaction is processed and the procedures of the consumer's account-holding institution. A consumer cannot reasonably be expected to verify whether a hold remains in place before each and every subsequent transaction.

Injury is not outweighed by countervailing benefits. The benefits to consumers and competition from allowing fees for an overdraft to be charged when the overdraft was caused by a debit hold amount that exceeds the transaction amount do not appear to outweigh the injury. The Agencies understand that financial institutions charge overdraft fees in part to account for the potential risk the institution may assume if the consumer does not have sufficient funds for a requested transaction. Under card network rules generally, institutions guarantee merchants payment for debit card transactions that were properly authorized by the consumer. Accordingly, without the ability to assess overdraft fees to protect against potential losses due to non-payment, account-holding institutions may be reluctant to issue debit cards to consumers.

The Agencies note, however, that the card issuing financial institution is not required to send payment for an authorized transaction until the transaction is presented for settlement by the merchant and is posted to the consumer's account. At this time, any potential loss for the financial institution is not for the amount of the debit hold, but rather for the actual purchase amount for the transaction. The proposed provision would not prohibit institutions from assessing an overdraft fee if the consumer's account has insufficient funds to cover the actual purchase amount when the transaction is presented for settlement (and the consumer has not opted out). Thus, because the provision would allow account-holding institutions to cover their risk of loss in the event consumers overdraw their accounts for the purchase amount of the transaction, it appears that the availability of debit cards for consumers will not be adversely impacted even if this proposal is adopted. The proposed provision, however, would allow consumers to avoid the injury of unwarranted overdraft fees caused by debit holds that exceed the purchase amount of the requested transaction.

Proposal

As discussed above, proposed § ____.32(b) would provide that an institution must not assess a fee or charge on the consumer's account in connection with an overdraft service if an overdraft would not have occurred but for a hold placed on funds in the consumer's account that exceeds the actual purchase or transaction amount. The Agencies believe that a substantive ban on assessing fees to address problems with debit holds is appropriate rather than disclosure of the existence of the hold in light of concerns that such disclosures may be ineffective for the reasons discussed above.

Comment 32(b)–1 as proposed clarifies that the prohibition against assessing an overdraft fee in connection with a debit hold applies only if the overdraft is caused solely by the existence of the hold. Thus, if there are other reasons or causes for the consumer's overdraft, the institution may assess an overdraft fee or charge. These reasons may include other transactions that may have been authorized but not yet presented for settlement, a deposited check in the consumer's account that is returned, or if the actual purchase or transaction amount for the transaction for which the hold was placed would have caused the consumer to overdraw his or her account.

Application of the rule is illustrated by four separate examples set forth in proposed commentary provisions. *See* comments 32(b)–2 through –5. The first example describes the circumstance where the amount of the hold for an authorized transaction exceeds the consumer's balance. For example, assume that a consumer with $50 in his deposited account purchases $20 worth of fuel. In authorizing the consumer to begin dispensing fuel after the consumer has swiped his or her debit card at the pump, the gas station imposes a hold for $75 on the consumer's account. The proposal would prohibit the consumer's financial institution from assessing an overdraft fee or charge because the purchase amount for the fuel would not have caused the consumer to overdraw his or her account. See proposed comment 32(b)–2. However, had the consumer purchased $60 of fuel, the institution would be permitted to assess an overdraft fee or charge (assuming the consumer had not opted out of the overdraft service) because the transaction exceeds the consumer's account balance.

The second example illustrates the prohibition when the hold is made in connection with another transaction that has been authorized by the institution but not yet been presented for settlement. To illustrate, assume the same consumer as in the prior example has $100 in his deposit account, and uses his or her debit card to purchase fuel. The gas station puts a hold for $75 on the consumer's account. The consumer purchases $20 worth of fuel. Later that day, and assuming no other transactions, the consumer withdraws $75 at an ATM. Under this example, the consumer's account-holding institution would be prohibited from assessing an overdraft fee or charge in connection with the $75 withdrawal because the overdraft would not have occurred but for the $75 hold. *See* proposed comment 32(b)–3.

The third example illustrates the prohibition when both the authorization amount and the settlement amount are held against the consumer's account, because the merchant did not use the same transaction code for both authorization and settlement, causing the institution to later reconcile the transaction. To illustrate, assume a consumer has $100 in his deposit account, and uses his debit card to purchase $50 worth of fuel. At the time the consumer swipes his debit card at the fuel pump, a hold of $75 is placed on the consumer's account. Because the merchant does not use the same transaction code for both the pre-authorization and for settlement, the consumer's account is temporarily overdrawn. Because the overdraft would not have occurred but for the existence of the $75 hold, the institution may not assess a fee or charge for paying an overdraft. *See* proposed comment 32(b)–4.

The fourth example illustrates a circumstance in which an institution may charge an overdraft fee despite the existence of a hold on funds in the consumer's account because there are other reasons for the overdraft. Using the same facts as in the example in proposed comment 32(b)–3, the consumer makes a $35 purchase of fuel, instead of $20. Under the third example, the institution could permissibly charge an overdraft fee or charge for the subsequent $75 ATM withdrawal because the consumer would have incurred the overdraft even if the hold had been for the actual amount of the fuel purchase. *See* proposed comment 32(b)–5.

Request for Comment

The Agencies seek comment on the operational issues and costs of implementing the proposed prohibition on the imposition of overdraft fees if the

overdraft occurs solely because of the existence of a hold.

Other Overdraft Practices

Balance Disclosures

The Agencies are also concerned about balance disclosures that may be deceptive to consumers if they represent that the consumer has more funds in his or her account due to the inclusion of additional funds the institution may provide to cover an overdraft. The Board is addressing this issue in a Regulation DD proposal published contemporaneously with today's proposed rule.

Transaction Clearing Practices

The Agencies are also concerned about the impact of transaction clearing practices on the amount of overdraft fees that may be incurred by the consumer. The February 2005 overdraft guidance lists as a best practice explaining the impact of transaction clearing policies to consumers, including that transactions may not be processed in the order in which they occurred and that the order in which transactions are received by the institution and processed can affect the total amount of overdraft fees incurred by the consumer.[88] In its Guidance on Overdraft Protection Programs, the OTS also recommended as best practices: (1) clearly disclosing rules for processing and clearing transactions; and (2) having transaction clearing rules that are not administered unfairly or manipulated to inflate fees.[89]

While today's proposal does not address transaction clearing practices, the Agencies solicit comment on the impact of requiring institutions to pay smaller dollar items before larger dollar items when received on the same day for purposes of assessing overdraft fees on a consumer's account. Under such an approach, institutions could use an alternative clearing order, provided that it discloses this option to the consumer and the consumer affirmatively opts in. The Agencies solicit comment on how such a rule would impact an institution's ability to process transactions on a real-time basis.

VII. Effective Date

The Agencies solicit comment on when any final rules should be effective and whether a one-year time period is appropriate or whether the period should be longer or shorter.

[88] 70 FR at 8431; 70 FR at 9132.

[89] 70 FR at 8431.

VIII. Regulatory Analysis

A. Regulatory Flexibility Act

Board: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The Federal Trade Commission Act (15 U.S.C. 41 *et seq.*) (FTC Act) prohibits unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. 45(a)(1). The FTC Act provides that the Board (with respect to banks), OTS (with respect to savings associations), and the NCUA (with respect to federal credit unions) are responsible for prescribing regulations prohibiting such acts or practices. 15 U.S.C. 57a(f)(1). The Board, OTS, and NCUA are jointly proposing regulations under the FTC Act to protect consumers from specific unfair or deceptive acts or practices regarding consumer credit card accounts and overdraft services. The Board's proposed rule will revise Regulation AA.

Proposals Regarding Consumer Credit Card Accounts

The proposed requirements would provide several substantive protections for consumers against unfair or deceptive acts or practices with respect to consumer credit card accounts. First, proposed § 227.22 ensures that consumers' credit card payments are not treated as late unless they have been provided a reasonable amount of time to make payment. Second, proposed § 227.23 would ensure that, when different annual percentage rates apply to different balances on a credit card account, consumers' payments in excess of the required minimum payment are allocated among the balances, rather than exclusively to the balance with the lowest annual percentage rate. Third, under proposed § 227.24, an increase in the annual percentage rate could not be applied to the outstanding balance on a credit card account, except in certain circumstances. Fourth, proposed § 227.25 would protect consumers from being assessed a fee if the credit limit is exceeded solely due to a hold placed on the available credit. Fifth, proposed § 227.26 would prohibit institutions from reaching back to days in earlier billing cycles when calculating the amount of interest charged in the current cycle. Sixth, proposed § 227.27 would ensure that security deposits and fees for the issuance or availability of credit (such as account-opening fees or membership fees) do not consume the majority of the available credit on a credit card account during the twelve months after the account is opened. In addition, when such amounts exceed 25 percent of the credit limit, they must be spread equally among the eleven billing cycles following the first billing cycle. Seventh and last, proposed § 227.28 would require institutions to disclose in a firm offer of credit the criteria that will determine whether consumers receive the lowest annual percentage rate and highest credit limit.

Proposals Regarding Overdraft Services

The proposed rule would also provide substantive protections against unfair or deceptive acts or practices with respect to overdraft services. Proposed § 227.32 is intended to ensure that consumers understand overdraft services and have the choice to avoid the associated costs where such services do not meet their needs. First, consumers could not be assessed a fee or charge for paying an overdraft unless the consumer is provided with the right to opt out of the payment of overdrafts and a reasonable opportunity to exercise that right but does not do so. Second, the proposal would protect consumers from being assessed an overdraft fee if the overdraft is caused solely by a hold on funds.

2. *Small entities affected by the proposed rule.* The Board's proposed rule would apply to banks and their subsidiaries, except savings associations as defined in 12 U.S.C. 1813(b). Based on 2007 call report data, there are approximately 2,159 banks with assets of $165 million or less that would be required to comply with the Board's proposed rule.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule does not impose any new recordkeeping or reporting requirements. The proposed rule would, however, impose new compliance requirements.

Proposals Regarding Consumer Credit Card Accounts

Proposed § 227.22 may require some banks to extend the period of time provided to consumers to make payments on consumer credit card accounts. The Board notes, however, that some credit card issuers already send periodic statements 21 days in advance of the payment due date, which constitutes a reasonable amount of time under the proposed rule. Thus, small entities following this practice would not be required to alter their systems or procedures.

Proposed § 227.23 would require small entities that provide consumer credit card accounts with multiple balances at different rates to redesign their systems to allocate payments in excess of the minimum payment among the balances, consistent with the proposed rule. Compliance with this proposal may also reduce interest revenue for small entities that currently allocate payments first to balances with the lowest annual percentage rate. Similarly, compliance with proposed § 227.24 will also reduce interest revenue because such entities would be prohibited from increasing the annual percentage rate on an outstanding balance, except in certain circumstances. However, small entities are likely to adjust other terms (such as increasing the annual percentage rates offered to consumers when the account is opened) to compensate for the loss of revenue. In addition, although proposed § 227.24 will limit the ability of small entities to impose higher rates on pre-existing balances, it would permit small entities to increase the rates applicable to new transactions. Furthermore, the use of variable rates that reflect market conditions could mitigate this effect because proposed § 227.24 does not apply to variable rates. Finally, proposed § 227.24 would also permit small entities to apply an increased rate to an outstanding balance when a promotional rate is lost or expires or when the consumer's payment has not been received within 30 days after the due date.

Proposed § 227.25 would require small entities that provide credit cards to redesign their systems to prevent the assessment of fees for exceeding the credit limit that are caused by holds on the available credit. Similarly, proposed § 227.26 could require some small entities that provide credit cards to change the way finance charges are calculated, although the Board understands that few institutions still use the prohibited method.

Proposed § 227.27 would require small entities that provide credit cards to modify their systems in order to track security deposits and fees for the issuance or availability of credit that are charged to the account during the first year. This proposal could also reduce revenue derived from security deposits and fees. These costs, however, would likely be borne by the few entities offering cards with security deposits and fees that consume a majority of the credit limit.

Proposed § 227.28 would require small entities to disclose that, if the consumer is approved for credit, the annual percentage rate and the credit limit the consumer will receive will depend on specific criteria bearing on creditworthiness. Because similar disclosures are required by the FCRA, this proposal should not result in substantial compliance costs.

Proposals Regarding Overdraft Services

Proposed § 227.32 would convert current Board guidance regarding provision of a notice and opportunity to opt out of overdraft services into a rule. Thus, this proposal should not have a significant impact on small entities if those entities are currently providing opt-out notices. Proposed § 227.32 would also require small entities to redesign their systems to prevent the assessment of overdraft fees that are caused by holds on the available credit.

4. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation AA.

5. *Significant alternatives to the proposed revisions.* One approach to minimizing the burden on small entities would be to provide a specific exemption for small institutions. However, the FTC Act's prohibition against unfair or deceptive acts or practices makes no provision for exempting small institutions and the Board has no specific authority under the FTC Act to grant an exception that would remove small institutions. Further, in considering rulemaking under the Act, the Board believes an act or practice that is unfair or deceptive remains so despite the size of the institution engaging in such act or practice and, thus, should not be exempt from this rule.

In addition, the Board believes the proposed rule, where appropriate, provides for sufficient flexibility and choice for institutions, including small entities. As such, any institution, regardless of size, may tailor its operations to its individual needs and, thus, mitigate any incremental burden that may be created by the proposed rule. For instance, § 227.23, which addresses payment allocation, provides an institution a choice of payment allocation methods.

The Board solicits comment on any significant alternatives that would minimize the impact of the proposed rule on small entities.

OTS: The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA and OTS-regulated entities, a ''small entity'' is a savings association with assets of $165 million or less (small savings association). Based on its analysis and for the reason stated below, OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

1. Reasons for Proposed Rule

This proposed rule is promulgated pursuant to section 18(f)(1) of the FTC Act (15 U.S.C. 57a(f)(1)), which makes OTS responsible for prescribing regulations that prevent savings associations from engaging in unfair or deceptive acts or practices in or affecting commerce within the meaning of section 5(a) of the FTC Act (15 U.S.C. 45(a)). OTS, the Board, and the NCUA are jointly proposing this rule to protect consumers against unfair or deceptive acts or practices with respect to consumer credit card accounts and overdraft services for deposit accounts. The Agencies have identified a number of business practices that present a significant risk of harm to consumers of these products and services. As discussed in the **SUPPLEMENTARY INFORMATION**, the Agencies have acquired information about these practices from several sources, including consumer complaints, supervisory observations, and comments received on OTS's ANPR issued August 6, 2007 and the Board's Reg. Z open-end proposal issued June 14, 2007.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains this information. The legal basis for OTS's portion of the proposed rule is section 57(a) of the FTC Act and HOLA.

3. Description and Estimate of Small Entities to Which the Rule Applies

OTS's portion of the proposed rule would apply to savings associations and

their subsidiaries. There are 407 thrifts with $165 million in assets or less. There are 26 thrifts with $165 million in assets or less that offer credit cards. Many of the thrifts with $165 million in assets or less offer overdraft services.

4. Projected Recordkeeping, Reporting, and Other Compliance Requirements

The proposed rule would not have a significant impact on a substantial number of small entities. It imposes no new recordkeeping requirements or new requirements to report information to the Agencies.

Some of the proposed requirements are not new. Section 535.13, which involves providing disclosures to consumers so that consumers will know their rights and responsibilities as cosigners on consumer loans, is merely a recodification of a long-standing requirement currently codified in section 535.3. Section 535.32, which would require institutions to provide a notice and opportunity to consumers to opt out of overdraft services on deposit accounts, would turn current OTS guidance into a rule. Thus, these provisions of the proposed rule would not have a significant impact on small entities.

The proposal in section 535.28 is new, and would require savings associations that make a solicitation for a firm offer of credit for a consumer credit card account to include certain consumer disclosures in the solicitations. Since savings associations will have developed this information in preparing the firm offer, the burden would be limited to placing an appropriate disclosure in the solicitation and, therefore, would not have a significant impact on small entities.

The professional skills necessary for preparation of the consumer disclosures under sections 535.13 and 535.28 are the same skills needed to prepare disclosures under many other consumer protection laws and regulations, such as the Truth in Lending Act/Reg. Z (12 CFR part 226) and the Truth in Savings Act/Reg. DD (12 CFR part 230). The professional skills necessary for preparation of the notice and opt-out notice under section 535.32 are the same skills needed to prepare opt-out notices under a variety of consumer protection laws and regulations, such as the Privacy Rule (12 CFR part 573) issued under the Gramm-Leach-Bliley Act and the Fair Credit Reporting Act Rule (12 CFR part 571) . These professional skills could include attorneys and compliance specialists, as well as computer programmers.

In addition to disclosures and opt-out notices, the proposed rule would impose some additional compliance requirements. Under section 535.22, a savings association may need to extend the period of time it gives consumers to make credit card account payments. Under section 535.23, a savings association may need to change the way it allocates credit card account payments among multiple account balances. Under section 535.24, a savings association may need to change the circumstances in which it can raise interest rates on outstanding credit card account balances. Under section 535.25, a savings association may need to change the circumstances in which it imposes over limit fees. Under section 535.26, a savings association may need to change the way it computes finance charges on outstanding credit card account balances. Under section 535.27, a savings association may need to change the way it collects security deposits and fees for a credit card's issuance or availability of credit. Each of these provisions could require some adjustments to a savings association's operations and require some additional training of staff as well as computer programming.

Many savings associations already employ the professionals that would be needed to meet the requirements that would be imposed by the rule as proposed rule, since they need these professionals to meet other existing consumer protection requirements. The others have pre-existing arrangements with third party service providers to perform the functions that would be affected by this rulemaking.

In addition, as discussed in the Executive Order 12866 analysis, most of the practices which the proposed provisions would impact are not common among savings associations.

Accordingly, the proposed provisions would not have a significant impact on small entities.

While OTS believes the proposed rule does not have a significant impact on a substantial number of small entities, OTS, nevertheless, requests comment and data on the size and incremental burden on small savings associations that would be created by the proposed rule.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

OTS has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. As discussed in the **SUPPLEMENTARY INFORMATION**, the laws of only three states have been found by any of the Agencies to provide substantially equivalent rights as the existing Credit Practices rule. OTS seeks comment regarding any statutes or regulations, including state or local statutes or regulations, which would duplicate, overlap, or conflict with the proposed rule.

6. Discussion of Significant Alternatives

One approach to minimizing the burden on small entities would be to provide a specific exemption for small institutions. However, the FTC Act's prohibition against unfair or deceptive acts or practices makes no provision for exempting small institutions and OTS has no specific authority under the FTC Act to grant an exception that would remove small institutions. Further, in contemplating rulemaking under the Act, OTS believes an act or practice that is unfair or deceptive remains so despite the size of the institution engaging in such act or practice and, thus, should not be exempt from this rule.

In addition, OTS believes the proposed rule, where appropriate, provides for sufficient flexibility and choice for institutions, including small entities. As such, any savings association, regardless of size, may tailor its operations to its individual needs and, thus, mitigate any incremental burden that may be created by the proposed rule. For instance, Section 535.23, unfair payment allocations, provides an institution a choice of payment allocation methods.

OTS welcomes comments on any significant alternatives that would minimize the impact of the proposed rule on small entities.

NCUA: Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NCUA must publish an initial regulatory flexibility analysis with its proposed rule, unless NCUA certifies the rule will not have a significant economic impact on a substantial number of small entities. For NCUA, these are federal credit unions with less than $10 million in assets. NCUA certifies this proposed rule would not have a significant economic impact on a substantial number of small entities.

1. Reasons for Proposed Rule

NCUA is exercising authority under section 18(f)(1) of the Federal Trade Commission Act, 15 U.S.C. 57a(f)(1), and proposing to prohibit certain unfair or deceptive acts or practices (UDAPs) that violate section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a). The proposed rule reorganizes and renames NCUA's longstanding Credit Practices Rule, 12 CFR part 706, and addresses UDAPs involving credit cards

and overdraft protection services. NCUA, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision are jointly proposing this rule to protect consumers against unfair or deceptive acts or practices with respect to consumer credit card accounts and overdraft services for deposit accounts.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains this information. The legal basis for the proposed rule is sections 45(a) and 57(a) of the FTC Act.

3. Description and Estimate of Small Entities to Which the Rule Applies

NCUA's portion of the proposed rule would apply to all federal credit unions. As of December 31, 2007, there are 5,036 federal credit unions, of which 2,374 have total assets less than $10 million. NCUA estimates 2,363 small credit unions offer loans to their members. NCUA does not believe the disclosure requirements for co-signors will significantly affect small credit unions because all credit unions have complied with this requirement since 1987, when the credit practices rule was initially promulgated. This proposed rule does not change the co-signor disclosure requirements, but renumbers the applicable sections of the rule.

The proposed rule contains new requirements regarding credit card accounts and overdraft protection services. Approximately 2,461 federal credit unions issue credit cards and have an aggregate portfolio of $18.92 billion. Of these, 425 small federal credit unions issue credit cards and have an aggregate credit card portfolio of approximately $124.73 million. Approximately 2,094 federal credit unions offer overdraft protection service, and 353 of these are small federal credit unions.

4. Projected Recordkeeping, Reporting, and Other Compliance Requirements

The proposed rule does not impose any new recordkeeping or reporting requirements. The proposed rule would, however, impose new compliance requirements.

Some of the proposed requirements are not new. Section 706.13, which involves providing disclosures to cosigners on consumer loans, is a recodification of a long-standing requirement currently in § 706.3. Section 703.32, which would require institutions to provide a notice and opportunity to consumers to opt out of overdraft services on deposit accounts, would turn current interagency guidance into a rule. Thus, these provisions of the proposed rule would not have a significant impact on small entities.

The proposal in § 706.28 is new, and would require federal credit unions that make a solicitation for a firm offer of credit for a consumer credit card account to include certain consumer disclosures in the solicitations. Since federal credit unions will have developed this information in preparing the firm offer, the burden would be limited to placing an appropriate disclosure in the solicitation and, therefore, would not have a significant impact on small entities.

The professional skills necessary for preparation of the consumer disclosures under §§ 706.13 and 706.28 are the same skills needed to prepare disclosures under many other consumer protection laws and regulations, such as the Truth in Lending Act, Regulation Z (12 CFR part 226), and the Truth in Savings Act and part 707 (12 CFR part 707). The professional skills necessary for preparation of the notice and opt-out notice under § 706.32 are the same skills needed to prepare opt-out notices under a variety of consumer protection laws and regulations, such as the Privacy Rule (12 CFR part 716) issued under the Gramm-Leach-Bliley Act and the Fair Credit Reporting Act Rule (12 CFR part 717). These professional skills could include attorneys and compliance specialists, as well as computer programmers.

In addition to disclosures and opt-out notices, the proposed rule would impose some additional compliance requirements. Under § 706.22, a federal credit union may need to extend the period of time it gives consumers to make credit card account payments. Under § 706.23, a federal credit union may need to change the way it allocates credit card account payments among multiple account balances. Under § 706.24, a federal credit union may need to change the circumstances in which it can raise interest rates on outstanding credit card account balances. Under § 706.25, a federal credit union may need to change the circumstances in which it imposes over limit fees. Under § 706.26, a federal credit union may need to change the way it computes finance charges on outstanding credit card account balances. Under § 706.27, a federal credit union may need to change the way it collects security deposits and fees for a credit card's issuance or availability of credit. Each of these provisions could require some adjustments to a federal credit union's operations and require additional computer programming and training of staff.

Many federal credit unions already employ the professionals that would be needed to meet the requirements that would be imposed by the rule as proposed rule, since they need these professionals to meet other existing consumer protection requirements. The others have pre-existing arrangements with third-party service providers to perform the functions that would be affected by this rulemaking.

Additionally, most of the practices that the proposed provisions would impact are not common among federal credit unions. Accordingly, the proposed provisions would not have a significant impact on small entities.

While NCUA believes the proposed rule does not have a significant impact on a substantial number of small entities, it requests comments on the size and incremental burden on small federal credit unions that would be created by the proposed rule.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

NCUA has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. NCUA seeks comment regarding any statutes or regulations, including state or local statutes or regulations, which would duplicate, overlap, or conflict with the proposed rule.

6. Discussion of Significant Alternatives

NCUA has not identified any significant alternatives to the prohibitions and requirements in the proposed rule. The Agencies explored requiring financial institutions provide disclosures regarding the credit card and overdraft practices to consumers. NCUA does not believe federal credit unions can provide clear or concise disclosures that members could easily understand and use to make an informed decision regarding their credit and saving needs.

Another approach to minimizing the burden on small entities would be to provide a specific exemption to small federal credit unions. However, the Federal Trade Commission Act's prohibition against unfair or deceptive acts or practices makes no provision for exempting small federal credit unions, and NCUA does not have authority to grant an exception. Further, NCUA believes an act or practices that is unfair or deceptive under the Federal Trade Commission Act remains unfair or deceptive despite the size of a federal

credit union and should not be exempt from the proposed rule.

NCUA believes the proposed rule provides sufficient flexibility where appropriate for all federal credit unions. NCUA welcomes comments on any significant alternatives that would minimize the impact of the proposed rule on small entities.

B. Paperwork Reduction Act

Board: In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collections of information that are required by this proposed rule are found in 12 CFR 227.14 and 227.28.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 4301 *et seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses.

Regulation AA establishes consumer complaint procedures and defines unfair or deceptive acts or practices in extending credit to consumers. As discussed above, the Federal Reserve is seeking comment on a proposed rule that would prohibit institutions from engaging in certain acts or practices in connection with consumer credit card accounts and overdraft services for deposit accounts. This proposal evolved from the Board's June 2007 Proposal and OTS's August 2007 ANPR. The proposed rule is coordinated with the Board's proposals under the Truth in Lending Act and the Truth in Savings Act published in separate notices in today's **Federal Register**.

Consumer Credit Card Accounts

Under proposed § 227.28 (titled ''Deceptive acts or practices regarding firm offers of credit''), banks would be prohibited from certain marketing practices in relation to prescreened firm offers for consumer credit card accounts unless a disclaimer sufficiently explains the limitations of the offers. The Board anticipates that banks would, with no additional burden, incorporate the proposed disclosure requirement under proposed § 227.28 with an existing disclosure requirement in Regulation Z regarding credit and charge card applications and solicitations. *See* 12 CFR 226.5a. Thus, in order to avoid double-counting, the Board will account for the burden associated with proposed Regulation AA § 227.28 under Regulation Z (OMB No. 7100–0199) § 226.5a. Under Regulation AA § 227.14(b) (titled ''Unfair and deceptive practices involving cosigners''), a clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to being obligated. The disclosure statement must be substantively similar to the example provided in § 227.14(b). The Board will also account for the burden associated with Regulation AA § 227.14(b) under Regulation Z. The title of the Regulation Z information collection will be updated to account for these sections of Regulation AA.

Overdraft Services

The proposed rule would also provide substantive protections against unfair and deceptive acts or practices with respect to overdraft services. Proposed § 227.32 is intended to ensure that consumers understand overdraft services and have the choice to avoid the associated costs where such services do not meet their needs. Under this proposal, consumers could not be assessed a fee or charge for paying an overdraft unless the consumer is provided with the right to opt out of the payment of overdrafts and a reasonable opportunity to exercise that right but does not do so.

The burden associated with Regulation AA § 227.28 will be accounted for under Regulation DD (OMB No. 7100–0271) §§ 230.10 (opt-out disclosures for overdraft services), 230.11(a) (disclosure of total fees on periodic statements), and 230.11(c) (disclosure of account balances). The title of the Regulation DD information collection will be updated to account for this section of Regulation AA.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility; (b) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (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. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (Regulation AA), Washington, DC 20503.

OTS and NCUA: In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (''PRA''), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The information collection requirements contained in this joint notice of proposed rulemaking have been submitted by the OTS and NCUA to OMB for review and approval under section 3507 of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The review and authorization information for the Board is provided later in this section along with the Board's burden estimates. The proposed rule contains requirements subject to the PRA. The requirements are found in 12 CFR ____.13, and ____.32. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record.

Comments should be addressed to:

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

NCUA: Jeryl Fish, Paperwork Clearance Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428; send a facsimile to (703) 518–6319; or send an e-mail to *regcomments@ncua.gov.* Please submit information collection comments by one method. NCUA will post comments on its Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html.* Also, interested persons may inspect the comments at NCUA, 1775 Duke Street, Alexandria, Virginia 22314, by appointment. To make an appointment, call (703) 518–6540, send an e-mail to *OGCmail@ncua.gov*, or send a facsimile transmission to (703) 518–6667.

OTS: Savings associations and their subsidiaries.

NCUA: Federally-chartered credit unions.

Abstract: Under section 18(f) of the FTC Act, the Agencies are responsible for prescribing rules to prevent unfair or deceptive acts or practices in or affecting commerce, including acts or practices that are unfair or deceptive to consumers. Under this proposed rulemaking, the Agencies would incorporate their existing Credit Practices Rules, which govern unfair or deceptive acts or practices involving consumer credit, into new, more comprehensive rules that would also address unfair or deceptive acts or practices involving credit cards and overdraft protection services.

Estimated Burden: The burden associated with this collection of information may be summarized as follows.

OTS:

Estimated number of respondents: 826.

Estimated time developing opt outs: 10 hours.

Estimated time developing disclaimer: 10 hours.

Estimated time for training: 4 hours.

Total estimated time per respondent: 24 hours.

Total estimated annual burden: 19,824 hours.

NCUA:

Estimated number of respondents: 5,036.

Estimated time developing opt outs: 10 hours.

Estimated time developing disclaimer: 10 hours.

Estimated time for training: 4 hours.

Total estimated time per respondent: 24 hours.

Total estimated annual burden: 120,864 hours.

C. OTS Executive Order 12866 Determination

OTS has determined that its portion of the proposed rulemaking is not a significant regulatory action under Executive Order 12866. However, OTS solicits comment on the economic impact of the rule as proposed.

Summary

The proposed rulemaking is not a significant regulatory action under Executive Order 12866 for a number of reasons. First, the OTS proposal applies only to savings associations and their subsidiaries. As explained in more detail below, these OTS-supervised institutions account for only a small portion of the affected market. Second, these OTS-supervised institutions already refrain from engaging in many of the proposed prohibited practices. Issuing a rule to prevent institutions from taking up these practices will help ensure that market conduct standards remain high, but it will not cause significant economic impact.

The prohibitions that relate to annual percentage rate (APR) increases on outstanding balances and payment allocation practices will, to some extent, limit fees and interest income currently generated by these practices. However, to the extent income to savings associations is affected, the corresponding offset provided by the limitations is an equally sized consumer benefit of lower fees and interest payments. As a result, most economic effects of the proposed rulemaking would result in small transfers from institutions to consumers, with an overall limited net effect.

Moreover, if such fee and interest income is economically justified in a competitive environment for the allocation of credit, then a likely longer-term outcome would be that institutions would reflect such economic factors in the initial terms of a credit card contract. If that occurs, then consumers will have clearer initial information about potential costs with which to compare credit card offerings than they do currently. Consequently, any shorter term disruptions to institutions caused by the proposed rulemaking will likely be addressed in the longer term by changes in disclosed credit card account APRs and fees, thus making consumer costs and benefits more easily considered and compared.

In-Depth Analysis

1. Limited Economic Effect: Limited Scope of the Proposal

OTS's portion of the proposed rulemaking would apply only to OTS-supervised savings associations and their subsidiaries. OTS is the primary federal regulator for 826 federally- and state-chartered savings associations. The proposed rulemaking primarily addresses certain credit card practices. Of the 826 savings associations, only 124 report any credit card assets. Among those 124 savings associations, only 19 have more than 1% of their total assets in credit card receivables. Moreover, credit card assets comprise only 3% of all assets held by savings associations. In sum, OTS-supervised institutions potentially engaged in the practices prohibited by the proposed rulemaking are not representative of the overall industry that OTS supervises. Most provisions of the proposed rulemaking would have little economic effect on the vast majority of the institutions under OTS jurisdiction.

The Board of Governors of the Federal Reserve System and the National Credit Union Administration are simultaneously proposing a similar set of rules governing credit card practices for other types of federally insured financial institutions. As a consequence, the rulemaking should have little or no intra-industry competitive effects.

2. Limited Economic Effect: Most Affected Practices Are Not Common

Most of the practices covered by this rulemaking have been included as a prophylactic measure to ensure that institutions do not begin to use or expand the use of activities deemed unfair or deceptive. Since most OTS-supervised institutions do not currently engage in these practices, the costs of complying with the provisions of the proposed rule are likely to be minimal.

§ 535.22 Unfair time to make payments. This section would prohibit treating a payment on a consumer credit card account as late for any purpose unless consumers have been provided a reasonable amount of time to make payment. The proposed rule would create a safe harbor for institutions that adopt reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date. Based on our supervisory observations and experience, OTS-supervised institutions, in general, mail or deliver periodic statements to their customers at least 21 days before the due date. Therefore, a rule that requires institutions to provide a reasonable amount of time to make payment, such as by mailing or delivering periodic statements to customers at least 21 days in advance of the payment due date,

would have insignificant or no economic impact.

§ 535.25 Unfair fees for exceeding the credit limit due to credit holds. This section would prohibit assessing a fee for exceeding the credit limit on a consumer credit card account if the credit limit would not have been exceeded but for a hold on any portion of the available credit on the account that is in excess of the actual purchase or transaction amount. Based on our supervisory observations and experience, OTS-supervised institutions do not, in general, charge overlimit fees in this manner. Therefore, prohibiting this practice would have insignificant or no economic impact.

§ 535.26 Unfair balance computation method. This section would prohibit imposing finance charges on outstanding balances on a consumer credit card account based on balances in billing cycles preceding the most recent billing cycle, subject to certain exceptions.

Very few institutions compute balances using any method other than a single-cycle method. This conclusion was reached by the GAO as part of its recent credit card study.[90] According to the GAO, of the six largest card issuers, only two used the double-cycle billing method between 2003 and 2005.[91] GAO's finding conforms to OTS's own supervisory observations with respect to the prevalence of use of balance computation methods other than single-cycle methods by institutions OTS supervises. Use of a balance computation method other than a single-cycle method is the exception, rather than the norm, for OTS-supervised institutions.

Moreover, the economic impact of this practice arises only in instances where a card holder converts from a convenience user, *i.e.*, one who pays off his/her card balance in full at the end of the billing cycle, to a revolver, *i.e.*, one who carries a balance beyond the end of the billing cycle. Accounts that routinely stay in a ''convenience'' or nonrevolving status would not be impacted by this prohibition. The same would be true of accounts that routinely stay in a revolving status. Only when an account would convert from a nonrevolving status to a revolving status would the prohibition have an impact.

§ 535.27 Unfair charging to the account of security deposits and fees for the issuance or availability of credit. During the period beginning with the date on which a consumer credit card account is opened and ending 12 months from that date, this section would prohibit institutions from charging the account security deposits or fees for the issuance or availability of credit if the total amount of such security deposits and fees constituted a majority of the initial credit limit for the account. During this same period, this rule would require institutions that charge security deposits or fees against the account for the issuance or availability of credit constituting more than 25 percent of the initial credit limit for the account, to apply these charges in the following manner: during the first billing cycle, an institution could charge no more than 25% of the initial credit limit offered for the account; in each of 11 months following the first billing cycle, an institution could charge no more than one eleventh of the total security deposit or fees for the issuance of availability of credit in excess of 25 percent of the initial credit limit for the account.

Credit cards to which security deposits and high account opening related fees are charged against the credit line are found predominately in the subprime credit card market. Subprime credit cards represent just 5% of all credit cards issued.[92] Cards of this type are rare among OTS-supervised institutions. Therefore, a rule prohibiting this practice would have insignificant economic impact.

§ 535.28 Deceptive firm offers of credit. This section would prohibit the practice of offering a range of or multiple annual percentage rates or credit limits in a solicitation for a firm offer of credit for a consumer credit card unless it is disclosed to the consumer that, if approved, the consumer's annual percentage rate and the credit limit will depend on specific criteria bearing on creditworthiness.

While the rule would affect how institutions advertise credit, it would not limit the terms of credit offered nor impact any underwriting strategy. Once the rule became effective, institutions would likely adjust their marketing so as not to be misleading under the rule. Operational costs to do so should be minimal and the economic impact, overall, insignificant.

§ 535.32 Unfair overdraft service practices. This section contains two main requirements. First, with certain exceptions, it would prohibit assessing a fee or charge on a consumer's account in connection with an overdraft service, unless an institution provides the consumer with notice and reasonable opportunity to opt out of the payment of all overdrafts and the consumer has not opted out. The consumer would also have to be provided the more limited option of opting out only for the payment of overdrafts for ATM and point-of-sale transactions initiated by a debit card.

OTS Guidance on Overdraft Protection Programs suggests that, as a best practice, institutions that have overdraft protection programs should provide an election or opt-out of the service and obtain affirmative consent from consumers to receive overdraft protection.[93] Therefore, some OTS-supervised institutions may already be carrying out the requirements proposed in this rule. For those institutions, the effect of the opt-out provisions of this notice would be minimal. For the institutions that do not currently offer an opt-out, the rule would trigger some operational costs, but those costs are not likely to materially reduce the revenue generated by overdraft fees. This is because institutions often charge the same fee to pay an overdraft as they do to return it.

Second, this section would prohibit assessing a fee or charge on a consumer's account in connection with an overdraft service if the overdraft would not have occurred but for a hold placed on funds in the consumer's account that is in excess of the actual purchase or transaction amount. Based on our supervisory observations and experience, OTS-supervised institutions do not, in general, charge overdraft fees in this manner. Therefore, prohibiting this practice would have insignificant or no economic impact.

3. Limited Economic Effect: Small Transfers From Institutions to Consumers

The proposed rulemaking contains two other sections. One affects the way in which payments received by the institution are allocated among the customer's outstanding balances. The other specifies the conditions under which the institution could raise the APRs on outstanding balances.

§ 535.23 Unfair payment allocations. A consumer may have multiple balances on a consumer credit card account. Currently, most institutions allocate any

[90] *See* GAO Credit Card Report.

[91] GAO Credit Card Report at 28 (''In our review of 28 popular cards from the six largest issuers, we found that two of the six issuers used the double-cycle billing method on one or more popular cards between 2003 and 2005. The other four issuers indicated they would only go back one cycle to impose finance charges.'').

[92] Outstanding credit card balances as of February 2008 as reported by Fitch Ratings, Know Your Risk; Asset Backed Securities Prime Credit Card Index and Subprime Credit Card Index available at *http://www.fitchresearch.com/creditdesk/sectors/surveilance/asset_backed/credit_card.*

[93] *See* 70 FR 8428 (Feb. 18, 2005).

payment received from a consumer by first covering any fees and finance charges, then allocating any remaining amounts from the lowest APR balance to the highest. This section of the proposed rulemaking would require allocation in a manner that is no less beneficial to the consumer than one of the following methods: (1) Applying the entire amount first to the balance with the highest annual percentage rate, (2) splitting the amount equally among balances, or (3) allocating pro rata among the balances. Any allocation method that would be less beneficial to the consumer than these three methods would be impermissible. For instance, applying the entire amount first to the balance with the lowest annual percentage rate is an example of an allocation method that would be less beneficial to the consumer. The rule leaves open the door to the possibility of other reasonable payment allocation methods.

The costs of the proposed rule are mitigated to some extent by providing institutions with operational flexibility as to which of the allocation methods they choose. To the extent there are economic costs imposed by the payment allocation restrictions included in the proposal, institutions are likely to adjust initial credit card terms to reflect those costs. If this occurs, consumers will likely have a clearer initial disclosure of potential costs with which to compare credit card offerings than they do now. Their actual cost of credit will not be increased by low-to-high balance payment allocation strategies implemented by institutions after charges have been incurred.

§ 535.24 Unfair annual percentage rate increases on outstanding balances. This section would generally prohibit institutions from increasing the annual percentage rate on an outstanding balance. This prohibition would not apply, however, where a variable rate increases due to the operation of an index that is not under the institution's control and is available to the general public, where a promotional rate has expired or is lost (provided the APR is not increased to a rate greater than the APR that would have applied after expiration of the promotional rate), or where the minimum payment has not been received within 30 days after the due date.

The proposed rulemaking would not permit the institution to increase the APR on the outstanding balances simply because the consumer pays late or defaults on other debt obligations. This practice is sometimes referred to as ''universal default.'' However, the section would permit APR increases on new purchases or transactions.

Based on our supervisory observations and experience, most larger OTS-supervised institutions do not practice universal default. However, some institutions do raise APR on outstanding balances based on external factors such as a decline in a consumer's credit score. Institutions that make use of this approach would likely adjust to the rule in the longer term by adjusting their initial interest rate pricing schedule.

A potential small negative effect might be that the prohibition on APR increases on outstanding balances would result in higher initial average APRs across all consumers, if the increases on outstanding balances acted as an effective screen for initially weaker credits. However, the fact that most institutions do not use a universal default trigger to increase APRs suggests that this effect may be limited.

D. OTS Executive Order 13132 Determination

OTS has determined that its portion of the proposed rulemaking does not have any federalism implications for purposes of Executive Order 13132.

E. NCUA Executive Order 13132 Determination

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5) voluntarily complies with the Executive Order. The proposed rule apply only to federally chartered credit unions and would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

F. OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

G. NCUA: The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

IX. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board and OTS to use plain language in all proposed and final rules published after January 1, 2000. Additionally, NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burdens. Therefore, the Agencies specifically invite your comments on how to make this proposal easier to understand. *For example:*

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulations clearly stated? If not, how could the regulations be more clearly stated?
- Do the proposed regulations contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulations easier to understand? If so, what changes to the format would make them easier to understand?
- What else could we do to make the regulations easier to understand?

List of Subjects

12 CFR Part 227

Banks, Banking, Credit, Intergovernmental relations, Trade practices.

12 CFR Part 535

Consumer credit, Consumer protection, Credit, Credit cards, Deception, Intergovernmental relations,

Savings associations, Trade practices, Overdrafts, Unfairness.

12 CFR Part 706

Credit, Credit unions, Deception, Intergovernmental relations, Overdrafts, Trade practices, Unfairness.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows while language that would be deleted is set off with brackets.

Authority and Issuance

For the reasons discussed in the joint preamble, the Board proposes to amend 12 CFR part 227 as set forth below:

PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES (REGULATION AA)

1. The authority citation for part 227 continues to read as follows:

Authority: 15 U.S.C. 57a(f).

Subpart A—General Provisions

2. The heading for subpart A is revised to read as set forth above.

§ 227.1 [Removed]

§ 227.11 [Redesignated as § 227.1]

3. Section 227.1 is removed and § 227.11 is redesignated as § 227.1 and revised to read as follows:

§ 227.1 Authority, Purpose, and Scope.

(a) *Authority.* This [subpart] ►part◄ is issued by the Board under section 18(f) of the Federal Trade Commission Act, 15 [USC] ►U.S.C.◄ 57a(f) (§ 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93–637).

(b) *Purpose.* ►The purpose of this part is to prohibit unfair◄ [Unfair] or deceptive acts or practices ►in violation of◄ [in or affecting commerce are unlawful under] section 5(a)(1) of the Federal Trade Commission Act, 15 [USC] ►U.S.C.◄ 45(a)(1). [This subpart defines] ►Subparts B, C, and D define and contain requirements prescribed for the purpose of preventing specific◄ unfair or deceptive acts or practices of banks [in connection with extensions of credit to consumers]. ►The prohibitions in subparts B, C, and D do not limit the Board's authority to enforce the FTC Act with respect to any other unfair or deceptive acts or practices.◄

(c) *Scope.* [This subpart applies] ►Subparts B, C, and D apply◄ to all banks and their subsidiaries, except [Federal savings banks] ►savings associations as defined in 12 U.S.C. 1813(b).◄ Compliance is to be enforced by:

(1) The Comptroller of the Currency, in the case of national banks[, banks operating under the code of laws for the District of Columbia,] and federal branches and federal agencies of foreign banks;

(2) The Board of Governors of the Federal Reserve System, in the case of banks that are members of the Federal Reserve System (other than banks referred to in paragraph (c)(1) of this section), branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(3) The Federal Deposit Insurance Corporation, in the case of banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in paragraphs (c)(1) and (c)(2) of this section), and insured state branches of foreign banks.

(d) ►Unless otherwise noted,◄ [T]►t◄he terms used in paragraph (c) of this section that are not defined in the Federal Trade Commission Act or in section 3(s) of the Federal Deposit Insurance Act (12 [USC] ►U.S.C.◄ 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 [USC] ►U.S.C.◄ 3101).

4. Section 227.2 is amended by redesignating paragraphs (a) through (c) as paragraphs (b) through (d), respectively, and republishing them, and adding a new paragraph (a) to read as follows:

§ 227.2 Consumer-Complaint Procedure.

►(a) *Definitions.* For purposes of this section, unless the context indicates otherwise, the following definitions apply:

(1) ''Board'' means the Board of Governors of the Federal Reserve System.

(2) ''Consumer complaint'' means an allegation by or on behalf of an individual, group of individuals, or other entity that a particular act or practice of a State member bank is unfair or deceptive, or in violation of a regulation issued by the Board pursuant to a Federal statute, or in violation of any other act or regulation under which the bank must operate.

(3) ''State member bank'' means a bank that is chartered by a State and is a member of the Federal Reserve System.

(4) Unless the context indicates otherwise, ''bank'' shall be construed to mean a ''State member bank,'' and ''complaint'' to mean a ''consumer complaint.''◄

(b) *Submission of complaints.* (1) Any consumer having a complaint regarding a State member bank is invited to submit it to the Federal Reserve System. The complaint should be submitted in writing, if possible, and should include the following information:

(i) A description of the act or practice that is thought to be unfair or deceptive, or in violation of existing law or regulation, including all relevant facts;

(ii) The name and address of the bank that is the subject of the complaint; and

(iii) The name and address of the complainant.

(2) Consumer complaints should be made to—Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480, Toll-free number: (888) 851–1920, Fax number: (877) 888–2520, TDD number: (877) 766–8533.

(c) *Response to complaints.* Within 15 business days of receipt of a written complaint by the Board or a Federal Reserve Bank, a substantive response or an acknowledgment setting a reasonable time for a substantive response will be sent to the individual making the complaint.

(d) *Referrals to other agencies.* Complaints received by the Board or a Federal Reserve Bank regarding an act or practice of an institution other than a State member bank will be forwarded to the Federal agency having jurisdiction over that institution.

§ 227.11 [Reserved]

5. In Subpart B, § 227.11 is added and reserved.

6. A new Subpart C is added to part 227 to read as follows:

Subpart C—Consumer Credit Card Account Practices Rule

Sec.

227.21 Definitions.
227.22 Unfair acts or practices regarding time to make payment.
227.23 Unfair acts or practices regarding allocation of payments.
227.24 Unfair acts or practices regarding application of increased annual percentage rates to outstanding balances.
227.25 Unfair acts or practices regarding fees for exceeding the credit limit caused by credit holds.
227.26 Unfair balance computation method.
227.27 Unfair acts or practices regarding security deposits and fees for the issuance or availability of credit.

227.28 Deceptive acts or practices regarding firm offers of credit.

Subpart C—Consumer Credit Card Account Practices Rule

§ 227.21 Definitions.

For purposes of this subpart, the following definitions apply:

(a) ''Annual percentage rate'' means the product of multiplying each periodic rate for a balance or transaction on a consumer credit card account by the number of periods in a year. The term ''periodic rate'' has the same meaning as in 12 CFR 226.2.

(b) ''Consumer'' means a natural person to whom credit is extended under a consumer credit card account or a natural person who is a co-obligor or guarantor of a consumer credit card account.

(c) ''Consumer credit card account'' means an account provided to a consumer primarily for personal, family, or household purposes under an open-end credit plan that is accessed by a credit card or charge card. The terms ''open-end credit,'' ''credit card,'' and ''charge card'' have the same meanings as in 12 CFR 226.2. The following are not consumer credit card accounts for purposes of this subpart:

(1) Home equity plans subject to the requirements of 12 CFR 226.5b that are accessible by a credit or charge card;

(2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; and

(4) Lines of credit accessed solely by account numbers.

(d) ''Promotional rate'' means:

(1) Any annual percentage rate applicable to one or more balances or transactions on a consumer credit card account for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period; or

(2) Any annual percentage rate applicable to one or more transactions on a consumer credit card account that is lower than the annual percentage rate that applies to other transactions of the same type.

§ 227.22 Unfair acts or practices regarding time to make payment.

(a) *General rule.* Except as provided in paragraph (c) of this section, a bank must not treat a payment on a consumer credit card account as late for any purpose unless the consumer has been provided a reasonable amount of time to make the payment.

(b) *Safe harbor.* A bank satisfies the requirements of paragraph (a) of this section if it has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

(c) *Exception for grace periods.* Paragraph (a) of this section does not apply to any time period provided by the bank within which the consumer may repay any portion of the credit extended without incurring an additional finance charge.

§ 227.23 Unfair acts or practices regarding allocation of payments.

(a) *General rule for accounts with different annual percentage rates on different balances.* Except as provided in paragraph (b) of this section, when different annual percentage rates apply to different balances on a consumer credit card account, the bank must allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances in a manner that is no less beneficial to the consumer than one of the following methods:

(1) The amount is allocated first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate;

(2) Equal portions of the amount are allocated to each balance; or

(3) The amount is allocated among the balances in the same proportion as each balance bears to the total balance.

(b) *Special rules for accounts with promotional rate balances or deferred interest balances.* (1) *Rule regarding payment allocation.* (i) *In general.* When a consumer credit card account has one or more balances at a promotional rate or balances on which interest is deferred, the bank must allocate any amount paid by the consumer in excess of the required minimum periodic payment among the other balances on the account consistent with paragraph (a) of this section. If any amount remains after such allocation, the bank must allocate that amount among the promotional rate balances or the deferred interest balances consistent with paragraph (a) of this section.

(ii) *Exception for deferred interest balances.* Notwithstanding paragraph (b)(1)(i) of this section, the bank may allocate the entire amount paid by the consumer in excess of the required minimum periodic payment to a balance on which interest is deferred during the two billing cycles immediately preceding expiration of the period during which interest is deferred.

(2) *Rule regarding grace periods.* A bank must not require a consumer to repay any portion of a promotional rate balance or deferred interest balance on a consumer credit card account in order to receive any time period offered by the bank in which to repay other credit extended without incurring finance charges, provided that the consumer is otherwise eligible for such a time period.

§ 227.24 Unfair acts or practices regarding application of increased annual percentage rates to outstanding balances.

(a) *Prohibition on increasing annual percentage rates on outstanding balances.* (1) *General rule.* Except as provided in paragraph (b) of this section, a bank must not increase the annual percentage rate applicable to any outstanding balance on a consumer credit card account.

(2) *Outstanding balance.* For purposes of this section, ''outstanding balance'' means the amount owed on a consumer credit card account at the end of the fourteenth day after the bank provides a notice required by 12 CFR 226.9(c) or (g).

(b) *Exceptions.* Paragraph (a) of this section does not apply where the annual percentage rate is increased due to:

(1) The operation of an index that is not under the bank's control and is available to the general public;

(2) The expiration or loss of a promotional rate, provided that, if a promotional rate is lost, the bank does not increase the annual percentage rate to a rate that is greater than the annual percentage rate that would have applied after expiration of the promotional rate; or

(3) The bank not receiving the consumer's required minimum periodic payment within 30 days after the due date for that payment.

(c) *Treatment of outstanding balances following rate increase.* (1) *Payment of outstanding balances.* When a bank increases the annual percentage rate applicable to a category of transactions on a consumer credit card account and the bank is prohibited by this section from applying the increased rate to outstanding balances in that category, the bank must provide the consumer with a method of paying that outstanding balance that is no less beneficial to the consumer than one of the following methods:

(i) An amortization period for the outstanding balance of no less than five years, starting from the date on which the increased annual percentage rate went into effect; or

(ii) A required minimum periodic payment on the outstanding balance

that includes a percentage of that balance that is no more than twice the percentage included before the date on which the increased annual percentage rate went into effect.

(2) *Fees and charges on outstanding balance.* When a bank increases the annual percentage rate applicable to a category of transactions on a consumer credit card account and the bank is prohibited by this section from applying the increased rate to outstanding balances in that category, the bank must not assess any fee or charge based solely on the outstanding balance.

§ 227.25 Unfair acts or practices regarding fees for exceeding the credit limit caused by credit holds.

A bank must not assess a fee or charge for exceeding the credit limit on a consumer credit card account if the credit limit would not have been exceeded but for a hold placed on any portion of the available credit on the account that is in excess of the actual purchase or transaction amount.

§ 227.26 Unfair balance computation method.

(a) *General rule.* Except as provided in paragraph (b) of this section, a bank must not impose finance charges on balances on a consumer credit card account based on balances for days in billing cycles that precede the most recent billing cycle.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) The assessment of deferred interest; or

(2) Adjustments to finance charges following the resolution of a billing error dispute under 12 CFR 226.12(b) or 12 CFR 226.13.

§ 227.27 Unfair acts or practices regarding security deposits and fees for the issuance or availability of credit.

(a) *Annual rule.* During the period beginning with the date on which a consumer credit card account is opened and ending twelve months from that date, a bank must not charge to the account security deposits or fees for the issuance or availability of credit if the total amount of such security deposits and fees constitutes a majority of the initial credit limit for the account.

(b) *Monthly rule.* If the total amount of security deposits and fees for the issuance or availability of credit charged to a consumer credit card account during the period beginning with the date on which a consumer credit card account is opened and ending twelve months from that date constitutes more than 25 percent of the initial credit limit for the account:

(1) During the first billing cycle after the account is opened, the bank must not charge to the account security deposits and fees for the issuance or availability of credit that total more than 25 percent of the initial credit limit for the account; and

(2) In each of the eleven billing cycles following the first billing cycle, the bank must not charge to the account more than one eleventh of the total amount of any security deposits and fees for the issuance or availability of credit in excess of 25 percent of the initial credit limit for the account.

(c) *Fees for the issuance or availability of credit.* For purposes of paragraphs (a) and (b) of this section, fees for the issuance or availability of credit include:

(1) Any annual or other periodic fee that may be imposed for the issuance or availability of a consumer credit card account, including any fee based on account activity or inactivity; and

(2) Any non-periodic fee that relates to opening an account.

§ 227.28 Deceptive acts or practices regarding firm offers of credit.

(a) *Disclosure of criteria bearing on creditworthiness.* If a bank offers a range or multiple annual percentage rates or credit limits when making a solicitation for a firm offer of credit for a consumer credit card account, and the annual percentage rate or credit limit that consumers approved for credit will receive depends on specific criteria bearing on creditworthiness, the bank must disclose the types of criteria in the solicitation. The disclosure must be provided in a manner that is reasonably understandable to consumers and designed to call attention to the nature and significance of the information regarding the eligibility criteria for the lowest annual percentage rate or highest credit limit stated in the solicitation. If presented in a manner that calls attention to the nature and significance of the information, the following disclosure may be used to satisfy the requirements of this section (as applicable): ''If you are approved for credit, your annual percentage rate and/or credit limit will depend on your credit history, income, and debts.''

(b) *Firm offer of credit defined.* For purposes of this section, ''firm offer of credit'' has the same meaning as that term has under the definition of ''firm offer of credit or insurance'' in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)).

7. A new Subpart D is added to part 227 to read as follows:

Subpart D—Overdraft Services Rule

Sec.

227.31 Definitions.
227.32 Unfair acts or practices regarding overdraft services.

Subpart D—Overdraft Services Rule

§ 227.31 Definitions.

For purposes of this subpart, the following definitions apply:

(a) ''Account'' means a deposit account at a bank that is held by or offered to a consumer, and has the same meaning as in § 230.2(a) of the Board's Regulation DD, Truth in Savings (12 CFR part 230).

(b) ''Consumer'' means a person who holds an account primarily for personal, family, or household purposes.

(c) ''Overdraft service'' means a service under which a bank charges a fee for paying a transaction (including a check or other item) that overdraws an account. The term ''overdraft service'' does not include any payment of overdrafts pursuant to—

(1) A line of credit subject to the Federal Reserve Board's Regulation Z (12 CFR part 226), including transfers from a credit card account, home equity line of credit or overdraft line of credit; or

(2) A service that transfers funds from another account of the consumer.

§ 227.32 Unfair acts or practices regarding overdraft services.

(a) *Opt-out requirement.* (1) *General rule.* A bank must not assess a fee or charge on a consumer's account in connection with an overdraft service, unless the bank provides the consumer with the right to opt out of the bank's payment of overdrafts and a reasonable opportunity to exercise that opt-out and the consumer has not opted out. The consumer must be given notice and an opportunity to opt out before the bank's assessment of any fee or charge for an overdraft, and subsequently at least once during or for any periodic statement cycle in which any fee or charge for paying an overdraft is assessed. The notice requirements in paragraphs (a)(1) and (a)(2) do not apply if the consumer has opted out, unless the consumer subsequently revokes the opt-out.

(2) *Partial opt-out.* A bank must provide a consumer the option of opting out only for the payment of overdrafts at automated teller machines and for point-of-sale transactions initiated by a debit card, in addition to the choice of opting out of the payment of overdrafts for all transactions.

(3) *Exceptions.* Notwithstanding a consumer's election to opt out under paragraphs (a)(1) or (a)(2) of this section, a bank may assess a fee or charge on a consumer's account for paying a debit

card transaction that overdraws an account if:

(i) There were sufficient funds in the consumer's account at the time the authorization request was received, but the actual purchase amount for that transaction exceeds the amount that had been authorized; or

(ii) The transaction is presented for payment by paper-based means, rather than electronically through a card terminal, and the bank has not previously authorized the transaction.

(4) *Time to comply with opt-out.* A bank must comply with a consumer's opt-out request as soon as reasonably practicable after the bank receives it.

(5) *Continuing right to opt-out.* A consumer may opt out of the bank's future payment of overdrafts at any time.

(6) *Duration of opt-out.* A consumer's opt-out is effective unless subsequently revoked by the consumer.

(b) *Debit holds.* A bank must not assess a fee or charge on a consumer's account for an overdraft service if the consumer's overdraft would not have occurred but for a hold placed on funds in the consumer's account that is in excess of the actual purchase or transaction amount.

8. A new Supplement I is added to part 227 as follows:

Supplement I to Part 227—Official Staff Commentary

Subpart A—General Provisions for Consumer Protection Rules

Section 227.1—Authority, Purpose, and Scope

1(c) Scope

1. *Penalties for noncompliance.* Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease-and-desist orders requiring that actions be taken to remedy violations and civil money penalties.

2. *Industrial loan companies.* Industrial loan companies that are insured by the Federal Deposit Insurance Corporation are covered by the Board's rule.

Subpart C—Consumer Credit Card Account Practices Rule

Section 227.21—Definitions

(d) Promotional Rate

Paragraph (d)(1)

1. *Rate in effect at the end of the promotional period.* If the annual percentage rate that will be in effect at the end of the specified period of time is a variable rate, the rate in effect at the end of that period for purposes of § 227.21(d)(1) is the rate that would otherwise apply if the promotional rate was not offered, consistent with any applicable accuracy requirements under 12 CFR part 226.

Paragraph (d)(2)

1. *Example.* A bank generally offers a 15% annual percentage rate for purchases on a consumer credit card account. For purchases made during a particular month, however, the creditor offers a rate of 5% that will apply until the consumer pays those purchases in full. Under § 227.21(d)(2), the 5% rate is a ''promotional rate'' because it is lower than the 15% rate that applies to other purchases.

Section 227.22—Unfair Acts or Practices Regarding Time To Make Payment

(a) General Rule

1. *Treating a payment as late for any purpose.* Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within the amount of time provided to make that payment under this section.

2. *Reasonable amount of time to make payment.* Whether an amount of time is reasonable for purposes of making a payment is determined from the perspective of the consumer, not the bank. Under § 227.22(b), a bank provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

(b) Safe Harbor

1. *Reasonable procedures.* A bank is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. A bank provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than, for example, three days after the closing date of the billing cycle and the payment due date on the periodic statement is no less than 24 days after the closing date of the billing cycle.

2. *Payment due date.* For purposes of § 227.22(b), ''payment due date'' means the date by which the bank requires the consumer to make payment to avoid being treated as late for any purpose, except as provided in § 227.22(c).

Section 227.23—Unfair Acts or Practices Regarding Allocation of Payments

1. *Minimum periodic payment.* This section addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the bank. This section does not limit or otherwise address the bank's ability to determine the amount of the minimum periodic payment or how that payment is allocated.

2. *Adjustments of one dollar or less permitted.* When allocating payments, the bank may adjust amounts by one dollar or less. For example, if a bank is allocating $100 equally among three balances, the bank may apply $34 to one balance and $33 to the others. Similarly, if a bank is splitting $100.50 between two balances, the bank may apply $50 to one balance and $50.50 to another.

(a) General Rule for Accounts With Different Annual Percentage Rates on Different Balances

1. *No less beneficial to the consumer.* A bank may allocate payments using a method that is different from the methods listed in § 227.23(a) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer than a listed method if it results in the assessment of the same or a lesser amount of interest charges than would be assessed under any of the listed methods. For example, a bank may not allocate the entire amount paid by the consumer in excess of the required minimum periodic payment to the balance with the lowest annual percentage rate because this method would result in a higher assessment of interest charges than any of the methods listed in § 227.23(a).

2. *Example of payment allocation method that is no less beneficial to consumers than a method listed in § 227.23(a).* Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $555 in excess of the required minimum periodic payment. A bank could allocate one-third of this amount ($185) to the cash advance balance and two-thirds ($370) to the purchase balance even though this is not a method listed in § 227.23(a) because the bank is applying more of the amount to the balance with the highest annual percentage rate (with the result that the consumer will be assessed less in interest charges) than would be the case under the pro rata allocation method in § 227.23(a)(3). *See* comment 23(a)(3)–1.

Paragraph (a)(1)

1. *Examples of allocating first to the balance with the highest annual percentage rate.*

(A) Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $800 in excess of the required minimum periodic payment. None of the minimum periodic payment is allocated to the cash advance balance. A bank using this method would allocate $500 to pay off the cash advance balance and then allocate the remaining $300 to the purchase balance.

(B) Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $400 in excess of the required minimum periodic payment. A bank using this method would allocate the entire $400 to the cash advance balance.

Paragraph (a)(2)

1. *Example of equal portion method.* Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $555 in excess of the required minimum periodic payment. A bank using this method would allocate $278 to the cash advance balance and $277 to the purchase balance (or vice versa).

Paragraph (a)(3)

1. *Example of pro rata method.* Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $555 in excess of the required minimum periodic payment. A bank using this method would allocate 25% of the amount ($139) to the cash advance balance and 75% of the amount ($416) to the purchase balance.

(b) Special Rules for Accounts With Promotional Rate Balances or Deferred Interest Balances

Paragraph (b)(1)(i)

1. *Examples of special rule regarding payment allocation for accounts with promotional rate balances or deferred interest balances.*

(A) A consumer credit card account has a cash advance balance of $500 at an annual percentage rate of 20%, a purchase balance of $1,500 at an annual percentage rate of 15%, and a transferred balance of $3,000 at a promotional rate of 5%. The consumer pays $800 in excess of the required minimum periodic payment. The bank must allocate the $800 between the cash advance and purchase balances (consistent with § 227.23(a)) and apply nothing to the transferred balance.

(B) A consumer credit card account has a cash advance balance of $500 at an annual percentage rate of 20%, a balance of $1,500 on which interest is deferred, and a transferred balance of $3,000 at a promotional rate of 5%. The consumer pays $800 in excess of the required minimum periodic payment. None of the minimum periodic payment is allocated to the cash advance balance. The bank must allocate $500 to pay off the cash advance balance before allocating the remaining $300 between the deferred interest balance and the transferred balance (consistent with § 227.23(a)).

Paragraph (b)(1)(ii)

1. *Examples of exception for deferred interest balances.* Assume that on January 1 a consumer uses a credit card to make a $1,000 purchase on which interest is deferred until June 30. If this amount is not paid in full by June 30, all interest accrued during the six-month period will be charged to the account. The billing cycle for this credit card begins on the first day of the month and ends on the last day of the month. Each month from January through June the consumer uses the credit card to make $200 in purchases on which interest is not deferred.

(A) The consumer pays $300 in excess of the minimum periodic payment each month from January through June. None of the minimum periodic payment is applied to the deferred interest balance or the purchase balance. For the January, February, March, and April billing cycles, the bank must allocate $200 to the purchase balance and $100 to the deferred interest balance. For the May and June billing cycles, however, the bank has the option of allocating the entire $300 to the deferred interest balance, which will result in that balance being paid in full before the deferred interest period expires on June 30. In this example, the interest that accrued between January 1 and June 30 will not be assessed to the consumer's account.

(B) The consumer pays $200 in excess of the minimum periodic payment each month from January through June. None of the minimum periodic payment is applied to the deferred interest balance or the purchase balance. For the January, February, March, and April billing cycles, the bank must allocate the entire $200 to the purchase balance. For the May and June billing cycles, however, the bank has the option to allocate the entire $200 to the deferred interest balance, which will result in that balance being reduced to $600 before the deferred interest period expires on June 30. In this example, the interest that accrued between January 1 and June 30 will be assessed to the consumer's account.

Paragraph (b)(2)

1. *Example of special rule regarding grace periods for accounts with promotional rate balances or deferred interest balances.* A bank offers a promotional rate on balance transfers and a higher rate on purchases. The bank also offers a grace period under which consumers who pay their balances in full by the due date are not charged interest on purchases. A consumer who has paid the balance for the prior billing cycle in full by the due date transfers a balance of $2,000 and makes a purchase of $500. Because the bank offers a grace period, it must provide a grace period on the $500 purchase if the consumer pays that amount in full by the due date, even though the $2,000 balance at the promotional rate remains outstanding.

Section 227.24—Unfair Acts or Practices Regarding Application of Increased Annual Percentage Rates to Outstanding Balances

(a) Prohibition Against Increasing Annual Percentage Rates on Outstanding Balances

1. *Example.* Assume that on December 30 a consumer credit card account has a balance of $1,000 at an annual percentage rate of 15%. On December 31, the bank mails or delivers a notice required by 12 CFR 226.9(c) informing the consumer that the annual percentage rate will increase to 20% on February 15. The consumer uses the account to make $2,000 in purchases on January 10 and $1,000 in purchases on January 20. Assuming no other transactions, the outstanding balance for purposes of § 227.24 is the $3,000 balance as of the end of the day on January 14. Therefore, under § 227.24(a), the bank cannot increase the annual percentage rate applicable to that balance. The bank can apply the 20% rate to the $1,000 in purchases made on January 20 but, consistent with 12 CFR 226.9(c), the bank cannot do so until February 15.

2. *Reasonable procedures.* A bank is not required to determine the specific date on which a notice required by 12 CFR 226.9(c) or (g) was provided. For purposes of § 227.24(a)(2), if the bank has adopted reasonable procedures designed to ensure that notices required by 12 CFR 226.9(c) or (g) are provided to consumers no later than, for example, three days after the event giving rise to the notice, the outstanding balance is the balance at the end of the seventeenth day after such event.

(b) Exceptions

Paragraph (b)(1)

1. *External index.* A bank may increase the annual percentage rate on an outstanding balance if the increase is based on an index outside the bank's control. A bank may not increase the rate on an outstanding balance based on its own prime rate or cost of funds and may not reserve a contractual right to change rates on outstanding balances at its discretion. In addition, a bank may not increase the rate on an outstanding balance by changing the method used to determine that rate. A bank is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal*, even if the bank's own prime rate is one of several rates used to establish the published rate.

2. *Publicly available.* The index must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the rate applied to the outstanding balance.

Paragraph (b)(2)

1. *Example.* Assume that a consumer credit card account has a balance of $1,000 at a 5% promotional rate and that the bank also charges an annual percentage rate of 15% for purchases and a penalty rate of 25%. If the consumer does not make payment by the due date and the account agreement specifies that event as a trigger for applying the penalty rate, the bank may increase the annual percentage rate on the $1,000 from the 5% promotional rate to the 15% annual percentage rate for purchases. The bank may not, however, increase the rate on the $1,000 from the 5% promotional rate to the 25% penalty rate, except as otherwise permitted under § 227.24(b)(3).

Paragraph (b)(3)

1. *Example.* Assume that the annual percentage rate applicable to purchases on a consumer credit card account is increased from 15% to 20% and that the account has an outstanding balance of $1,000 at the 15% rate. The payment due date on the account is the twenty-fifth of the month. If the bank has not received the required minimum periodic payment due on March 15 on or before April 14, the bank may increase the rate applicable to the $1,000 balance once the bank has complied with the notice requirements in 12 CFR 226.9(g).

(c) Treatment of Outstanding Balances Following Rate Increase

1. *Scope.* This provision does not apply if the consumer credit card account does not have an outstanding balance. This provision also does not apply if a rate is increased pursuant to any of the exceptions in § 227.24(b).

2. *Category of transactions.* This provision does not apply to balances in categories of transactions other than the category for which the bank has increased the annual percentage rate. For example, if a bank increases the annual percentage rate that applies to purchases but not the rate that applies to cash advances, § 227.24(c)(1) and (2) apply to an outstanding balance consisting of purchases but not an outstanding balance consisting of cash advances.

Paragraph (c)(1)

1. *No less beneficial to the consumer.* A bank may provide a method of paying the outstanding balance that is different from the methods listed in § 227.24(c)(1) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method amortizes the outstanding balance in five years *or* longer or if the method results in a required minimum periodic payment on the outstanding balance that is equal to or less than a minimum payment calculated consistent with § 227.24(c)(1)(ii). For example, a bank could more than double the percentage of amounts owed included in the minimum payment so long as the minimum payment does not result in amortization of the outstanding balance in less than five years. Alternatively, a bank could require a consumer to make a minimum payment on the outstanding balance that amortizes that balance in less than five years so long as the payment does not include a percentage of the outstanding balance that is more than twice the percentage included in the minimum payment before the effective date of the increased rate.

Paragraph (c)(1)(ii)

1. *Required minimum periodic payment on other balances.* This paragraph addresses the required minimum periodic payment on the outstanding balance. This paragraph does not limit or otherwise address the bank's ability to determine the amount of the minimum periodic payment for other balances.

2. *Example.* Assume that the method used by a bank to calculate the required minimum periodic payment for a consumer credit card account requires the consumer to pay either the total of fees and interest charges plus 1% of the total amount owed or $20, whichever is greater. Assume also that the bank increases the annual percentage rate applicable to purchases on a consumer credit card account from 15% to 20% and that the account has an outstanding balance of $1,000 at the 15% rate. Section 227.24(c)(1)(ii) would permit the bank to calculate the required minimum periodic payment on the outstanding balance by adding fees and interest charges to 2% of the outstanding balance.

Paragraph (c)(2)

1. *Fee or charge based solely on the outstanding balance.* A bank is prohibited from assessing a fee or charge based solely on an outstanding balance. For example, a bank is prohibited from assessing a maintenance or similar fee based on an outstanding balance. A bank is not, however, prohibited from assessing fees such as late payment fees or fees for exceeding the credit limit even if such fees are based in part on an outstanding balance.

Section 227.25—Unfair Acts or Practices Regarding Fees for Exceeding the Credit Limit Caused by Credit Holds

1. *General.* Under § 227.25, a bank may not assess a fee for exceeding the credit limit if the credit limit would not have been exceeded but for a hold placed on the available credit for a consumer credit card account for a transaction that has been authorized but has not yet been presented for settlement, if the amount of the hold is in excess of the actual purchase or transaction amount when the transaction is settled. Section 227.25 does not limit a bank from charging a fee for exceeding the credit limit in connection with a particular transaction if the consumer would have exceeded the credit limit due to other reasons, such as other transactions that may have been authorized but not yet presented for settlement, a payment that is returned, or if the purchase or transaction amount for the transaction for which the hold was placed would have also caused the consumer to exceed the credit limit.

2. *Example of prohibition in connection with hold placed for same transaction.* Assume that a consumer credit card account has a credit limit of $2,000 and a balance of $1,500. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the bank for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Assuming that there is no other activity on the account, the bank is prohibited from assessing a fee for exceeding the credit limit with respect to the $750 hold. If, however, the total cost of the stay charged to the account had been more than $500, the bank would not be prohibited from assessing a fee for exceeding the credit limit.

3. *Example of prohibition in connection with hold placed for another transaction.* Assume that a consumer credit card account has a credit limit of $2,000 and a balance of $1,400. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the bank for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. While the hold remains in place, the consumer uses the credit card to make a $150 purchase. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Assuming that there is no other activity on the account, the bank is prohibited from assessing a fee for exceeding the credit limit with respect to either the $750 hold or the $150 purchase. If, however, the total cost of the stay charged to the account had been more than $450, the bank would not be prohibited from assessing a fee for exceeding the credit limit.

4. *Example of prohibition when authorization and settlement amounts are held for the same transaction.* Assume that a consumer credit card account has a credit limit of $2,000 and a balance of $1,400. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the bank for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. When the hotel presents the $450 transaction for settlement, it uses a different transaction code to identify the transaction than it had used for the pre-authorization, causing both the $750 hold and the $450 purchase amount to be temporarily posted to the consumer's account at the same time, and the consumer's balance to exceed the credit limit. Under these circumstances, and assuming no other transactions, the bank is prohibited from assessing a fee for exceeding the credit limit because the credit limit was exceeded solely due to the $750 hold.

5. *Example of permissible fee for exceeding the credit limit in connection with a hold.* Assume that a consumer has a credit limit of $2,000 and a balance of $1,400 on a consumer credit card account. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the bank for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. While the hold remains in place, the consumer uses the credit card to make a $650 purchase. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Notwithstanding the existence of the hold and assuming that there is no other activity on the account, the bank may charge the consumer a fee for exceeding the credit limit with respect to the $650 purchase because the consumer would have exceeded the credit limit even if the hold had been for the actual amount of the hotel transaction.

Section 227.26—Unfair Balance Computation Method

(a) General Rule

1. *Two-cycle method prohibited.* A bank is prohibited from computing the finance charge using the so-called two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance (including or excluding new purchases and

deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

2. *Example.* Assume that the billing cycle on a consumer credit card account starts on the first day of the month and ends on the last day of the month. A consumer has a zero balance on March 1. The consumer uses the credit card to make a $500 purchase on March 15. The consumer makes no other purchases and pays $400 on the due date (April 25), leaving a $100 balance. The bank may charge interest on the $500 purchase from the start of the billing cycle (April 1) through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 30). The bank is prohibited, however, from reaching back and charging interest on the $500 purchase from the date of purchase (March 15) to the end of the March billing cycle (March 31).

Section 227.27—Unfair Acts or Practices Regarding Security Deposits and Fees for the Issuance or Availability of Credit

1. *Initial credit limit for the account.* For purposes of this section, the initial credit limit is the limit in effect when the account is opened.

(a) Annual Rule

1. *Majority of the credit limit.* The total amount of security deposits and fees for the issuance or availability of credit constitutes a majority of the initial credit limit if that total is greater than half of the limit. For example, assume that a consumer credit card account has an initial credit limit of $500. Under § 227.27(a), a bank may only charge to the account security deposits and fees for the issuance or availability of credit totaling no more than $250 during the twelve months after the date on which the account is opened (consistent with § 227.27(b)).

(b) Monthly Rule

1. *Adjustments of one dollar or less permitted.* When dividing amounts pursuant to § 227.27(b)(2), the bank may adjust amounts by one dollar or less. For example, if a bank is dividing $125 over eleven billing cycles, the bank may charge $12 for four months and $11 for the remaining seven months.

2. *Example.* Assume that a consumer credit card account opened on January 1 has an initial credit limit of $500 and that a bank charges to the account security deposits and fees for the issuance or availability of credit that total $250 during the twelve months after the date on which the account is opened. Assume also that the billing cycles for this account begin on the first day of the month and end on the last day of the month. Under § 227.27(b), the bank may charge to the account no more than $250 in security deposits and fees for the issuance or availability of credit. If it charges $250, the bank may charge as much as $125 during the first billing cycle. If it charges $125 during the first billing cycle, it may then charge $12 in any four billing cycles and $11 in any seven billing cycles during the year.

(c) Fees for the Issuance or Availability of Credit

1. *Membership fees.* Membership fees for opening an account are fees for the issuance or availability of credit. A membership fee to join an organization that provides a credit or charge card as a privilege of membership is a fee for the issuance or availability of credit only if the card is issued automatically upon membership. If membership results merely in eligibility to apply for an account, then such a fee is not a fee for the issuance or availability of credit.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) are not fees for the issuance or availability of credit if the basic account may be opened without paying such fees.

3. *One-time fees.* Only non-periodic fees related to opening an account (such as one-time membership or participation fees) are fees for the issuance or availability of credit. Fees for reissuing a lost or stolen card and statement reproduction fees are examples of fees that are not fees for the issuance or availability of credit.

Section 227.28—Deceptive Acts or Practices Regarding Firm Offers of Credit

(a) Disclosure of Criteria Bearing on Creditworthiness

1. *Designed to call attention.* Whether a disclosure has been provided in a manner that is designed to call attention to the nature and significance of required information depends on where the disclosure is placed in the solicitation and how it is presented, including whether the disclosure uses a typeface and type size that are easy to read and uses boldface or italics. Placing the disclosure in a footnote would not satisfy this requirement.

2. *Form of electronic disclosures.* Electronic disclosures must be provided consistent with 12 CFR 226.5a(a)(2)–8 and –9.

3. *Multiple annual percentage rates or credit limits.* For purposes of this section, a firm offer of credit solicitation that states an annual percentage rate or credit limit for a credit card feature and a different annual percentage rate or credit limit for a different credit card feature does not offer multiple annual percentage rates or credit limits. For example, if a firm offer of credit solicitation offers a 15% annual percentage rate for purchases and a 20% annual percentage rate for cash advances, the solicitation does not offer multiple annual percentage rates for purposes of this section.

4. *Example.* Assume that a bank requests from a consumer reporting agency a list of consumers with credit scores of 650 or higher so that the bank can send those consumers a firm offer of credit solicitation. The bank sends a solicitation to those consumers for a consumer credit card account advertising ''rates from 8.99% to 19.99%'' and ''credit limits from $1,000 to $10,000.'' Before selection of the consumers for the offer, however, the bank determines that it will provide an interest rate of 8.99% and a credit limit of $10,000 only to those consumers responding to the solicitation who are verified to have a credit score of 650 or higher, who have a debt-to-income ratio below a certain amount, and who meet other specific criteria bearing on creditworthiness. Under § 227.28, this solicitation is deceptive unless the bank discloses, in a manner that is reasonably understandable to the consumer and designed to call attention to the nature and significance of the information, that, if the consumer is approved for credit, the annual percentage rate and credit limit the consumer will receive will depend on specific criteria bearing on the consumer's creditworthiness. The bank may satisfy this requirement by using a typeface and type size that are easy to read and stating in boldface in a manner that otherwise calls attention to the nature and significance of the information: **''If you are approved for credit, your annual percentage rate and/or credit limit will depend on your credit history, income, and debts.''**

5. *Applicability of criteria in disclosure.* When making a disclosure under this section, a bank may only disclose the criteria it uses in evaluating whether consumers who are approved for credit will receive the lowest annual percentage rate or the highest credit limit. For example, if a bank does not consider the consumer's debts when determining whether the consumer should receive the lowest annual percentage rate or highest credit limit, the disclosure must not refer to ''debts.''

Subpart D—Overdraft Services Rule

Section 227.32—Unfair Acts or Practices Regarding Overdraft Services

(a) Opt-Out Requirement

(a)(1) General Rule

1. *Form, content and timing of disclosure.* The form, content and timing of the opt-out notice required to be provided under paragraph (a) of this section are addressed under § 230.10 of the Board's Regulation DD, Truth in Savings (12 CFR 230).

(a)(3) Exceptions

Paragraph (a)(3)(i)

1. *Example of transaction amount exceeding authorization amount (fuel purchase).* A consumer has $30 in a deposit account. The consumer uses a debit card to purchase fuel. Before permitting the consumer to use the fuel pump, the merchant verifies the validity of the card by obtaining authorization from the bank for a $1 transaction. The consumer purchases $50 of fuel. If the bank pays the transaction, it would be permitted to assess a fee or charge for paying the overdraft, even if the consumer has opted out of the payment of overdrafts.

2. *Example of transaction amount exceeding authorization amount (restaurant).* A consumer has $50 in a deposit account. The consumer pays for a $45 meal at a restaurant using a debit card. While the restaurant may obtain authorization for the $45 cost of the meal, the consumer may add $10 for a tip. If the bank pays the $55

transaction (including the tip amount), it would be permitted to assess a fee or charge for paying the overdraft, even if the consumer has opted out of the payment of overdrafts.

Paragraph (a)(3)(ii)

1. *Example of transaction presented by paper-based means.* A consumer has $50 in a deposit account. The consumer makes a $60 purchase and presents his or her debit card for payment. The merchant takes an imprint of the card. Later that day, the merchant submits a sales slip with the card imprint to its processor for payment. If the consumer's bank pays the transaction, it would be permitted to assess a fee or charge for paying the overdraft, even if the consumer has opted out of the payment of overdrafts.

(b) Debit Holds

1. *General.* Under § 227.32(b), a bank may not assess an overdraft fee if the overdraft would not have occurred but for a hold placed on funds in the consumer's account for a transaction that has been authorized but has not yet been presented for settlement, if the amount of the hold is in excess of the actual purchase or transaction amount when the transaction is settled. Section 227.32(b) does not limit a bank from charging an overdraft fee in connection with a particular transaction if the consumer would have incurred an overdraft due to other reasons, such as other transactions that may have been authorized but not yet presented for settlement, a deposited check that is returned, or if the purchase or transaction amount for the transaction for which the hold was placed would have also caused the consumer to overdraw his or her account.

2. *Example of prohibition in connection with hold placed for same transaction.* A consumer has $50 in a deposit account. The consumer makes a fuel purchase using his or her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's bank for a $75 ''hold'' on the account which exceeds the consumer's funds. The consumer purchases $20 of fuel. Under these circumstances, § 227.32(b) prohibits the bank from assessing a fee or charge in connection with the debit hold because the actual amount of the fuel purchase did not exceed the funds in the consumer's account. However, if the consumer had purchased $60 of fuel, the bank could assess a fee or charge for an overdraft because the transaction exceeds the funds in the consumer's account, unless the consumer has opted out of the payment of overdrafts under § 227.32(a).

3. *Example of prohibition in connection with hold placed for another transaction.* A consumer has $100 in a deposit account. The consumer makes a fuel purchase using his or her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's bank for a $75 ''hold'' on the account. The consumer purchases $20 of fuel, but the transaction is not presented for settlement until the next day. Later on the first day, and assuming no other transactions, the consumer withdraws $75 at an ATM. Under these circumstances, § 227.32(b) prohibits the bank from assessing a fee or charge for paying an overdraft with respect to the $75 withdrawal because the overdraft was caused solely by the $75 hold.

4. *Example of prohibition when authorization and settlement amounts are held for the same transaction.* A consumer has $100 in his deposit account, and uses his debit card to purchase $50 worth of fuel. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's bank for a $75 ''hold'' on the account. The consumer purchases $50 of fuel. When the merchant presents the $50 transaction for settlement, it uses a different transaction code to identify the transaction than it had used for the pre-authorization, causing both the $75 hold and the $50 purchase amount to be temporarily posted to the consumer's account at the same time, and the consumer's account to be overdrawn. Under these circumstances, and assuming no other transactions, § 227.32(b) prohibits the bank from assessing a fee or charge for paying an overdraft because the overdraft was caused solely by the $75 hold.

5. *Example of permissible overdraft fees in connection with a hold.* A consumer has $100 in a deposit account. The consumer makes a fuel purchase using his or her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's bank for a $75 ''hold'' on the account. The consumer purchases $35 of fuel, but the transaction is not presented for settlement until the next day. Later on the first day, and assuming no other transactions, the consumer withdraws $75 at an ATM. Notwithstanding the existence of the hold, and assuming the consumer has not opted out of the payment of overdrafts under § 227.32(a), the consumer's bank may charge the consumer an overdraft fee for the $75 ATM withdrawal, because the consumer would have incurred the overdraft even if the hold had been for the actual amount of the fuel purchase.

9. The Federal Reserve System Board of Governors' Staff Guidelines on the Credit Practices Rule, published August 3, 1988 at 51 FR 29225, is amended as follows:

Staff Guidelines on the Credit Practices Rule

Effective January 1, 1986; as amended effective [August 1, 1988] ►Insert effective date of new amendments◄

Introduction

* * * * *

3. *Scope; enforcement.*►As stated in subpart A of Regulation AA,◄ [The Board's] ►this◄ rule applies to all banks and their subsidiaries►, except savings associations as defined in 12 U.S.C. 1813(b).◄ [institutions that are members of the Federal Home Loan Bank System and nonbank subsidiaries of bank holding companies are covered by the rules of the Federal Home Loan Bank Board and the FTC, respectively.] The Board has enforcement responsibility for state-chartered banks that are members of the Federal Reserve System. The Office of the Comptroller of the Currency has enforcement responsibility for national banks. The Federal Deposit Insurance Corporation has enforcement responsibility for insured state-chartered banks that are not members of the Federal Reserve System.

* * * * *

[Section 227.11 Authority, Purpose, and Scope

Q11(c)–1: *Penalties for noncompliance.* What are the penalties for noncompliance with the rule?

A: Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease-and-desist orders requiring that actions be taken to remedy violations. If the terms of the order are violated, the federal supervisory agency may impose penalties of up to $1,000 per day for every day that the bank is in violation of the order.

Q11(c)–2: *Industrial loan companies.* Are industrial loan companies subject to the Board's rule?

A: Industrial loan companies that are insured by the Federal Deposit Insurance Corporation are covered by the Board's rule.]

* * * * *

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

For the reasons discussed in the joint preamble, the Office of Thrift Supervision proposes to amend chapter V of title 12 of the Code of Federal Regulations by revising 12 CFR part 535 to read as follows:

PART 535—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Subpart A—General Provisions

Sec.

535.1 Authority, purpose, and scope.

Subpart B—Consumer Credit Practices

535.11 Definitions.
535.12 Unfair credit contract provisions.
535.13 Unfair or deceptive cosigner practices.
535.14 Unfair late charges.
535.15 State exemptions.

Subpart C—Consumer Credit Card Account Practices

535.21 Definitions.
535.22 Unfair time to make payment.
535.23 Unfair payment allocations.
535.24 Unfair annual percentage rate increases on outstanding balances.
535.25 Unfair fees for exceeding the credit limit due to credit holds.
535.26 Unfair balance computation method.
535.27 Unfair charging to the account of security deposits and fees for the issuance or availability of credit.
535.28 Deceptive firm offers of credit.

Subpart D—Overdraft Service Practices

535.31 Definitions.
535.32 Unfair overdraft service practices.
Appendix to Part 535—Official Staff Commentary

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 57a.

Subpart A—General Provisions

§ 535.1 Authority, purpose and scope.

(a) *Authority.* This part is issued by OTS under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f).

(b) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). This part defines and contains requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices of savings associations. The prohibitions in this part do not limit OTS's authority to enforce the FTC Act with respect to any other unfair or deceptive acts or practices.

(c) *Scope.* This part applies to savings associations and subsidiaries owned in whole or in part by a savings association.

Subpart B—Consumer Credit Practices

§ 535.11 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Consumer* means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, other than for the purchase of real property, and who applies for or is extended *consumer credit.*

(b) *Consumer credit* means credit extended to a natural person for personal, family, or household purposes. It includes consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; overdraft loans; and credit cards. It also includes loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security but only if the savings association relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan.

(c) *Earnings* means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(d) *Obligation* means an agreement between a consumer and a creditor.

(e) *Person* means an individual, corporation, or other business organization.

§ 535.12 Unfair credit contract provisions.

It is an unfair act or practice for you, directly or indirectly, to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation you purchased, any of the following provisions:

(a) *Confession of judgment.* A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(b) *Waiver of exemption.* An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) *Assignment of wages.* An assignment of wages or other earnings unless:

(1) The assignment by its terms is revocable at the will of the debtor;

(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or

(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) *Security interest in household goods.* A nonpossessory security interest in household goods other than a purchase-money security interest. For purposes of this paragraph, *household goods:*

(1) Means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents.

(2) Does not include:

(i) Works of art;

(ii) Electronic entertainment equipment (except one television and one radio);

(iii) Antiques (any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character); or

(iv) Jewelry (other than wedding rings).

§ 535.13 Unfair or deceptive cosigner practices.

(a) *Prohibited deception.* It is a deceptive act or practice for you, directly or indirectly in connection with the extension of credit to consumers, to misrepresent the nature or extent of cosigner liability to any person.

(b) *Prohibited unfairness.* It is an unfair act or practice for you, directly or indirectly in connection with the extension of credit to consumers, to obligate a cosigner unless the cosigner is informed, before becoming obligated, of the nature of the cosigner's liability.

(c) *Disclosure requirement.* (1) *Disclosure statement.* A clear and conspicuous statement must be given in writing to the cosigner before becoming obligated. In the case of open-end credit, the disclosure statement must be given to the cosigner before the time that the cosigner becomes obligated for any fees or transactions on the account. The disclosure statement must contain the following statement or one that is substantially similar:

Notice of Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) *Compliance.* Compliance with paragraph (d)(1) of this section constitutes compliance with the consumer disclosure requirement in paragraph (b) of this section.

(3) *Additional content limitations.* If the notice is a separate document, nothing other than the following items may appear with the notice:

(i) Your name and address;

(ii) An identification of the debt to be cosigned (*e.g.*, a loan identification number);

(iii) The date (of the transaction); and

(iv) The statement, ''This notice is not the contract that makes you liable for the debt.''

(d) *Cosigner defined.* (1) *Cosigner* means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

(2) *Cosigner* includes any person whose signature is requested as a condition to granting credit to a

consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse or other person whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a *cosigner,* whether or not the person is designated as such on a credit obligation.

§ 535.14 Unfair late charges.

(a) *Prohibition.* In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for you, directly or indirectly, to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) *Collecting a debt defined. Collecting a debt* means, for the purposes of this section, any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

§ 535.15 State exemptions.

(a) *Applications.* An appropriate state agency may apply to OTS for a determination that:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this subpart applies; and

(2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this subpart.

(b) *Determinations.* If OTS makes a determination under paragraph (a) of this section, then the provision of this subpart will not be in effect in that state to the extent specified by OTS in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively, as determined by OTS.

(c) *Delegated authority.* The Managing Director, Compliance and Consumer Protection in consultation with the Chief Counsel has delegated authority to make such determinations as are required under this subpart.

Subpart C—Consumer Credit Card Account Practices

§ 535.21 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Annual percentage rate* means the product of multiplying each periodic rate for a balance or transaction on a consumer credit card account by the number of periods in a year. The term *periodic rate* has the same meaning as in § 226.2 of this title.

(b) *Consumer* means a natural person to whom credit is extended under a consumer credit card account or a natural person who is a co-obligor or guarantor of a consumer credit card account.

(c) *Consumer credit card account* means an account provided to a consumer primarily for personal, family, or household purposes under an open-end credit plan that is accessed by a credit card or charge card. The terms *open-end credit, credit card,* and *charge card* have the same meanings as in § 226.2 of this title. The following are not consumer credit card accounts for purposes of this subpart:

(1) Home equity plans subject to the requirements of § 226.5b of this title that are accessible by a credit or charge card;

(2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; and

(4) Lines of credit accessed solely by account numbers.

(d) *Promotional rate* means:

(1) Any annual percentage rate applicable to one or more balances or transactions on a consumer credit card account for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period; or

(2) Any annual percentage rate applicable to one or more transactions on a consumer credit card account that is lower than the annual percentage rate that applies to other transactions of the same type.

§ 535.22 Unfair time to make payment.

(a) *General rule.* Except as provided in paragraph (c) of this section, you must not treat a payment on a consumer credit card account as late for any purpose unless you have provided the consumer a reasonable amount of time to make the payment.

(b) *Safe harbor.* You satisfy the requirements of paragraph (a) of this section if you have adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

(c) *Exception for grace periods.* Paragraph (a) of this section does not apply to any time period you provide within which the consumer may repay any portion of the credit extended without incurring an additional finance charge.

§ 535.23 Unfair payment allocations.

(a) *General rule for accounts with different annual percentage rates on different balances.* Except as provided in paragraph (b) of this section, when different annual percentage rates apply to different balances on a consumer credit card account, you must allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances in a manner that is no less beneficial to the consumer than one of the following methods:

(1) You allocate the amount first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate;

(2) You allocate equal portions of the amount to each balance; or

(3) You allocate the amount among the balances in the same proportion as each balance bears to the total balance.

(b) *Special rules for accounts with promotional rate balances or deferred interest balances.* (1) *Rule regarding payment allocation.* (i) *In general.* When a consumer credit card account has one or more balances at a promotional rate or balances on which interest is deferred, you must allocate any amount paid by the consumer in excess of the required minimum periodic payment among the other balances on the account consistent with paragraph (a) of this section. If any amount remains after such allocation, you must allocate that amount among the promotional rate balances or the deferred interest balances consistent with paragraph (a) of this section.

(ii) *Exception for deferred interest balances.* Notwithstanding paragraph (b)(1)(i) of this section, you may allocate the entire amount paid by the consumer in excess of the required minimum periodic payment to a balance on which interest is deferred during the two billing cycles immediately preceding expiration of the period during which interest is deferred.

(2) *Rule regarding grace period.* You must not require a consumer to repay any portion of a promotional rate balance or deferred interest balance on a consumer credit card account in order to receive any time period you offer in which to repay other credit extended without incurring finance charges, provided that the consumer is otherwise eligible for such a time period.

§ 535.24 Unfair annual percentage rate increases on outstanding balances.

(a) *Prohibition against increasing annual percentage rates on outstanding balances.* (1) *General rule.* Except as provided in paragraph (b) of this section, you must not increase the annual percentage rate applicable to any outstanding balance on a consumer credit card account.

(2) *Outstanding balance defined.* For purposes of this section, *outstanding balance* means the amount owed on a consumer credit card account at the end of the fourteenth day after you provide a notice required by §§ 226.9(c) or 226.9(g) of this title.

(b) *Exceptions.* Paragraph (a) of this section does not apply where the annual percentage rate is increased due to:

(1) The operation of an index that is not under your control and is available to the general public;

(2) The expiration or loss of a promotional rate provided that, if a promotional rate is lost, you do not increase the annual percentage rate to a rate that is greater than the annual percentage rate that would have applied after expiration of the promotional rate; or

(3) You not receiving the consumer's required minimum payment within 30 days after the due date for that payment.

(c) *Treatment of outstanding balances following rate increase.* (1) *Payment of outstanding balances.* When you increase the annual percentage rate applicable to a category of transaction on a consumer credit card account and this section prohibits you from applying the increased rate to outstanding balances in that category, you must provide the consumer with a method of paying that outstanding balance that is no less beneficial to the consumer than one of the following methods:

(i) An amortization period for the outstanding balance of no less than five years, starting from the date on which the increased annual percentage rate went into effect; or

(ii) A required minimum periodic payment on the outstanding balance that includes a percentage of that balance that is no more than twice the percentage included before the date on which the increased annual percentage rate went into effect.

(2) *Fees and charges on outstanding balance.* When you increase the annual percentage rate applicable to a category of transactions on a consumer credit card account and this section prohibits you from applying the increased rate to outstanding balances in that category, you must not assess any fee or charge based solely on the outstanding balance.

§ 535.25 Unfair fees for exceeding the credit limit due to credit holds.

You must not assess a fee or charge for exceeding the credit limit on a consumer credit card account if the credit limit would not have been exceeded but for a hold placed on any portion of the available credit on the account that is in excess of the actual purchase or transaction amount.

§ 535.26 Unfair balance computation method.

(a) *General rule.* Except as provided in paragraph (b) of this section, you must not impose finance charges on balances on a consumer credit card account based on balances for days in billing cycles that precede the most recent billing cycle.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) The assessment of deferred interest; or

(2) Adjustments to finance charges following the resolution of a billing error dispute under §§ 226.12(b) or 226.13 of this title.

§ 535.27 Unfair charging to the account of security deposits and fees for the issuance or availability of credit.

(a) *Annual rule.* During the period beginning with the date on which a consumer credit card account is opened and ending twelve months from that date, you must not charge to the account security deposits or fees for the issuance or availability of credit if the total amount of such security deposits and fees constitutes a majority of the initial credit limit for the account.

(b) *Monthly rule.* If the total amount of security deposits and fees for the issuance or availability of credit charged to a consumer credit card account during the period beginning with the date on which a consumer credit card account is opened and ending twelve months from that date constitutes more than 25 percent of the initial credit limit for the account:

(1) During the first billing cycle after the account is opened, you must not charge to the account security deposits and fees for the issuance or availability of credit that total more than 25 percent of the initial credit limit for the account; and

(2) In each of the eleven billing cycles following the first billing cycle, you must not charge to the account more than one eleventh of the total amount of any security deposits and fees for the issuance or availability of credit in excess of 25 percent of the initial credit limit for the account.

(c) *Fees for the issuance or availability of credit.* For purposes of paragraphs (a) and (b) of this section, fees for the issuance or availability of credit include:

(1) Any annual or other periodic fee that may be imposed for the issuance or availability of a consumer credit card account, including any fee based on account activity or inactivity; and

(2) Any non-periodic fee that relates to opening an account.

§ 535.28 Deceptive firm offers of credit.

(a) *Disclosure of criteria bearing on creditworthiness.* If you offer a range or multiple annual percentage rates or credit limits when you make a solicitation for a firm offer of credit for a consumer credit card account, and the annual percentage rate or credit limit that consumers approved for credit will receive depends on specific criteria bearing on creditworthiness, you must disclose the types of criteria in the solicitation. You must provide the disclosure in a manner that is reasonably understandable to consumers and designed to call attention to the nature and significance of the eligibility criteria for the lowest annual percentage rate or highest credit limit stated in the solicitation. If presented in a manner that calls attention to the nature and significance of the information, the following disclosure may be used to satisfy the requirements of this section (as applicable): ''If you are approved for credit, your annual percentage rate and/or credit limit will depend on your credit history, income, and debts.''

(b) *Firm offer of credit defined.* For purposes of this section, *firm offer of credit* has the same meaning as that term has under the definition of *firm offer of credit or insurance* in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)).

Subpart D—Overdraft Service Practices

§ 535.31 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Account* means a deposit account at a savings association that is held by or offered to a consumer. The term *account* has the same meaning as in § 230.2(a) of this title.

(b) *Consumer* means a person who holds an account primarily for personal, family, or household purposes.

(c) *Overdraft service* means a service under which a savings association charges a fee for paying a transaction (including a check or other item) that overdraws an account. The term *overdraft service* does not include any payment of overdrafts pursuant to:

(1) A line of credit subject to part 226 of this title, including transfers from a credit card account, home equity line of credit, or overdraft line of credit; or

(2) A service that transfers funds from another account of the consumer.

§ 535.32 Unfair overdraft service practices.

(a) *Opt-out requirement.* (1) *General rule.* You must not assess a fee or charge on a consumer's account in connection with an overdraft service, unless you provide the consumer with the right to opt out of your payment of overdrafts and a reasonable opportunity to exercise that opt out and the consumer has not opted out. The consumer must be given notice and an opportunity to opt out before you assess any fee or charge for an overdraft, and subsequently at least once during or for any periodic statement cycle in which any fee or charge for paying an overdraft is assessed. The notice requirements in paragraphs (a)(1) and (a)(2) of this section do not apply if the consumer has opted out, unless the consumer subsequently revokes the opt-out.

(2) *Partial opt-out.* You must provide a consumer the option of opting out only for the payment of overdrafts at automated teller machines and for point-of-sale transactions initiated by a debit card, in addition to the choice of opting out of the payment of overdrafts for all transactions.

(3) *Exceptions.* Notwithstanding a consumer's election to opt out under paragraphs (a)(1) or (a)(2) of this section, you may assess a fee or charge on a consumer's account for paying a debit card transaction that overdraws an account if:

(i) There were sufficient funds in the consumer's account at the time the authorization request was received, but the actual purchase amount for that transaction exceeds the amount that had been authorized; or

(ii) The transaction is presented for payment by paper-based means, rather than electronically through a card terminal, and you have not previously authorized the transaction.

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

(5) *Continuing right to opt-out.* A consumer may opt out of your future payment of overdrafts at any time.

(6) *Duration of opt-out.* A consumer's opt-out is effective unless the consumer subsequently revokes it.

(b) *Debit holds.* You must not assess a fee or charge on a consumer's account for an overdraft service if the consumer's overdraft would not have occurred but for a hold placed on funds in the consumer's account that is in excess of the actual purchase or transaction amount.

Appendix to Part 535—Official Staff Commentary

Subpart A—General Provisions

Section 535.1—Authority, Purpose, and Scope

1(c) Scope

1. *Penalties for noncompliance.* Administrative enforcement of the rule for savings associations may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease-and-desist orders requiring that action be taken to remedy violations and civil money penalties.

Subpart C—Consumer Credit Card Account Practices

Section 535.21—Definitions

(d) Promotional Rate

Paragraph (d)(1)

1. *Rate in effect at the end of the promotional period.* If the annual percentage rate that will be in effect at the end of the specified period of time is a variable rate, the rate in effect at the end of that period for purposes of § 535.21(d)(1) is the rate that would otherwise apply if the promotional rate were not offered, consistent with any applicable accuracy requirements under part 226 of this title.

Paragraph (d)(2)

1. *Example.* A savings association generally offers a 15% annual percentage rate for purchases on a consumer credit card account. For purchases made during a particular month, however, the creditor offers a rate of 5% that will apply until the consumer pays those purchases in full. Under § 535.21(d)(2), the 5% rate is a ''promotional rate'' because it is lower than the 15% rate that applies to other purchases.

Section 535.22—Unfair Time To Make Payment

(a) General Rule

1. *Treating a payment as late for any purpose.* Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within the amount of time provided to make that payment under this section.

2. *Reasonable amount of time to make payment.* Whether an amount of time is reasonable for purposes of making a payment is determined from the perspective of the consumer, not the savings association. Under § 535.22(b), a savings association provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

(b) Safe Harbor

1. *Reasonable procedures.* A savings association is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. A savings association provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than, for example, three days after the closing date of the billing cycle and the payment due date on the periodic statement is no less than 24 days after the closing date of the billing cycle.

2. *Payment due date.* For purposes of § 535.22(b), ''payment due date'' means the date by which the savings association requires the consumer to make payment to avoid being treated as late for any purpose, except as provided in § 535.22(c).

Section 535.23—Unfair Payment Allocations

1. *Minimum periodic payment.* This section addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the savings association. This section does not limit or otherwise address the savings association's ability to determine the amount of the minimum periodic payment or how that payment is allocated.

2. *Adjustments of one dollar or less permitted.* When allocating payments, the savings association may adjust amounts by one dollar or less. For example, if a savings association is allocating $100 equally among three balances, the savings association may apply $34 to one balance and $33 to the others. Similarly, if a savings association is splitting $100.50 between two balances, the savings association may apply $50 to one balance and $50.50 to another.

(a) General Rule for Accounts With Different Annual Percentage Rates on Different Balances

1. *No less beneficial to the consumer.* A savings association may allocate payments using a method that is different from the methods listed in § 535.23(a) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer than a listed method if it results in the assessment of the same or a lesser amount of interest charges than would be assessed under any of the listed methods. For example, a savings association may not allocate the entire amount paid by the consumer in excess of the required minimum periodic payment to the balance with the lowest annual percentage rate because this method would result in a higher assessment of interest charges than any of the methods listed in § 535.23(a).

2. *Example of payment allocation method that is no less beneficial to consumers than a method listed in § 535.23(a).* Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $555 in excess of the

required minimum periodic payment. A savings association could allocate one-third of this amount ($185) to the cash advance balance and two-thirds ($370) to the purchase balance even though this is not a method listed in § 535.23(a) because the savings association is applying more of the amount to the balance with the highest annual percentage rate (with the result that the consumer will be assessed less in interest charges) than would be the case under the pro rata allocation method in § 535.23(a)(3). *See* comment 23(a)(3)–1.

Paragraph (a)(1)

1. *Examples of allocating first to the balance with the highest annual percentage rate.*

(A) Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $800 in excess of the required minimum periodic payment. None of the minimum periodic payment is allocated to the cash advance balance. A savings association using this method would allocate $500 to pay off the cash advance balance and then allocate the remaining $300 to the purchase balance.

(B) Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $400 in excess of the required minimum periodic payment. A savings association using this method would allocate the entire $400 to the cash advance balance.

Paragraph (a)(2)

1. *Example of equal portion method.* Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $555 in excess of the required minimum periodic payment. A savings association using this method would allocate $278 to the cash advance balance and $277 to the purchase balance (or vice versa).

Paragraph (a)(3)

1. *Example of pro rata method.* Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $555 in excess of the required minimum periodic payment. A savings association using this method would allocate 25% of the amount ($139) to the cash advance balance and 75% of the amount ($416) to the purchase balance.

(b) Special Rules for Accounts With Promotional Rate Balances or Deferred Interest Balances

Paragraph (b)(1)(i)

1. *Examples of special rule regarding payment allocation for accounts with promotional rate balances or deferred interest balances.*

(A) A consumer credit card account has a cash advance balance of $500 at an annual percentage rate of 20%, a purchase balance of $1,500 at an annual percentage rate of 15%, and a transferred balance of $3,000 at a promotional rate of 5%. The consumer pays $800 in excess of the required minimum periodic payment. The savings association must allocate the $800 between the cash advance and purchase balances (consistent with § 535.23(a)) and apply nothing to the transferred balance.

(B) A consumer credit card account has a cash advance balance of $500 at an annual percentage rate of 20%, a balance of $1,500 on which interest is deferred, and a transferred balance of $3,000 at a promotional rate of 5%. The consumer pays $800 in excess of the required minimum periodic payment. None of the minimum periodic payment is allocated to the cash advance balance. The savings association must allocate $500 to pay off the cash advance balance before allocating the remaining $300 between the deferred interest balance and the transferred balance (consistent with § 535.23(a)).

Paragraph (b)(1)(ii)

1. *Examples of exception for deferred interest balances.* Assume that on January 1, a consumer uses a credit card to make a $1,000 purchase on which interest is deferred until June 30. If this amount is not paid in full by June 30, all interest accrued during the six-month period will be charged to the account. The billing cycle for this credit card begins on the first day of the month and ends on the last day of the month. Each month from January through June the consumer uses the credit card to make $200 in purchases on which interest is not deferred.

(A) The consumer pays $300 in excess of the minimum periodic payment each month from January through June. None of the minimum periodic payment is applied to the deferred interest balance or the purchase balance. For the January, February, March, and April billing cycles, the savings association must allocate $200 to the purchase balance and $100 to the deferred interest balance. For the May and June billing cycles, however, the savings association has the option of allocating the entire $300 to the deferred interest balance, which will result in that balance being paid in full before the deferred interest period expires on June 30. In this example, the interest that accrued between January 1 and June 30 will not be assessed to the consumer's account.

(B) The consumer pays $200 in excess of the minimum periodic payment each month from January through June. None of the minimum periodic payment is applied to the deferred interest balance or the purchase balance. For the January, February, March, and April billing cycles, the savings association must allocate the entire $200 to the purchase balance. For the May and June billing cycles, however, the savings association has the option to allocate the entire $200 to the deferred interest balance, which will result in that balance being reduced to $600 before the deferred interest period expires on June 30. In this example, the interest that accrued between January 1 and June 30 will be assessed to the consumer's account.

Paragraph (b)(2)

1. *Example of special rule regarding grace periods for accounts with promotional rate balances or deferred interest balances.* A savings association offers a promotional rate on balance transfers and a higher rate on purchases. The savings association also offers a grace period under which consumers who pay their balances in full by the due date are not charged interest on purchases. A consumer who has paid the balance for the prior billing cycle in full by the due date transfers a balance of $2,000 and makes a purchase of $500. Because the savings association offers a grace period, it must provide a grace period on the $500 purchase if the consumer pays that amount in full by the due date, even though the $2,000 balance at the promotional rate remains outstanding.

Section 535.24—Unfair Annual Percentage Rate Increases on Outstanding Balances

(a) Prohibition Against Increasing Annual Percentage Rates on Outstanding Balances

1. *Example.* Assume that on December 30, a consumer credit card account has a balance of $1,000 at an annual percentage rate of 15%. On December 31, the savings association mails or delivers a notice required by § 226.9(c) of this title informing the consumer that the annual percentage rate will increase to 20% on February 15. The consumer uses the account to make $2,000 in purchases on January 10 and $1,000 in purchases on January 20. Assuming no other transactions, the outstanding balance for purposes of § 535.24 is the $3,000 balance as of the end of the day on January 14. Therefore, under § 535.24(a), the savings association cannot increase the annual percentage rate applicable to that balance. The savings association can apply the 20% rate to the $1,000 in purchases made on January 20 but, consistent with § 226.9(c) of this title, the savings association cannot do so until February 15.

2. *Reasonable procedures.* A savings association is not required to determine the specific date on which a notice required by §§ 226.9(c) or 226.9(g) of this title was provided. For purposes of § 535.24(a)(2), if the savings association has adopted reasonable procedures designed to ensure that notices required by §§ 226.9(c) or 229.9(g) of this title are provided to consumers no later than, for example, three days after the event giving rise to the notice, the outstanding balance is the balance at the end of the seventeenth day after such event.

(b) Exceptions

Paragraph (b)(1)

1. *External index.* A savings association may increase the annual percentage rate on an outstanding balance if the increase is based on an index outside the savings association's control. A savings association may not increase the rate on an outstanding balance based on its own prime rate or cost of funds and may not reserve a contractual right to change rates on outstanding balances at its discretion. In addition, a savings association may not increase the rate on an outstanding balance by changing the method used to determine that rate. A savings

association is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal,* even if the savings association's own prime rate is one of several rates used to establish the published rate.

2. *Publicly available.* The index must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the rate applied to the outstanding balance.

Paragraph (b)(2)

1. *Example.* Assume that a consumer credit card account has a balance of $1,000 at a 5% promotional rate and that the savings association also charges an annual percentage rate of 15% for purchases and a penalty rate of 25%. If the consumer does not make payment by the due date and the account agreement specifies that event as a trigger for applying the penalty rate, the savings association may increase the annual percentage rate on the $1,000 from the 5% promotional rate to the 15% annual percentage rate for purchases. The savings association may not, however, increase the rate on the $1,000 from the 5% promotional rate to the 25% penalty rate, except as otherwise permitted under § 535.24(b)(3).

Paragraph (b)(3)

1. *Example.* Assume that the annual percentage rate applicable to purchases on a consumer credit card account is increased from 15% to 20% and that the account has an outstanding balance of $1,000 at the 15% rate. The payment due date on the account is the twenty-fifth of the month. If the savings association has not received the required minimum periodic payment due on March 15 on or before April 14, the savings association may increase the rate applicable to the $1,000 balance once the savings association has complied with the notice requirements § 226.9(g) of this title.

(c) Treatment of Outstanding Balances Following Rate Increase

1. *Scope.* This provision does not apply if the consumer credit card account does not have an outstanding balance. This provision also does not apply if a rate is increased pursuant to any of the exceptions in § 535.24(b).

2. *Category of transactions.* This provision does not apply to balances in categories of transactions other than the category for which the savings association has increased the annual percentage rate. For example, if a savings association increases the annual percentage rate that applies to purchases but not the rate that applies to cash advances, §§ 535.24(c)(1) and 535.(c)(2) apply to an outstanding balance consisting of purchases but not an outstanding balance consisting of cash advances.

Paragraph (c)(1)

1. *No less beneficial to the consumer.* A savings association may provide a method of paying the outstanding balance that is different from the methods listed in § 535.24(c)(1) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method amortizes the outstanding balance in five years or longer *or* if the method results in a required minimum periodic payment on the outstanding balance that is equal to or less than a minimum payment calculated consistent with § 535.24(c)(1)(ii). For example, a savings association could more than double the percentage of amounts owed included in the minimum payment so long as the minimum payment does not result in amortization of the outstanding balance in less than five years. Alternatively, a savings association could require a consumer to make a minimum payment on the outstanding balance that amortizes that balance in less than five years so long as the payment does not include a percentage of the outstanding balance that is more than twice the percentage included in the minimum payment before the effective date of the increased rate.

Paragraph (c)(1)(ii)

1. *Required minimum periodic payment on other balances.* This paragraph addresses the required minimum periodic payment on the outstanding balance. This paragraph does not limit or otherwise address the savings association's ability to determine the amount of the minimum periodic payment for other balances.

2. *Example.* Assume that the method used by a savings association to calculate the required minimum periodic payment for a consumer credit card account requires the consumer to pay either the total of fees and interest charges plus 1% of the total amount owed or $20, whichever is greater. Assume also that the savings association increases the annual percentage rate applicable to purchases on a consumer credit card account from 15% to 20% and that the account has an outstanding balance of $1,000 at the 15% rate. Section 535.24(c)(1)(ii) would permit the savings association to calculate the required minimum periodic payment on the outstanding balance by adding fees and interest charges to 2% of the outstanding balance.

Paragraph (c)(2)

1. *Fee or charge based solely on the outstanding balance.* You are prohibited from assessing a fee or charge based solely on an outstanding balance. For example, a savings association is prohibited from assessing a maintenance or similar fee based on an outstanding balance. A savings association is not, however, prohibited from assessing fees such as late payment fees or fees for exceeding the credit limit even if such fees are based in part on an outstanding balance.

Section 535.25—Unfair Fees for Exceeding the Credit Limit Due to Credit Holds

1. *General.* Under § 535.25, a savings association may not assess a fee for exceeding the credit limit if the credit limit would not have been exceeded but for a hold placed on the available credit for a consumer credit card account for a transaction that has been authorized but has not yet been presented for settlement, if the amount of the hold is in excess of the actual purchase or transaction amount when the transaction is settled. Section 535.25 does not limit a savings association from charging a fee for exceeding the credit limit in connection with a particular transaction if the consumer would have exceeded the credit limit due to other reasons, such as other transactions that may have been authorized but not yet presented for settlement, a payment that is returned, or if the purchase or transaction amount for the transaction for which the hold was placed would have also caused the consumer to exceed the credit limit.

2. *Example of prohibition in connection with hold placed for same transaction.* Assume that a consumer credit card account has a credit limit of $2,000 and a balance of $1,500. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the savings association for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Assuming that there is no other activity on the account, the savings association is prohibited from assessing a fee for exceeding the credit limit with respect to the $750 hold. If, however, the total cost of the stay charged to the account had been more than $500, the savings association would not be prohibited from assessing a fee for exceeding the credit limit.

3. *Example of prohibition in connection with hold placed for another transaction.* Assume that a consumer credit card account has a credit limit of $2,000 and a balance of $1,400. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the savings association for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. While the hold remains in place, the consumer uses the credit card to make a $150 purchase. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Assuming that there is no other activity on the account, the savings association is prohibited from assessing a fee for exceeding the credit limit with respect to either the $750 hold or the $150 purchase. If, however, the total cost of the stay charged to the account had been more than $450, the savings association would not be prohibited from assessing a fee for exceeding the credit limit.

4. *Example of prohibition when authorization and settlement amounts are held for the same transaction.* Assume that a consumer credit card account has a credit limit of $2,000 and a balance of $1,400. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the savings association for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. When the hotel presents the

$450 transaction for settlement, it uses a different transaction code to identify the transaction than it had used for the pre-authorization, causing both the $750 hold and the $450 purchase amount to be temporarily posted to the consumer's account at the same time, and the consumer's balance to exceed the credit limit. Under these circumstances, and assuming no other transactions, the savings association is prohibited from assessing a fee for exceeding the credit limit because the credit limit was exceeded solely due to the $750 hold.

5. *Example of permissible fee for exceeding the credit limit in connection with a hold.* Assume that a consumer has a credit limit of $2,000 and a balance of $1,400 on a consumer credit card account. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the savings association for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. While the hold remains in place, the consumer uses the credit card to make a $650 purchase. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Notwithstanding the existence of the hold and assuming that there is no other activity on the account, the savings association may charge the consumer a fee for exceeding the credit limit with respect to the $650 purchase because the consumer would have exceeded the credit limit even if the hold had been for the actual amount of the hotel transaction.

Section 535.26—Unfair Balance Computation Method

(a) General Rule

1. *Two-cycle method prohibited.* A savings association is prohibited from computing the finance charge using the so-called two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance (including or excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

2. *Example.* Assume that the billing cycle on a consumer credit card account starts on the first day of the month and ends on the last day of the month. A consumer has a zero balance on March 1. The consumer uses the credit card to make a $500 purchase on March 15. The consumer makes no other purchases and pays $400 on the due date (April 25), leaving a $100 balance. The savings association may charge interest on the $500 purchase from the start of the billing cycle (April 1) through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 30). The savings association is prohibited, however, from reaching back and charging interest on the $500 purchase from the date of purchase (March 15) to the end of the March billing cycle (March 31).

Section 535.27—Unfair Charging to the Account of Security Deposits and Fees for the Issuance or Availability of Credit

1. *Initial credit limit for the account.* For purposes of this section, the initial credit limit is the limit in effect when the account is opened.

(a) Annual Rule

1. *Majority of the credit limit.* The total amount of security deposits and fees for the issuance or availability of credit constitutes a majority of the initial credit limit if that total is greater than half of the limit. For example, assume that a consumer credit card account has an initial credit limit of $500. Under § 535.27(a), a savings association may charge to the account security deposits and fees for the issuance or availability of credit totaling no more than $250 during the twelve months after the date on which the account is opened (consistent with § 535.27(b)).

(b) Monthly Rule

1. *Adjustments of one dollar or less permitted.* When dividing amounts pursuant to § 535.27(b)(2), the savings association may adjust amounts by one dollar or less. For example, if a savings association is dividing $125 over eleven billing cycles, the savings association may charge $12 for four months and $11 for the remaining seven months.

2. *Example.* Assume that a consumer credit card account opened on January 1 has an initial credit limit of $500 and that a savings association charges to the account security deposits and fees for the issuance or availability of credit that total $250 during the twelve months after the date on which the account is opened. Assume also that the billing cycles for this account begin on the first day of the month and end on the last day of the month. Under § 535.27(b), the savings association may charge to the account no more than $250 in security deposits and fees for the issuance or availability of credit. If it charges $250, the savings association may charge as much as $125 during the first billing cycle. If it charges $125 during the first billing cycle, it may then charge $12 in any four billing cycles and $11 in any seven billing cycles during the year.

(c) Fees for the Issuance or Availability of Credit

1. *Membership fees.* Membership fees for opening an account are fees for the issuance or availability of credit. A membership fee to join an organization that provides a credit or charge card as a privilege of membership is a fee for the issuance or availability of credit only if the card is issued automatically upon membership. If membership results merely in eligibility to apply for an account, then such a fee is not a fee for the issuance or availability of credit.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) are not fees for the issuance or availability of credit if the basic account may be opened without paying such fees.

3. *One-time fees.* Only non-periodic fees related to opening an account (such as one-time membership or participation fees) are fees for the issuance or availability of credit. Fees for reissuing a lost or stolen card and statement reproduction fees are examples of fees that are not fees for the issuance or availability of credit.

Section 535.28—Deceptive Firm Offers of Credit

(a) Disclosure of Criteria Bearing on Creditworthiness

1. *Designed to call attention.* Whether a disclosure has been provided in a manner that is designed to call attention to the nature and significance of required information depends on where the disclosure is placed in the solicitation and how it is presented, including whether the disclosure uses a typeface and type size that are easy to read and uses boldface or italics. Placing the disclosure in a footnote would not satisfy this requirement.

2. *Form of electronic disclosures.* Electronic disclosures must be provided consistent with §§ 226.5a(a)(2)–8 and 226.5a(a)(2)–9 of this title.

3. *Multiple annual percentage rates or credit limits.* For purposes of this section, a firm offer of credit solicitation that states an annual percentage rate or credit limit for a credit card feature and a different annual percentage rate or credit limit for a different credit card feature does not offer multiple annual percentage rates or credit limits. For example, if a firm offer of credit solicitation offers a 15% annual percentage rate for purchases and a 20% annual percentage rate for cash advances, the solicitation does not offer multiple annual percentage rates for purposes of this section.

4. *Example.* Assume that a savings association requests from a consumer reporting agency a list of consumers with credit scores of 650 or higher, so that the savings association can send those consumers a firm offer of credit solicitation. The savings association sends a solicitation to those consumers for a consumer credit card account advertising ''rates from 8.99% to 19.99%'' and ''credit limits from $1,000 to $10,000.'' Before selection of the consumers for the offer, however, the savings association determines that it will provide an interest rate of 8.99% and a credit limit of $10,000 only to those consumers responding to the solicitation who are verified to have a credit score of 650 or higher, who have a debt-to-income ratio below a certain amount, and who meet other specific criteria bearing on creditworthiness. Under § 535.28, this solicitation is deceptive unless the savings association discloses, in a manner that is reasonably understandable to the consumer and designed to call attention to the nature and significance of the information, that, if the consumer is approved for credit, the annual percentage rate and credit limit the consumer will receive will depend on specific criteria bearing on the consumer's creditworthiness. The savings association may satisfy this requirement by using a typeface and type size that are easy to read and stating in boldface in a manner that otherwise calls attention to the nature and

significance of the information: **"If you are approved for credit, your annual percentage rate and/or credit limit will depend on your credit history, income, and debts."**

5. *Applicability of criteria in disclosure.* When making a disclosure under this section, a savings association may only disclose the criteria it uses in evaluating whether consumers who are approved for credit will receive the lowest annual percentage rate or the highest credit limit. For example, if a savings association does not consider the consumer's debts when determining whether the consumer should receive the lowest annual percentage rate or highest credit limit, the disclosure must not refer to ''debts.''

Subpart D—Overdraft Service Practices

Section 535.32—Unfair Overdraft Service Practices

(a) Opt-Out Requirement

(a)(1) General Rule

1. *Form, content and timing of disclosure.* The form, content and timing of the opt-out notice required to be provided under paragraph (a) of this section are addressed under § 230.10 of this title.

(a)(3) Exceptions

Paragraph (a)(3)(i)

1. *Example of transaction amount exceeding authorization amount (fuel purchase).* A consumer has $30 in a deposit account. The consumer uses a debit card to purchase fuel. Before permitting the consumer to use the fuel pump, the merchant verifies the validity of the card by obtaining authorization from the savings association for a $1 transaction. The consumer purchases $50 of fuel. If the savings association pays the transaction, it would be permitted to assess a fee or charge for paying the overdraft, even if the consumer has opted out of the payment of overdrafts.

2. *Example of transaction amount exceeding authorization amount (restaurant).* A consumer has $50 in a deposit account. The consumer pays for a $45 meal at a restaurant using a debit card. While the restaurant may obtain authorization for the $45 cost of the meal, the consumer may add $10 for a tip. If the savings association pays the $55 transaction (including the tip amount), it would be permitted to assess a fee or charge for paying the overdraft, even if the consumer has opted out of the payment of overdrafts.

Paragraph (a)(3)(ii)

1. *Example of transaction presented by paper-based means.* A consumer has $50 in a deposit account. The consumer makes a $60 purchase and presents his or her debit card for payment. The merchant takes an imprint of the card. Later that day, the merchant submits a sales slip with the card imprint to its processor for payment. If the consumer's savings association pays the transaction, it would be permitted to assess a fee or charge for paying the overdraft, even if the consumer has opted out of the payment of overdrafts.

(b) Debit Holds

1. *General.* Under § 535.32(b), a savings association may not assess an overdraft fee if the overdraft would not have occurred but for a hold placed on funds in the consumer's account for a transaction that has been authorized but has not yet been presented for settlement, if the amount of the hold is in excess of the actual purchase or transaction amount when the transaction is settled. Section 535.32(b) does not limit a savings association from charging an overdraft fee in connection with a particular transaction if the consumer would have incurred an overdraft due to other reasons, such as other transactions that may have been authorized but not yet presented for settlement, a deposited check that is returned, or if the purchase or transaction amount for the transaction for which the hold was placed would have also caused the consumer to overdraw his or her account.

2. *Example of prohibition in connection with hold placed for same transaction.* A consumer has $50 in a deposit account. The consumer makes a fuel purchase using his or her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's savings association for a $75 ''hold'' on the account which exceeds the consumer's funds. The consumer purchases $20 of fuel. Under these circumstances, § 535.32(b) prohibits the savings association from assessing a fee or charge in connection with the debit hold because the actual amount of the fuel purchase did not exceed the funds in the consumer's account. However, if the consumer had purchased $60 of fuel, the savings association could assess a fee or charge for an overdraft because the transaction exceeds the funds in the consumer's account, unless the consumer has opted out of the payment of overdrafts under § 535.32(a).

3. *Example of prohibition in connection with hold placed for another transaction.* A consumer has $100 in a deposit account. The consumer makes a fuel purchase using his or her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's savings association for a $75 ''hold'' on the account. The consumer purchases $20 of fuel, but the transaction is not presented for settlement until the next day. Later on the first day, and assuming no other transactions, the consumer withdraws $75 at an ATM. Under these circumstances, § 535.32(b) prohibits the savings association from assessing a fee or charge for paying an overdraft with respect to the $75 withdrawal because the overdraft was caused solely by the $75 hold.

4. *Example of prohibition when authorization and settlement amounts are held for the same transaction.* A consumer has $100 in his deposit account, and uses his debit card to purchase $50 worth of fuel. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's savings association for a $75 ''hold'' on the account. The consumer purchases $50 of fuel. When the merchant presents the $50 transaction for settlement, it uses a different transaction code to identify the transaction than it had used for the pre-authorization, causing both the $75 hold and the $50 purchase amount to be temporarily posted to the consumer's account at the same time, and the consumer's account to be overdrawn. Under these circumstances, and assuming no other transactions, § 535.32(b) prohibits the savings association from assessing a fee or charge for paying an overdraft because the overdraft was caused solely by the $75 hold.

5. *Example of permissible overdraft fees in connection with a hold.* A consumer has $100 in a deposit account. The consumer makes a fuel purchase using his or her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's savings association for a $75 ''hold'' on the account. The consumer purchases $35 of fuel, but the transaction is not presented for settlement until the next day. Later on the first day, and assuming no other transactions, the consumer withdraws $75 at an ATM. Notwithstanding the existence of the hold, and assuming the consumer has not opted out of the payment of overdrafts under § 535.32(a), the consumer's savings association may charge the consumer an overdraft fee for the $75 ATM withdrawal, because the consumer would have incurred the overdraft even if the hold had been for the actual amount of the fuel purchase.

National Credit Union Administration

12 CFR Part 706

For the reasons discussed in the joint preamble, the National Credit Union Administration proposes to revise part 706 of title 12 of the Code of Federal Regulations to read as follows:

PART 706—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Subpart A—General Provisions

Sec.

706.1 Authority, purpose, and scope.
706.2–706.10 [Reserved]

Subpart B—Consumer Credit Practices

706.11 Definitions.
706.12 Unfair credit contract provisions.
706.13 Unfair or deceptive cosigner practices.
706.14 Unfair late charges.
706.15 State exemptions.
706.16–703.20 [Reserved]

Subpart C—Consumer Credit Card Account Practices

706.21 Definitions.
706.22 Unfair time to make payments.
706.23 Unfair allocation of payments.
706.24 Unfair application of increased annual percentage rates to outstanding balances.
706.25 Unfair fees for exceeding the credit limit caused by credit holds.
706.26 Unfair balance computation method.
706.27 Unfair financing of security deposits and fees for the issuance or availability of credit.
706.28 Deceptive firm offers of credit.
706.29–706.30 [Reserved]

Subpart D—Overdraft Service Practices

706.31 Definitions.
706.32 Unfair practices involving overdraft services.
Appendix to Part 706—Official Staff Interpretations

Authority: 15 U.S.C. 57a(f).

Subpart A—General Provisions

§ 706.1 Authority, purpose and scope.

(a) *Authority.* This part is issued by NCUA under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f).

(b) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). This part defines and contains requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices of federal credit unions. The prohibitions in this part do not limit NCUA's authority to enforce the FTC Act with respect to any other unfair or deceptive acts or practices.

(c) *Scope.* This part applies to federal credit unions.

§§ 706.2–706.10 [Reserved]

Subpart B—Consumer Credit Practices

§ 706.11 Definitions.

For purposes of this subpart, the following definitions apply:

Antique means any item over one hundred years of age, including items that have been repaired or renovated without changing their original form or character.

Consumer means a natural person member who seeks or acquires goods, services, or money for personal, family, or household purposes, other than for the purchase of real property.

Cosigner means a natural person who renders himself or herself liable for the obligation of another person without receiving goods, services, or money in return for the credit obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the obligation. The term includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

Debt means money that is due or alleged to be due from one person to another.

Earnings mean compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

Household goods mean clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects, including wedding rings of the consumer and his or her dependents, provided that the following are not included within the scope of the term ''household goods'':

(1) Works of art;

(2) Electronic entertainment equipment, except one television and one radio;

(3) Items acquired as antiques; and

(4) Jewelry, except wedding rings.

Obligation means an agreement between a consumer and a federal credit union.

Person means an individual, corporation, or other business organization.

§ 706.12 Unfair credit contract provisions.

In connection with the extension of credit to consumers, it is an unfair act or practice for a federal credit union, directly or indirectly, to take or receive from a consumer an obligation that:

(a) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process.

(b) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) Constitutes or contains an assignment of wages or other earnings unless:

(1) The assignment by its terms is revocable at the will of the debtor, or

(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

§ 706.13 Unfair or deceptive cosigner practices.

(a) *Prohibited practices.* In connection with the extension of credit to consumers, it is:

(1) A deceptive act or practice for a federal credit union, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice for a federal credit union, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated, which in the case of open-end credit means prior to the time that the agreement creating the cosigner's liability for future charges is executed, of the nature of his or her liability as cosigner.

(b) *Disclosure requirement.* (1) To comply with the cosigner information requirement of paragraph (a)(2), a clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to becoming obligated. The disclosure statement must contain only the following statement, or one which is substantially similar, and shall either be a separate document or included in the documents evidencing the consumer credit obligation.

Notice to Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

(2) If the notice to cosigner is a separate document, nothing other than the following items may appear with the notice. Paragraphs (b)(2)(i) through (v) of this section may not be part of the narrative portion of the notice to cosigner.

(i) The name and address of the federal credit union;

(ii) An identification of the debt to be cosigned, *e.g.*, a loan identification number;

(iii) The amount of the loan;

(iv) The date of the loan;

(v) A signature line for a cosigner to acknowledge receipt of the notice; and

(vi) To the extent permitted by state law, a cosigner notice required by state law may be included in the paragraph (b)(1) notice.

(3) To the extent the notice to cosigner specified in paragraph (b)(1) refers to an action against a cosigner that is not permitted by state law, the notice to cosigner may be modified.

§ 706.14 Unfair late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a federal credit union, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, ''collecting a debt'' means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

§ 706.15 State exemptions.

(a) If, upon application to the NCUA by an appropriate state agency, the NCUA determines that:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule; then that provision of this rule will not be in effect in the state to the extent specified by the NCUA in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively.

(b) States that received an exemption from the Federal Trade Commission's Credit Practices Rule prior to September 17, 1987, are not required to reapply to NCUA for an exemption under paragraph (a) of this section provided that the state forwards a copy of its exemption determination to the appropriate Regional Office. NCUA will honor the exemption for as long as the state administers and enforces the state requirement or prohibition effectively. Any state seeking a greater exemption than that granted to it by the Federal Trade Commission must apply to NCUA for the exemption.

§§ 706.16–706.20 [Reserved]

Subpart C—Consumer Credit Card Account Practices

§ 706.21 Definitions.

For purposes of this subpart, the following definitions apply:

Annual percentage rate means the product of multiplying each periodic rate for a balance or transaction on a consumer credit card account by the number of periods in a year. The term ''periodic rate'' has the same meaning as in 12 CFR 226.2.

Consumer means a natural person member to whom credit is extended under a consumer credit card account or a natural person who is a co-obligor or guarantor of a consumer credit card account.

Consumer credit card account means an account provided to a consumer primarily for personal, family, or household purposes under an open-end credit plan that is accessed by a credit card or charge card. The terms ''open-end credit,'' ''credit card,'' and ''charge card'' have the same meanings as in 12 CFR 226.2. The following are not consumer credit card accounts for purposes of this subpart:

(1) Home equity plans subject to the requirements of 12 CFR 226.5b that are accessible by a credit or charge card;

(2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; and

(4) Lines of credit accessed solely by account numbers.

Promotional rate means:

(1) Any annual percentage rate applicable to one or more balances or transactions on a consumer credit card account for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period; or

(2) Any annual percentage rate applicable to one or more transactions on a consumer credit card account that is lower than the annual percentage rate that applies to other transactions of the same type.

§ 706.22 Unfair time to make payments.

(a) *General rule.* Except as provided in paragraph (c) of this section, a federal credit union must not treat a payment on a consumer credit card account as late for any purpose unless the consumer has been provided a reasonable amount of time to make the payment.

(b) *Safe harbor.* A federal credit union provides a reasonable amount of time to make a payment if it has adopted reasonable procedures to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days prior to the payment due date.

(c) *Exception for grace periods.* Paragraph (a) of this section does not apply to any time period provided by the federal credit union within which the consumer may repay any portion of the credit extended without incurring an additional finance charge.

§ 706.23 Unfair allocation of payments.

(a) *General rule for accounts with different annual percentage rates on different balances.* Except as provided in paragraph (b) of this section, when different annual percentage rates apply to different balances on a consumer credit card account, the federal credit union must allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances in a manner that is no less beneficial to the consumer than one of the following methods:

(1) The amount is allocated first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate;

(2) Equal portions of the amount are allocated to each balance; or

(3) The amount is allocated among the balances in the same proportion as each balance bears to the total outstanding balance.

(b) *Special rules for accounts with promotional rate balances or deferred interest balances.* (1) *Rule regarding payment allocation.* (i) In general, when a consumer credit card account has one or more balances at a promotional rate or balances on which interest is deferred, the federal credit union must allocate any amount paid by the consumer in excess of the required minimum periodic payment among the other balances on the account consistent with paragraph (a) of this section. If any amount remains after such allocation, the federal credit union must allocate that amount among the promotional rate balances or the deferred interest balances consistent with paragraph (a) of this section.

(ii) *Exception for deferred interest balances.* Notwithstanding paragraph (b)(1)(i) of this section, the federal credit union may allocate the entire amount paid by the consumer in excess of the

required minimum periodic payment to a balance on which interest is deferred during the two billing cycles immediately preceding expiration of the period during which interest is deferred.

(2) *Rule regarding grace periods.* A federal credit union must not require a consumer to repay any portion of a promotional rate balance or deferred interest balance on a consumer credit card account in order to receive any time period offered by the federal credit union in which to repay other credit extended without incurring finance charges, provided that the consumer is otherwise eligible for such a time period.

§ 706.24 Unfair application of increased annual percentage rates to outstanding balances.

(a) *Prohibition on increasing annual percentage rates on outstanding balances.*

(1) *General rule.* Except as provided in paragraph (b) of this section, a federal credit union must not increase the annual percentage rate applicable to any outstanding balance on a consumer credit card account.

(2) *Outstanding balance.* For purposes of this section, ''outstanding balance'' means the amount owed on a consumer credit card account at the end of the fourteenth day after the federal credit union provides a notice required by 12 CFR 226.9(c) or (g).

(b) *Exceptions.* Paragraph (a) of this section does not apply where the annual percentage rate is increased due to:

(1) The operation of an index or formula that is not under the federal credit union's control and is available to the general public;

(2) The expiration or loss of a promotional rate, provided that, if a promotional rate is lost, the federal credit union does not increase the annual percentage rate to a rate that is greater than the annual percentage rate that would have applied after expiration of the promotional rate; or

(3) The federal credit union not receiving the consumer's required minimum periodic payment within 30 days after the due date for that payment.

(c) *Treatment of outstanding balances following rate increase.* (1) *Payment of outstanding balances.* When a federal credit union increases the annual percentage rate applicable to a category of transactions on a consumer credit card account, and the federal credit union is prohibited by this section from applying the increased rate to outstanding balances in that category, the federal credit union must provide the consumer with a method of paying the outstanding balance that is no less beneficial to the consumer than one of the following methods:

(i) An amortization period for the outstanding balance of no less than five years, starting from the date on which the increased annual percentage rate went into effect; or

(ii) A required minimum periodic payment on the outstanding balance that includes a percentage of that balance that is no more than twice the percentage included before the date on which the increased annual percentage rate went into effect.

(2) *Fees and charges on outstanding balance.* When a federal credit union increases the annual percentage rate applicable to a category of transactions on a consumer credit card account, and the federal credit union is prohibited by this section from applying the increased rate to outstanding balances in that category, the federal credit union must not assess any fee or charge based solely on the outstanding balance.

§ 706.25 Unfair fees for exceeding the credit limit caused by credit holds.

A federal credit union must not assess a fee or charge for exceeding the credit limit on a consumer credit card account if the credit limit would not have been exceeded but for a hold on any portion of the available credit on the account that is in excess of the actual purchase or transaction amount.

§ 706.26 Unfair balance computation method.

(a) *General rule.* Except as provided in paragraph (b) of this section, a federal credit union must not impose finance charges on outstanding balances on a consumer credit card account based on balances for days in billing cycles that precede the most recent billing cycle.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) The assessment of deferred interest; or

(2) Adjustments to finance charges following the resolution of a billing error dispute under 12 CFR 226.12(b) or 12 CFR 226.13.

§ 706.27 Unfair financing of security deposits and fees for the issuance or availability of credit.

(a) *Annual rule.* During the period beginning with the date on which a consumer credit card account is opened and ending twelve months from that date, a federal credit union must not charge to the account security deposits or fees for the issuance or availability of credit if the total amount of such security deposits and fees constitutes a majority of the credit limit for the account.

(b) *Monthly rule.* If the total amount of security deposits and fees for the issuance or availability of credit charged to a consumer credit card account during the period beginning with the date on which a consumer credit card account is opened and ending twelve months from that date constitutes more than 25 percent of the initial credit limit for the account:

(1) During the first billing cycle after the account is opened, the federal credit union must not charge security deposits and fees for the issuance or availability of credit that total more than 25 percent of the initial credit limit for the account; and

(2) In each of the eleven billing cycles following the first billing cycle, the federal credit union must not charge to the account more than one eleventh of the total amount of any additional security deposits and fees for the issuance of availability of credit in excess of 25 percent of the initial credit limit for the account.

(c) *Fees for the issuance or availability of credit.* For purposes of paragraphs (a) and (b) of this section, fees for the issuance or availability of credit include:

(1) Any annual or other periodic fee that may be imposed for the issuance or availability of a consumer credit card account, including any fee based on account activity or inactivity; and

(2) Any non-periodic fee that relates to opening an account.

§ 706.28 Deceptive firm offers of credit.

(a) *Disclosure of criteria bearing on creditworthiness.* If a federal credit union offers a range or multiple annual percentage rates or credit limits when making a solicitation for a firm offer of credit for a consumer credit card account, and the annual percentage rate or credit limit that consumers approved for credit will receive depends on specific criteria bearing on creditworthiness, the federal credit union must disclose the types of criteria in the solicitation. The disclosure must be provided in a manner that is reasonably understandable to consumers and is designed to call attention to the nature and significance of the information regarding the eligibility criteria for the lowest annual percentage rate or highest credit limit stated in the solicitation. If presented in a manner that calls attention to the nature and significance of the information, the following disclosure may be used to satisfy the requirements of this section, as applicable: ''If you are approved for credit, your annual percentage rate and/or credit limit will

depend on your credit history, income, and debts.''

(b) *Firm offer of credit defined.* For purposes of this section, ''firm offer of credit'' has the same meaning as ''firm offer of credit or insurance'' in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)).

§§ 706.29–706.30 [Reserved]

Subpart D—Overdraft Services

§ 706.31 Definitions.

For purposes of this subpart, the following definitions apply:

Account means a share account at a federal credit union that is held by or offered to a consumer, and has the same meaning as in § 707.2(a) of this chapter.

Consumer means a member who holds an account primarily for personal, family, or household purposes.

Overdraft service means a service under which a federal credit union charges a fee for paying a transaction, including a check or other item, that overdraws an account. The term ''overdraft service'' does not include any payment of overdrafts pursuant to—

(1) A line of credit subject to the Federal Reserve Board's Regulation Z, 12 CFR part 226, including transfers from a credit card account, home equity line of credit, or overdraft line of credit; or

(2) A service that transfers funds from another account of the consumer.

§ 706.32 Unfair practices involving overdraft services.

(a) *Opt-out requirement.* (1) *General rule.* A federal credit union must not assess a fee or charge on a consumer's account in connection with an overdraft service, unless the federal credit union provides the consumer the right to opt out of the federal credit union's payment of overdrafts and a reasonable opportunity to exercise that opt-out, and the consumer has not opted out. The consumer must be given notice and an opportunity to opt out before the federal credit union's assessment of any fee or charge for an overdraft, and subsequently at least once during or for any periodic statement cycle in which any fee or charge for paying an overdraft is assessed. The notice requirements in this paragraph (a)(1) and (a)(2) do not apply if the consumer has opted out, unless the consumer subsequently revokes the opt-out.

(2) *Partial opt-out.* A federal credit union must provide a consumer the option of opting out only for the payment of overdrafts at automated teller machines and for point-of-sale transactions initiated by a debit card, in addition to the choice of opting out of the payment of overdrafts for all transaction.

(3) *Exceptions.* Notwithstanding a consumer's election to opt out under paragraphs (a)(1) or (a)(2) of this section, a federal credit union may assess a fee or charge on a consumer's account for paying a debit card transaction that overdraws an account if:

(i) There were sufficient funds in the consumer's account at the time the authorization request was received, but the actual purchase amount for that transaction exceeds the amount that had been authorized; or

(ii) The transaction is presented for payment by paper-based means, rather than electronically through a card terminal, and the federal credit union has not previously authorized the transaction.

(4) *Time to comply with opt-out.* A federal credit union must comply with a consumer's opt-out request as soon as reasonably practicable after the federal credit union receives it.

(5) *Continuing right to opt-out.* A consumer may opt out of the federal credit union's future payment of overdrafts at any time.

(6) *Duration of opt-out.* A consumer's opt-out is effective unless subsequently revoked by the consumer.

(b) *Debit holds.* A federal credit union shall not assess a fee or charge on a consumer's account for an overdraft service if the consumer's overdraft would not have occurred but for a hold placed on funds in the consumer's account that is in excess of the actual purchase or transaction amount.

Appendix to Part 706—Official Staff Interpretations

Subpart C—Consumer Credit Card Account Practices

Section 706.21—Definitions

(d) Promotional Rate

Paragraph (d)(1)

1. *Rate in effect at the end of the promotional period.* If the annual percentage rate that will be in effect at the end of the specified period of time is a variable rate, the rate in effect at the end of that period for purposes of § 706.21(d)(1) is the rate that would otherwise apply if the promotional rate was not offered, consistent with any applicable accuracy requirements under 12 CFR part 226.

Paragraph (d)(2)

1. *Example.* A federal credit union generally offers a 15% annual percentage rate for purchases on a consumer credit card account. For purchases made during a particular month, however, the creditor offers a rate of 5% that will apply until the consumer pays those purchases in full. Under § 706.21(d)(2), the 5% rate is a ''promotional rate'' because it is lower than the 15% rate that applies to other purchases.

Section 706.22—Unfair Time To Make Payment

(a) General Rule

1. *Treating a payment as late for any purpose.* Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within the amount of time provided under this section.

2. *Reasonable amount of time to make payment.* Whether an amount of time is reasonable for purposes of making a payment is determined from the perspective of the consumer, not the federal credit union. Under § 706.22(b), a federal credit union provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days prior to the payment due date.

(b) Safe Harbor

1. *Reasonable procedures.* A federal credit union is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. A federal credit union provides a reasonable amount of time to make a payment if the federal credit union has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than, for example, three days after the closing date of the billing cycle and the payment due date on the periodic statement is no less than 24 days after the closing date of the billing cycle.

2. *Payment due date.* For purposes of § 706.22(b), ''payment due date'' means the date by which the federal credit union requires the consumer to make payment to avoid being treated as late for any purpose, except as provided in § 706.22(c).

Section 706.23—Unfair Allocation of Payments

1. *Minimum periodic payment.* This section addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the federal credit union. This section does not limit or otherwise address the federal credit union's ability to determine the amount of the minimum periodic payment or how that payment is allocated.

2. *Adjustments of one dollar or less permitted.* When allocating payments, the federal credit union may adjust amounts by one dollar or less. For example, if a federal credit union is allocating $100 equally among three balances, the federal credit union may apply $34 to one balance and $33 to the others. Similarly, if a federal credit union is splitting $100.50 between two balances, the federal credit union may apply $50 to one balance and $50.50 to another.

(a) General Rule for Accounts With Different Annual Percentage Rates on Different Balances

1. *No less beneficial to the consumer.* A federal credit union may allocate payments using a method that is different from the methods listed in § 706.23(a) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer than a listed method if it results in the assessment of the same or a lesser amount of interest charges than would be assessed under any of the listed methods. For example, a federal credit union may not allocate the entire amount paid by the consumer in excess of the required minimum periodic payment to the balance with the lowest annual percentage rate because this method would result in a higher assessment of interest charges than any of the methods listed in § 706.23(a).

2. *Example of payment allocation method that is no less beneficial to consumers than a method listed in § 706.23(a).* Assume that a consumer's account has a cash advance balance of $500 at annual percentage rate of 15% and a purchase balance of $1,500 at an annual percentage rate of 10% and that the consumer pays $555 in excess of the required minimum periodic payment. A federal credit union could allocate one-third of this amount ($185) to the cash advance balance and two-thirds ($370) to the purchase balance even though this is not a method listed in § 706.23(a) because the federal credit union is applying more of the amount to the balance with the highest annual percentage rate, with the result that the consumer will be assessed less in interest charges, than would be the case under the pro rata allocation method in § 706.23(a)(3). *See* comment 23(a)(3)–1.

Paragraph (a)(1)

1. *Examples of allocating first to the balance with the highest annual percentage rate.*

(A) Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 15% and a purchase balance of $1,500 at an annual percentage rate of 10% and that the consumer pays $800 in excess of the required minimum periodic payment. None of the minimum periodic payment is allocated to the cash advance balance. A federal credit union using this method would allocate $500 to pay off the cash advance balance and then allocate the remaining $300 to the purchase balance.

(B) Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 15% and a purchase balance of $1,500 at an annual percentage rate of 10% and that the consumer pays $400 in excess of the required minimum periodic payment. A federal credit union using this method would allocate the entire $400 to the cash advance balance.

Paragraph (a)(2)

1. *Example of equal portion method.* Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 15% and a purchase balance of $1,500 at an annual percentage rate of 10% and that the consumer pays $555 in excess of the required minimum periodic payment. A federal credit union using this method would allocate $278 to the cash advance balance and $277 to the purchase balance, or vice versa.

Paragraph (a)(3)

1. *Example of pro rata method.* Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 15% and a purchase balance of $1,500 at an annual percentage rate of 10% and that the consumer pays $555 in excess of the required minimum periodic payment. A federal credit union using this method would allocate 25% of the amount ($139) to the cash advance balance and 75% of the amount ($416) to the purchase balance.

(b) Special Rules for Accounts With Promotional Rate Balances or Deferred Interest Balances

Paragraph (b)(1)(i)

1. *Examples of special rule regarding payment allocation for accounts with promotional rate balances or deferred interest balances.*

(A) A consumer credit card account has a cash advance balance of $500 at an annual percentage rate of 15%, a purchase balance of $1,500 at an annual percentage rate of 10%, and a transferred balance of $3,000 at a promotional rate of 5%. The consumer pays $800 in excess of the required minimum periodic payment. The federal credit union must allocate the $800 between the cash advance and purchase balances, consistent with § 706.23(a), and apply nothing to the transferred balance.

(B) A consumer credit card account has a cash advance balance of $500 at an annual percentage rate of 15%, a balance of $1,500 on which interest is deferred, and transferred balance of $3,000 at a promotional rate of 5%. The consumer pays $800 in excess of the required minimum periodic payment. None of the minimum periodic payment is allocated to the cash advance balance. The federal credit union must allocate $500 to pay off the cash advance balance before allocating the remaining $300 among the balance on which interest is deferred and the transferred balance, consistent with § 706.23(a).

Paragraph (b)(1)(ii)

1. *Examples of exception for deferred interest balances.* Assume that on January 1, a consumer uses a credit card to make a $1,000 purchase on which interest is deferred until June 30. If this amount is not paid in full by June 30, all interest accrued during the six-month period will be charged to the account. The billing cycle for this credit card begins on the first day of the month and ends on the last day of the month. Each month from January through June, the consumer uses the credit card to make $200 in purchases on which interest is not deferred.

(A) The consumer pays $300 in excess of the minimum periodic payment each month from January through June. None of the minimum periodic payment is applied to the deferred interest balance or the purchase balance. For the January, February, March, and April billing cycles, the federal credit union must allocate $200 to the purchase balance and $100 to the deferred interest balance. For the May and June billing cycles, however, the federal credit union has the option of allocating the entire $300 to the deferred interest balance, which will result in that balance being paid in full before the deferred interest period expires on June 30. In this example, the interest that accrued between January 1 and June 30 will not be assessed to the consumer's account.

(B) The consumer pays $200 in excess of the minimum periodic payment each month from January through June. None of the minimum periodic payment is applied to the deferred interest balance or the purchase balance. For the January, February, March, and April billing cycles, the federal credit union must allocate the entire $200 to the purchase balance. For the May and June billing cycles, however, the federal credit union has the option to allocate the entire $200 to the deferred interest balance, which will result in that balance being reduced to $600 before the deferred interest period expires on June 30. In this example, the interest that accrued between January 1 and June 30 will be assessed to the consumer's account.

Paragraph (b)(2)

1. *Example of special rule regarding grace periods for accounts with promotional rate balances or deferred interest balances.* A federal credit union offers a promotional rate on balance transfers and a higher rate on purchases. The federal credit union also offers a grace period under which consumers who pay their balances in full by the due date are not charged interest on purchases. A consumer who has paid the balance for the prior billing cycle in full by the due date transfers a balance of $2,000 and makes a purchase of $500. Because the federal credit union offers a grace period, the federal credit union must provide a grace period on the $500 purchase if the consumer pays that amount in full by the due date, even though the $2,000 balance at the promotional rate remains outstanding.

Section 706.24—Unfair Application of Increased Annual Percentage Rates to Outstanding Balances

(a) Prohibition Against Increasing Annual Percentage Rates on Outstanding Balances

1. *Example.* Assume that on December 30 a consumer credit card account has a balance of $1,000 at an annual percentage rate of 10%. On December 31, the federal credit union mails or delivers a notice required by 12 CFR 226.9(c) informing the consumer that the annual percentage rate will increase to 15% on February 15. The consumer uses the account to make $2,000 in purchases on January 10 and $1,000 in purchases on January 20. Assuming no other transactions, the outstanding balance for purposes of § 706.24 is the $3,000 balance as of the end of the day on January 14. Therefore, under § 706.24(a), the federal credit union cannot increase the annual percentage rate applicable to that balance. The federal credit union can apply the 15% rate to the $1,000 in purchases made on January 20 but, consistent with 12 CFR 226.9(c), the federal credit union cannot do so until February 15.

2. *Reasonable procedures.* A federal credit union is not required to determine the specific date on which a notice required by 12 CFR 226.9(c) or (g) was provided. For purposes of § 706.24(a)(2), if the federal credit union has adopted reasonable procedures designed to ensure that notices required by 12 CFR 226.9(c) or (g) are provided to consumers no later than, for example, three days after the event giving rise to the notice, the outstanding balance is the balance at the end of the seventeenth day after such event.

(b) Exceptions

Paragraph (b)(1)

1. *External index.* A federal credit union may increase the annual percentage rate on an outstanding balance if the increase is based on an index outside the federal credit union's control. A federal credit union may not increase the rate on an outstanding balance based on its own prime rate or cost of funds and may not reserve a contractual right to change rates on outstanding balances at its discretion. In addition, a federal credit union may not increase the rate on an outstanding balance by changing the method used to determine that rate. A federal credit union is permitted, however, to use a published prime rate, such as that in the Wall Street Journal, even if the federal credit union's own prime rate is one of several rates used to establish the published rate.

2. *Publicly available.* The index must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the rate applied to the outstanding balance.

Paragraph (b)(2)

1. *Example.* Assume that a consumer credit card account has a balance of $1,000 at a 5% promotional rate and that the federal credit union also charges an annual percentage rate of 15% for purchases and a penalty rate of 25%. If the consumer does not make payment by the due date and the account agreement specifies that event as a trigger for applying the penalty rate, the federal credit union may increase the annual percentage rate on the $1,000 from the 5% promotional rate to the 15% annual percentage rate for purchases. The federal credit union may not, however, increase the rate on the $1,000 from the 5% promotional rate to the 25% penalty rate, except as otherwise permitted under § 706.24(b)(3).

Paragraph (b)(3)

1. *Example.* Assume that the annual percentage rate applicable to purchases on a consumer credit card account is increased from 10% to 15% and that the account has an outstanding balance of $1,000 at the 10% rate. The payment due date on the account is the twenty-fifth of the month. If the federal credit union has not received the required minimum periodic payment due on March 15 on or before April 14, the federal credit union may increase the rate applicable to the $1,000 balance once the federal credit union has complied with the notice requirements in 12 CFR 226.9(g).

(c) Treatment of Outstanding Balances Following Rate Increase

1. *Scope.* This provision does not apply if the consumer credit card account does not have an outstanding balance. This provision also does not apply if a rate is increased pursuant to any of the exceptions in § 706.24(b).

2. *Category of transactions.* This provision does not apply to balances in categories of transactions other than the category for which the federal credit union has increased the annual percentage rate. For example, if a federal credit union increases the annual percentage rate that applies to purchases but not the rate that applies to cash advances, § 706.24(c)(1) and (2) apply to an outstanding balance consisting of purchases but not an outstanding balance consisting of cash advances.

Paragraph (c)(1)

1. *No less beneficial to the consumer.* A federal credit union may provide a method of paying the outstanding balance that is different from the methods listed in § 706.24(c)(1) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method amortizes the outstanding balance in five years or longer or if the method results in a required minimum periodic payment on the outstanding balance that is equal to or less than a minimum payment calculated consistent with § 706.24(c)(1)(ii). For example, a federal credit union could more than double the percentage of amounts owed included in the minimum payment so long as the minimum payment does not result in amortization of the outstanding balance in less than five years. Alternatively, a federal credit union could require a consumer to make a minimum payment on the outstanding balance that amortizes that balance in less than five years so long as the payment does not include a percentage of the outstanding balance that is more than twice the percentage included in the minimum payment before the effective date of the increased rate.

Paragraph (c)(1)(ii)

1. *Required minimum periodic payment on other balances.* This paragraph addresses the required minimum periodic payment on the outstanding balance. This paragraph does not limit or otherwise address the federal credit union's ability to determine the amount of the minimum periodic payment for other balances.

2. *Example.* Assume that the method used by a federal credit union to calculate the required minimum periodic payment for a consumer credit card account requires the consumer to pay either the total of fees and interest charges plus 1% of the total amount owed or $20, whichever is greater. Assume also that the federal credit union increases the annual percentage rate applicable to purchases on a consumer credit card account from 10% to 15% and that the account has an outstanding balance of $1,000 at the 10% rate. Section 706.24(c)(1)(ii) would permit the federal credit union to calculate the required minimum periodic payment on the outstanding balance by adding fees and interest charges to 2% of the outstanding balance.

Paragraph (c)(2)

1. *Fee or charge based solely on the outstanding balance.* A federal credit union is prohibited from assessing a fee or charge based solely on an outstanding balance. For example, a federal credit union is prohibited from assessing a maintenance or similar fee based on an outstanding balance. A federal credit union is not, however, prohibited from assessing fees such as late payment fees or fees for exceeding the credit limit even if such fees are based in part on an outstanding balance.

Section 706.25—Unfair Fees for Exceeding the Credit Limit Caused by Credit Holds

1. *General.* Under § 706.25, a federal credit union may not assess a fee for exceeding the credit limit if the credit limit would not have been exceeded but for a hold placed on the available credit for a consumer credit card account for a transaction that has been authorized but has not yet been presented for settlement, if the amount of the hold is in excess of the actual purchase or transaction amount when the transaction is settled. Section 706.25 does not limit a federal credit union from charging a fee for exceeding the credit limit in connection with a particular transaction if the consumer would have exceeded the credit limit due to other reasons, such as other transactions that may have been authorized but not yet presented for settlement, a payment that is returned, or if the purchase or transaction amount for the transaction for which the hold was placed would have also caused the consumer to exceed the credit limit.

2. *Example of prohibition in connection with hold placed for same transaction.* Assume that a consumer credit card account has a credit limit of $2,000 and a balance of $1,500. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the federal credit union for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Assuming that there is no other activity on the account, the federal credit union is prohibited from assessing a fee for exceeding the credit limit with respect to the $750 hold. If, however, the total cost of the stay charged to the account had been more than $500, the federal credit union would not be prohibited from assessing a fee for exceeding the credit limit.

3. *Example of prohibition in connection with hold placed for another transaction.* Assume that a consumer credit card account has a credit limit of $2,000 and a balance of $1,400. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the federal credit union for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. While the hold remains in place, the consumer uses the credit card to make a $150 purchase. The

consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Assuming there is no other activity on the account, the federal credit union is prohibited from assessing a fee for exceeding the credit limit with respect to either the $750 hold or the $150 purchase. If, however, the total cost of the stay charged to the account had been more than $450, the federal credit union would not be prohibited from assessing a fee for exceeding the credit limit.

4. *Example of prohibition when authorization and settlement amounts are held for the same transaction.* Assume that a consumer credit card account has a credit limit of $2,000 and a balance of $1,400. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the federal credit union for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. When the hotel presents the $450 transaction for settlement, it uses a different transaction code to identify the transaction than it had used for the pre-authorization, causing both the $750 hold and the $450 purchase amount to be temporarily posted to the consumer's account at the same time, and the consumer's balance to exceed the credit limit. Under these circumstances, and assuming no other transactions, the federal credit union is prohibited from assessing a fee for exceeding the credit limit because the credit limit was exceeded solely due to the $750 hold.

5. *Example of permissible fee for exceeding the credit limit in connection with a hold.* Assume that a consumer credit card account has a credit limit of $2,000 and a balance of $1,400. The consumer uses the credit card to check into a hotel for an anticipated stay of five days. When the consumer checks in, the hotel obtains authorization from the federal credit union for a $750 hold on the account to ensure there is adequate available credit to cover the cost of the anticipated stay. While the hold remains in place, the consumer uses the credit card to make a $650 purchase. The consumer checks out of the hotel after three days, and the total cost of the stay is $450, which is charged to the consumer's credit card account. Notwithstanding the existence of the hold and assuming there is no other activity on the account, the federal credit union may charge the consumer a fee for exceeding the credit limit with respect to the $650 purchase because the consumer would have exceeded the credit limit even if the hold had been for the actual amount of the hotel transaction.

Section 706.26—Unfair Balance Computation Method

(a) General Rule

1. *Two-cycle method prohibited.* A federal credit union is prohibited from computing the finance charge using the so-called two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the outstanding balance, including or excluding new purchases and deducting payments and credits, for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

2. *Example.* Assume that the billing cycle on a consumer credit card account starts on the first day of the month and ends on the last day of the month. A consumer has a zero balance on March 1. The consumer uses the credit card to make a $500 purchase on March 15. The consumer makes no other purchases and pays $400 on the due date, April 25, leaving a $100 balance. The federal credit union may charge interest on the $500 purchase from the start of the billing cycle April 1 through April 24, and interest on the remaining $100 from April 25 through the end of the April billing cycle, April 30. The federal credit union is prohibited, however, from reaching back and charging interest on the $500 purchase from the date of purchase, March 15, to the end of the March billing cycle, March 31.

Section 706.27—Unfair Financing of Security Deposits and Fees for the Issuance or Availability of Credit

1. *Initial credit limit for the account.* For purposes of this section the credit limit is the limit in effect when the account is opened.

(a) Annual Rule

1. *Majority of the credit limit.* The total amount of security deposits and fees for the issuance or availability of credit constitutes a majority of the credit limit if that total is greater than half of the credit limit. For example, assume that a consumer credit card account has a credit limit of $500. Under § 706.27(a), a federal credit union may charge to the account security deposits and fees for the issuance or availability of credit totaling no more than $250 during the twelve months after the date on which the account is opened, consistent with § 706.27(b), but may not charge any more than that amount.

(b) Monthly Rule

1. *Adjustments of one dollar or less permitted.* When dividing amounts pursuant to § 706.27(b)(2), the federal credit union may adjust amounts by one dollar or less. For example, if a federal credit union is dividing $125 over eleven billing cycles, the federal credit union may charge $12 for four months and $11 for the remaining seven months.

2. *Example.* Assume that a consumer credit card account opened on January 1 has a credit limit of $500 and that a federal credit union charges to the account security deposits and fees for the issuance or availability of credit that total $250 during the twelve months after the date on which the account is opened. Assume also that the billing cycles for this account begin on the first day of the month and end on the last day of the month. Under § 706.27(b), the federal credit union may charge to the account no more than $250 in security deposits and fees for the issuance or availability of credit. If it charges $250, the federal credit union may charge as much as $125 during the first billing cycle. If it charges $125 during the first billing cycle, it may then charge $12 in any four billing cycles and $11 in any seven billing cycles during the year.

(c) Fees for the Issuance or Availability of Credit

1. *Membership fees.* Membership fees for opening an account are fees for the issuance or availability of credit. A membership fee to join an organization that provides a credit or charge card as a privilege of membership is a fee for the issuance or availability of credit only if the card is issued automatically upon membership. If membership results merely in eligibility to apply for an account, then such a fee is not a fee for the issuance or availability of credit.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account, for example, travel insurance or card-registration services, are not fees for the issuance or availability of credit if the basic account may be opened without paying such fees.

3. *One-time fees.* Only non-periodic fees related to opening an account, such as one-time membership or participation fees, are fees for the issuance or availability of credit. Fees for reissuing a lost or stolen card and statement reproduction fees are examples of fees that are not fees for the issuance or availability of credit.

Section 706.28—Deceptive Firm Offers of Credit

(a) Disclosure of Criteria Bearing on Creditworthiness

1. *Designed to call attention.* Whether a disclosure has been provided in a manner that is designed to call attention to the nature and significance of required information depends on where the disclosure is placed in the solicitation and how it is presented, including whether the disclosure uses a typeface and type size that are easy to read and uses boldface or italics. Placing the disclosure in a footnote would not satisfy this requirement.

2. *Form of electronic disclosures.* Electronic disclosures must be provided consistent with 12 CFR 226.5a(a)(2)–8 and –9.

3. *Multiple annual percentage rates or credit limits.* For purposes of this section, a firm offer of credit solicitation that states an annual percentage rate or credit limit for a credit card feature and a different annual percentage rate or credit limit for a different credit card feature does not offer multiple annual percentage rates or credit limits. For example, if a firm offer of credit solicitation offers a 10% annual percentage rate for purchases and a 15% annual percentage rate for cash advances, the solicitation does not offer multiple annual percentage rates for purposes of this section.

4. *Example.* Assume that a federal credit union requests from a consumer reporting agency a list of consumers with credit scores of 650 or higher so that the federal credit union can send those consumers a firm offer of credit solicitation. The federal credit union sends a solicitation to those consumers for a

consumer credit card account advertising ''rates from 8.99% to 14.99%'' and ''credit limits from $1,000 to $10,000.'' Before selection of the consumers for the offer, however, the federal credit union determines that it will offer an interest rate of 8.99% only to those consumers responding to the solicitation who are verified to have a credit score of 650 or higher, who have a debt-to-income ratio below a certain amount, and who meet other specific criteria bearing on creditworthiness. Under § 706.28, this solicitation is deceptive unless the federal credit union discloses, in a manner that is reasonably understandable to the consumer and designed to call attention to the nature and significance of the information, that, if the consumer is approved for credit, the annual percentage rate and credit limit the consumer will receive will depend specific criteria bearing on the consumer's creditworthiness. The federal credit union may satisfy this requirement by using a typeface and type size that are easy to read and stating in boldface in a manner that otherwise calls attention to the nature and significance of the information: **''If you are approved for credit, your annual percentage rate and/or credit limit will depend on your credit history, debt-to-income ratio, and debts.''**

5. *Applicability of criteria in disclosure.* When making a disclosure under this section, a federal credit union may only disclose the criteria it uses in evaluating whether consumers who are approved for credit will receive the lowest annual percentage rate or the highest credit limit. For example, if a federal credit union does not consider the consumer's debts when determining whether the consumer should receive the lowest annual percentage rate or highest credit limit, the disclosure must not refer to ''debts.''

Subpart D—Overdraft Services

Section 706.32—Unfair Practices Involving Overdraft Services

(a) Opt-Out Requirement

(a)(1) General Rule

1. *Form, content, and timing of disclosure.* The form, content, and timing of the opt-out notice required to be provided under paragraph (a) of this section are addressed under § 707.10 of this chapter.

(a)(3) Exceptions

Paragraph (a)(3)(i)

1. *Example of transaction amount exceeding authorization amount (fuel purchase).* A consumer has $30 in a deposit account. The consumer uses a debit card to purchase fuel. Before permitting the consumer to use the fuel pump, the merchant verifies the validity of the card by obtaining authorization from the federal credit union for a $1 transaction. The consumer purchases $50 of fuel. If the federal credit union pays the transaction, it would be permitted to assess a fee or charge for paying the overdraft, even if the consumer has opted out of the payment of overdrafts.

2. *Example of transaction amount exceeding authorization amount (restaurant).* A consumer has $50 in a deposit account. The consumer pays for a $45 meal at a restaurant using a debit card. While the restaurant may obtain authorization for the $45 cost of the meal, the consumer may add $10 for a tip. If the federal credit union pays the $55 transaction, including the tip amount, it would be permitted to assess a fee or charge for paying the overdraft, even if the consumer has opted out of the payment of overdrafts.

Paragraph (a)(3)(ii)

1. *Example of transaction presented by paper-based means.* A consumer has $50 in a deposit account. The consumer makes a $60 purchase and presents his or her debit card for payment. The merchant takes an imprint of the card. Later that day, the merchant submits a sales slip with the card imprint to its processor for payment. If the consumer's federal credit union pays the transaction, it would be permitted to assess a fee or charge for paying the overdraft, even if the consumer has opted out of the payment of overdrafts.

(b) Debit Holds

1. *General.* Under § 706.32(b), a federal credit union may not assess an overdraft fee if the overdraft would not have occurred but for a hold placed on funds in the consumer's account for a transaction that has been authorized but has not yet been presented for settlement, if the amount of the hold is in excess of the actual purchase or transaction amount when the transaction is settled. Section 706.32(b) does not limit a federal credit union from charging an overdraft fee in connection with a particular transaction if the consumer would have incurred an overdraft due to other reasons, such as other transactions that may have been authorized but not yet presented for settlement, a deposited check that is returned, or if the purchase or transaction amount for the transaction for which the hold was placed would have also caused the consumer to overdraw his or her account.

2. *Example of prohibition in connection with hold placed for same transaction.* A consumer has $50 in a deposit account. The consumer makes a fuel purchase using his or her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's federal credit union for a $75 ''hold'' on the account which exceeds the consumer's funds. The consumer purchases $20 of fuel. Under these circumstances, § 706.32(b) prohibits the federal credit union from assessing a fee or charge in connection with the debit hold because the actual amount of the fuel purchase did not exceed the funds in the consumer's account. However, if the consumer had purchased $60 of fuel, the federal credit union could assess a fee or charge for an overdraft because the transaction exceeds the funds in the consumer's account, unless the consumer has opted out of the payment of overdrafts under § 706.32(a).

3. *Example of prohibition in connection with hold placed for another transaction.* A consumer has $100 in a deposit account. The consumer makes a fuel purchase using his or her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's federal credit union for a $75 ''hold'' on the account. The consumer purchases $20 of fuel, but the transaction is not presented for settlement until the next day. Later on the first day, and assuming no other transactions, the consumer withdraws $75 at an ATM. Under these circumstances, § 706.32(b) prohibits the federal credit union from assessing a fee or charge for paying an overdraft with respect to the $75 withdrawal because the overdraft was caused solely by the $75 hold.

4. *Example of prohibition when authorization and settlement amounts are held for the same transaction.* A consumer has $100 in his deposit account, and uses his debit card to purchase $50 worth of fuel. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's federal credit union for a $75 ''hold'' on the account. The consumer purchases $50 of fuel. When the merchant presents the $50 transaction for settlement, it uses a different transaction code to identify the transaction than it had used for the pre-authorization, causing both the $75 hold and the $50 purchase amount to be temporarily posted to the consumer's account at the same time, and the consumer's account to be overdrawn. Under these circumstances, and assuming no other transactions, § 706.32(b) prohibits the federal credit union from assessing a fee or charge for paying an overdraft because the overdraft was caused solely by the $75 hold.

5. *Example of permissible overdraft fees in connection with a hold.* A consumer has $100 in a deposit account. The consumer makes a fuel purchase using his or her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains authorization from the consumer's federal credit union for a $75 ''hold'' on the account. The consumer purchases $35 of fuel, but the transaction is not presented for settlement until the next day. Later on the first day, and assuming no other transactions, the consumer withdraws $75 at an ATM. Notwithstanding the existence of the hold, and assuming the consumer has not opted out of the payment of overdrafts under § 706.32(a), the consumer's federal credit union may charge the consumer an overdraft fee for the $75 ATM withdrawal, because the consumer would have incurred the overdraft even if the hold had been for the actual amount of the fuel purchase.

By order of the Board of Governors of the Federal Reserve System, May 2, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated: April 29, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By the National Credit Union Administration Board, on May 2, 2008.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E8–10247 Filed 5–16–08; 8:45 am]

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Federal Register

Monday,
May 19, 2008

Part IV

Federal Reserve System

12 CFR Part 222

Federal Trade Commission

16 CFR Parts 640 and 698

Fair Credit Reporting Risk-Based Pricing Regulations; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Regulation V; Docket No. R–1316]

FEDERAL TRADE COMMISSION

16 CFR Parts 640 and 698

RIN 3084–AA94

Fair Credit Reporting Risk-Based Pricing Regulations

AGENCIES: Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (Commission).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board and the Commission are publishing for comment proposed rules to implement the risk-based pricing provisions in section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amends the Fair Credit Reporting Act (FCRA). The proposed rules generally require a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. The proposed rules also provide for two alternative means by which creditors can determine when they are offering credit on material terms that are materially less favorable. The proposed rules also include certain exceptions to the general rule, including exceptions for creditors that provide a consumer with a disclosure of the consumer's credit score in conjunction with additional information that provides context for the credit score disclosure.

DATES: Comments must be received on or before August 18, 2008.

ADDRESSES: The Board and the Commission will jointly review all of the comments submitted. Therefore, you may comment to either the Board or the Commission and you need not send comments (or copies) to both agencies. Because paper mail in the Washington area and at the Board and the Commission is subject to delay, please submit your comments by electronic means whenever possible. Commenters are encouraged to use the title ''FACT Act Risk-Based Pricing Rule'' in addition to the docket or RIN number in their submission. Interested parties are invited to submit comments in accordance with the following instructions:

Board: You may submit comments, identified by Docket No. R–1316, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Commission: Comments should refer to ''FACT Act Risk-Based Pricing Rule, Project No. R411009,'' and may be submitted by any of the following methods. If, however, the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

- *Web Site:* Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-RiskBasedPricing* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-RiskBasedPricing*.
- *Federal eRulemaking Portal:* If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that Web site. The Agencies will consider all comments that regulations.gov forwards to the Commission.
- *Mail or Hand Delivery:* A comment filed in paper form should include ''FACT Act Risk-Based Pricing Rule, Project No. R411009,'' both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the Commission's Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm*. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the Commission's Web site. More information, including routine uses permitted by the Privacy Act, may be found in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT:

Board: David A. Stein, Managing Counsel, or Amy E. Burke, Senior Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; or Andrea K. Mitchell, Senior Attorney, Legal Division, (202) 452–2458, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Commission: Kellie Cosgrove Riley, Senior Attorney, or Stacey Brandenburg,

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2252, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Public Law 108–159, 117 Stat. 1952. In general, the FACT Act amended the Fair Credit Reporting Act (FCRA) to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, and allow consumers to exercise greater control regarding the type and amount of solicitations they receive.

Section 311 of the FACT Act added a new section 615(h) to the FCRA to address risk-based pricing. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. Information from a consumer report is often used in evaluating the risk posed by the consumer. Creditors that engage in risk-based pricing generally offer more favorable terms to consumers with good credit histories and less favorable terms to consumers with poor credit histories.

Under the new section 615(h) of the FCRA, a risk-based pricing notice must be provided to consumers in certain circumstances. Generally, a person must provide a risk-based pricing notice to a consumer when the person uses a consumer report in connection with an application, grant, extension, or other provision of credit and, based in whole or in part on the consumer report, grants, extends, or provides credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person.

Section 311 is part of Title III of the FACT Act, which is entitled ''Enhancing the Accuracy of Consumer Report Information.'' The risk-based pricing notice requirement is designed primarily to improve the accuracy of consumer reports by alerting consumers to the existence of negative information on their consumer reports so that consumers can, if they choose, check their consumer reports for accuracy and correct any inaccurate information.[2]

Section 615(h) requires the Board and the Commission (Agencies) jointly to issue rules implementing the risk-based pricing provisions. The statute requires the Agencies to address in the implementing rules the form, content, timing, and manner of delivery of any notices pursuant to section 615(h). The rules also must clarify the meaning of certain terms used in this section, including what are ''material'' credit terms and when credit terms are ''materially less favorable.'' Section 615(h) gives the Agencies the authority to provide exceptions to the notice requirement for classes of persons or transactions for which the Agencies determine that risk-based pricing notices would not significantly benefit consumers. Finally, the Agencies must provide a model notice that can be used to comply with section 615(h).

II. Developing the Proposed Rules

In developing these proposed risk-based pricing rules, the Agencies sought to implement the statutory provisions in a manner that would be operationally feasible for the wide variety of entities that will be subject to the rules. At the outset of developing the proposed rules, the Agencies conducted outreach to various interested parties, including consumer groups, financial institutions, mortgage bankers, and consumer reporting agencies. The goals of this initial outreach were to get a broad sense of how risk-based pricing is used in practice, how information from consumer reports factors into risk-based pricing, and how interested parties believe the Agencies should implement these provisions.

Based on this initial outreach, the Agencies determined that it may not be operationally feasible in many cases for creditors to compare the terms offered to each consumer with the terms offered to other consumers to whom the creditor has extended credit. After considering several approaches, the Agencies concluded that the most effective way to implement the statute was to develop certain tests that could serve as proxies for comparing the terms offered to different consumers. These tests could be used by creditors for which making direct comparisons among consumers would be difficult or infeasible.

The Agencies then conducted additional, more in-depth outreach meetings with interested parties, including consumer groups, consumer reporting agencies, and a variety of different types of creditors, including large banks, small community banks, credit card issuers, mortgage bankers, auto finance companies, automobile dealers, private student loan creditors, manufactured housing lenders, and industry trade associations. This outreach provided the Agencies with valuable information about how risk-based pricing is conducted in various sectors of the consumer credit market. In addition, the Agencies sought feedback from outreach participants on a number of possible tests that could be used to implement the requirements of the statute. The Agencies' goal was to determine which tests would both identify those consumers who likely received materially less favorable terms than the terms obtained by other consumers and be operationally feasible for creditors to implement.

The proposed rules reflect the Agencies' judgments as to the best approaches identified through these outreach efforts. As discussed more fully below, the Agencies recognize that no single test or approach is likely to be feasible for all of the various types of creditors to which the rules apply or for the many different credit products for which risk-based pricing is used. Therefore, the proposed rules provide a menu of approaches that creditors may use to comply with the statute's legal requirements. The next section provides a brief explanation of the proposed rules.

III. Summary of the Proposed Rules

Risk-Based Pricing Notice

The proposed rules implement the risk-based pricing notice requirement of section 615(h). The proposed rules apply to any person that both: (i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer; and (ii) based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person. The proposed rules clarify that the risk-based pricing notice requirements apply only in connection with credit that is primarily for personal, household, or family purposes, but not in connection with business credit. For more information about the scope of the proposed rules, see the discussion of §____.70 in the Section-by-Section Analysis.

Definitions

The proposed rules define certain key terms. Specifically, the proposed rules define ''material terms'' as the annual percentage rate for credit that has an annual percentage rate,[3] or, in the case

[2] *See* S. Rep. No. 108–166, at 20 (Oct. 17, 2003).

[3] Under Regulation Z, which implements the Truth in Lending Act, 15 U.S.C. 1601, *et seq.*, the

Continued

of credit that does not have an annual percentage rate, as any monetary terms, such as the down payment amount or deposit, that the person varies based on the consumer report. For credit cards, which may have multiple annual percentage rates applicable to different features, ''material terms'' is defined as the annual percentage rate applicable to purchases. In addition, the proposed rules define ''materially less favorable,'' as it applies to material terms, to mean that the terms granted or extended to a consumer differ from the terms granted or extended to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit to the other consumer. For more information about the definitions of these and other terms used in the proposed rules, see the discussion of §____.71 in the Section-by-Section Analysis.

General Rule and Methods for Identifying Consumers Who Must Receive Notice

The proposed rules generally restate the statutory requirement that a person must provide the consumer with a notice if that person both: (i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer; and (ii) based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person. The proposed rules apply to a person to whom the obligation is initially payable (also referred to as ''the original creditor'').

A person subject to the rule may determine, on a case-by-case basis, whether a consumer has received material terms that are materially less favorable terms than other consumers have received from or through that person by comparing the material terms offered to the consumer to the material terms offered to other consumers in similar transactions. It may not be operationally feasible for many persons subject to the rule to make such direct comparisons between consumers, however.

For those persons who prefer not to compare directly the material terms offered to their consumers, the proposed rules provide two alternative methods for determining which consumers must receive risk-based pricing notices. Using either method, a person may determine when credit offered from or through that person is on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person.

The first method is the credit score proxy method. A credit score is a numerical representation of a consumer's credit risk based on information in the consumer's credit file. The proposed rules permit a creditor that uses credit scores to set the material terms of credit to determine a cutoff score, representing the point at which approximately 60 percent of its consumers have lower credit scores, and provide a risk-based pricing notice to each consumer who has a credit score lower than the cutoff score. The proposed rules require periodic updating of the cutoff score.

The second method is the tiered pricing method. The proposed rules permit a creditor that sets the material terms of credit by assigning each consumer to one of a discrete number of pricing tiers, based in whole or in part on a consumer report, to use this method to provide a risk-based pricing notice to each consumer who is not assigned to the top pricing tier or tiers. The number of tiers of consumers to whom the notice is required to be given depends upon the total number of tiers. For more information about the general rule and the methods for determining which consumers must receive notices, see the discussion of §____.72 in the Section-by-Section Analysis.

Application of Rule to Credit Card Issuers

The proposed rules set forth a special test to identify circumstances in which a credit card issuer must provide a notice to consumers. A credit card issuer is required to provide a risk-based pricing notice to a consumer if the consumer applies for a credit card in connection with a multiple-rate offer and, based in whole or in part on a consumer report, is granted credit at a purchase annual percentage rate that is higher than the lowest purchase annual percentage rate available under that offer. The proposed rules assume that a consumer who applies for credit in response to a multiple-rate offer is applying for the best rate available. For more information about the application of the rule to credit card issuers, see the discussion of §____.72 in the Section-by-Section Analysis.

Account Review

Some creditors conduct periodic reviews of a consumer report in connection with credit that has been extended to a consumer. If the consumer's credit history has deteriorated, the creditor may, pursuant to applicable account terms, increase the annual percentage rate applicable to that consumer's account. The proposed rules require the creditor to provide a risk-based pricing notice to the consumer if the creditor increases the consumer's annual percentage rate in an account review based in whole or in part on a consumer report. For more information about the application of the general rule to account reviews, see the discussion of §____.72 in the Section-by-Section Analysis.

Content of the Notice

In addition to the minimum content prescribed by section 615(h)(5) of the FCRA, the proposed rules require the risk-based pricing notice to include a statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories. The Agencies believe that including such a statement in the notice could encourage consumers to check their consumer reports for inaccuracies. The proposed rules also include special content requirements for the notice in the context of account reviews. For more information about the content of the risk-based pricing notices, see the discussion of §____.73 in the Section-by-Section Analysis.

Timing of the Notice

Section 615(h)(2) of the FCRA states that the risk-based pricing notice may be provided at the time of an application for, or a grant, extension, or other provision of, credit or at the time of communication of an approval of an application for, or grant, extension, or other provision of, credit. Section 615(h)(6)(B)(v) of the FCRA, however, gives the Agencies broad discretion to set the timing requirements for the notice by rule.

The proposed rules generally require a risk-based pricing notice to be provided to the consumer after the terms of credit have been set, but before the consumer becomes contractually obligated on the credit transaction. In the case of closed-end credit, the notice must be provided to the consumer before consummation of the transaction, but not earlier than the time the approval decision is communicated to the consumer. In the case of open-end credit, the notice must be provided to the consumer before the first transaction

annual percentage rate is a measure of the cost of credit, expressed as a yearly or annualized rate. *See* 12 CFR 226.14, 226.22. Regulation Z requires creditors to disclose accurately the cost of credit, including the annual percentage rate. *See* 12 CFR 226.5a(b)(1), 226.5b(d)(6) and (12), and 226.18(e).

is made under the plan, but not earlier than the time the approval decision is communicated to the consumer. For account reviews, the notice must be provided at the time that the decision to increase the annual percentage rate is communicated to the consumer or, if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate, no later than five days after the effective date of the change in the annual percentage rate. For more information about the timing requirements, see the discussion of § ____.73 in the Section-by-Section Analysis.

Exceptions to the Risk-Based Pricing Notice Requirement

The proposed rules contain a number of exceptions to the risk-based pricing notice requirement. First, the proposed rules implement the statutory exceptions that apply: (i) When a consumer applies for, and receives, specific material terms; and (ii) when a consumer is receiving an adverse action notice under section 615(a) of the FCRA in connection with the transaction.

The Agencies also have used the exception authority set forth in section 615(h)(6)(iii) of the FCRA to propose additional exceptions for classes of persons or transactions regarding which the Agencies believe that the notice would not significantly benefit consumers. The Agencies are proposing exceptions for creditors that provide consumer applicants with certain information, including their credit score, in lieu of the risk-based pricing notice.[4] For credit secured by one to four units of residential real property, an exception applies when a creditor provides the consumer with a notice containing the credit score disclosure required by section 609(g) of the FCRA along with certain additional information that provides context for the credit score disclosure, describes the creditor's use of credit scores to set the terms of credit, and explains how a consumer can obtain his or her free annual consumer reports. Another proposed exception applies to credit that is not secured by one to four units of residential real property, and is thus not subject to the credit score disclosure requirements of section 609(g). This exception is similar to the credit score disclosure exception for residential real property secured credit.

In some cases, a consumer's credit file may not contain sufficient information to permit a consumer reporting agency or other person to calculate a score for that individual. A creditor using either of the credit score disclosure exceptions described above is permitted to comply with the regulation by providing an alternate narrative notice that does not include a credit score to those consumers for whom a score is not available.

Finally, the Agencies have proposed an exception for prescreened solicitations. Under this exception, a creditor will not be required to provide a risk-based pricing notice if that creditor obtains a consumer report that is a prescreened list and uses that consumer report to make a firm offer of credit to the consumers, regardless of how the material terms of that offer compare to the terms that the creditor includes in other firm offers of credit. For more information about the exceptions, see the discussion of § ____.74 in the Section-by-Section Analysis.

Free Consumer Report

Section 615(h)(5)(C) of the FCRA states that the risk-based pricing notice must contain a statement informing the consumer that he or she may obtain a copy of a consumer report, without charge, from the consumer reporting agency identified in the notice. Some industry representatives have interpreted this section as a reference to the free annual consumer report described in section 612(a) of the FCRA.[5] These industry representatives do not believe that section 615(h) of the FCRA gives rise to a right to a separate free consumer report. Consumer groups, on the other hand, interpret this section as giving a consumer a right to a separate free consumer report.[6] The proposed rule is based on the Agencies' reading of section 615(h) as giving consumers a right to a separate free consumer report upon receipt of a risk-based pricing notice.

Section 612(b) of the FCRA provides for free consumer reports to consumers who have received a notification pursuant to ''section 615'' of the FCRA. Section 615 of the FCRA includes both the adverse action notice requirement (section 615(a)), the risk-based pricing notice provision (section 615(h)), and certain other requirements. Accordingly, the Agencies read the reference to the free consumer report in section 612(b) to apply equally when notices are given under section 615(a) and section 615(h)(5)(C), *i.e.*, to require in both those cases a free report that is separate from the free annual report.

The notices provided under the credit score disclosure exceptions are not risk-based pricing notices, and therefore do not give rise to the right to a free consumer report. Instead, a consumer who receives a credit score disclosure notice that identifies a consumer reporting agency or other third party as the source of the credit score could request the free annual consumer report that is available from each of the three nationwide consumer reporting agencies. For more information about the credit score disclosure exceptions, see the discussion of § ____.74 in the Section-by-Section Analysis.

One Notice Per Credit Extension

The proposed rules contain a rule of construction to clarify that, in general, only one risk-based pricing notice will need to be provided per credit extension, except in the case of a notice provided in connection with an account review. The person to whom the obligation is initially payable must provide the risk-based pricing notice, or satisfy one of the exceptions, even if the loan is assigned to a third party or if that person is not the funding source for the loan. Although legal responsibility for providing the notice rests with the person to whom the obligation is initially payable, the various parties involved in a credit extension could determine by contract which party will send the notice. Purchasers or assignees of credit contracts will not be subject to the risk-based pricing notice requirements. For more information about the rules of construction, see the discussion of § ____.75 in the Section-by-Section Analysis.

[4] These exceptions are distinct from the credit score proxy method discussed above. The credit score proxy method is one way in which creditors can comply with the proposed rules' requirement to identify those consumers who should receive a risk-based pricing notice. The credit score disclosure exceptions, on the other hand, provide consumers with a credit score and related information *in lieu* of a risk-based pricing notice. A creditor, therefore, can comply with the proposed rules either by using the credit score proxy method (or one of the other enumerated methods) to determine for a given class of products which consumers should receive a risk-based pricing notice, or by providing the credit score disclosure to its consumers for that class of products.

[5] *See* letter from Mortgage Bankers Association to the Federal Trade Commission (Aug. 16, 2004), available at *http://www.ftc.gov/os/comments/FACTA-summaries/511461–0007.pdf* and letter from American Bankers Association & America's Community Bankers *et al.*, to Alan Greenspan and Deborah Platt Majoras (Sept. 9, 2004), available at *http://www.mortgagebankers.org/files/ResourceCenter/FACTA/FACTARisk-BasedPricingComments9-9-04.pdf.*

[6] *See* letter from National Consumer Law Center and Consumers Union *et al.*, to Alan Greenspan and Deborah Platt Majoras (Feb. 2, 2005), available at *http://www.consumerlaw.org/issues/credit_reporting/ content/facta_riskbased.pdf.*

Model Forms

Section 615(h)(6)(B)(iv) requires the Agencies to provide a model notice that may be used to comply with the risk-based pricing rules. For each of the risk-based pricing notices and alternative credit score disclosures, the Agencies have proposed model forms that are appended to the proposed rules as Appendices H–1 through H–5 of the Board's rule and Appendices B–1 through B–5 of the Commission's rule. For more information, see the discussion of the model forms in the Section-by-Section Analysis.

IV. Section-by-Section Analysis

Section ____.70 Scope

Proposed § ____.70 sets forth the scope of the Agencies' rules. Proposed paragraph (a)(1) generally tracks the statutory language from section 615(h)(1) of the FCRA, except that it limits coverage of the proposed rules to credit to a consumer that is primarily for a consumer's personal, family, or household purposes.

Proposed paragraph (a)(2) provides that the risk-based pricing rules do not apply to persons who use consumer reports in connection with an application for, grant, extension, or other provision of, credit for business purposes. Section 615(h) of the FCRA does not explicitly state that it applies only to a person using a consumer report in connection with consumer purpose credit. Section 615(h) does, however, require a person using a consumer report to compare the terms of credit offered in a particular transaction to the most favorable terms available to a substantial proportion of ''consumers'' and to provide a notice to the ''consumer'' if the person offers or extends credit on materially less favorable terms. In addition, several of the statutory exceptions reference the ''consumer'' or ''consumers,'' including those in section 615(h)(3)(A) (''the consumer applied for specific material terms * * *'') and section 615(h)(6)(B)(iii) (''* * * regarding which the agencies determine that notice would not significantly benefit consumers''). The statute's repeated use of the term ''consumer,'' which section 603(c) of the FCRA defines to mean ''an individual,'' suggests that Congress intended for the risk-based pricing provisions to apply only to credit that is primarily for personal, family, or household purposes.

Business-purpose loans generally are made to partnerships or corporations, as well as to individual consumers in the case of sole proprietorships. The Agencies understand that business borrowers generally are more sophisticated than individual consumers. For business loans made to partnerships or corporations, a creditor may obtain consumer reports on the principals of the business who may serve as guarantors for the loan.[7] The credit is granted or extended to the business entity, however, based primarily on that entity's creditworthiness, and that entity is primarily responsible for the loan. Also, when a consumer report is used in connection with a small business loan, the report may factor into the underwriting process quite differently than a consumer report utilized in connection with a consumer purpose loan. It may not be operationally feasible to compare the terms of credit granted for different business purposes because some types of business ventures pose a greater degree of risk than other types of business ventures. In addition, the Agencies believe that a comparison of the terms of business purpose credit to the terms of consumer purpose credit would not be meaningful. For example, the underwriting process used to set the terms for a business loan made to purchase a fleet of vehicles may differ substantially from the underwriting process used to set the terms of a single auto loan made to an individual consumer. The Agencies solicit comment regarding whether there are any circumstances under which creditors should be required to provide risk-based pricing notices in connection with credit primarily for business purposes.

Proposed paragraph (b) provides that compliance with either the Board's or the Commission's substantively identical risk-based pricing rules would be deemed to satisfy the requirements of the statute. Both the Board's and the Commission's rules would apply to the persons covered by paragraph (a). The Board proposes to codify its risk-based pricing rules at 12 CFR 222.70 *et seq.,* and the Commission proposes to codify its risk-based pricing rules at 16 CFR 640. There is, however, no substantive difference between the two sets of rules.

Proposed paragraph (c), consistent with the statutory language in section 615(h)(8), provides that the risk-based pricing rules will be enforced in accordance with sections 621(a) and (b) by the relevant federal agencies and officials identified in those sections, including state officials. The risk-based pricing provisions do not provide for a private right of action.

Section ____.71 Definitions

Proposed § ____.71 contains definitions for the following terms: ''annual percentage rate'' (and the related terms ''closed-end credit'' and ''open-end credit plan''), ''credit,'' ''creditor,'' ''credit card,'' ''credit card issuer,'' ''credit score,'' ''material terms'' (and the related term ''consummation''), and ''materially less favorable.''

Annual Percentage Rate

Proposed paragraph (a) defines ''annual percentage rate'' by incorporating the definitions of ''annual percentage rate'' for open-end credit plans and closed-end credit set forth in sections 226.14(b) and 226.22 of Regulation Z, respectively. (12 CFR 226.14(b), 12 CFR 226.22). The concept of an annual percentage rate, as discussed later in this Section-by-Section analysis, is relevant to the Agencies' proposed definition of ''material terms.'' The Agencies believe that use of the Regulation Z definitions of annual percentage rate promotes consistency among the rules pertaining to consumer credit, including the rules that implement the FCRA and the Truth-in-Lending Act. Regulation Z prescribes two separate methods for calculating the annual percentage rate for credit, depending on whether that credit is open-end or closed-end. To ensure that the correct calculation methods for the annual percentage rate are applied to the appropriate products, the proposal also incorporates the Truth-in-Lending Act's definition of ''open-end credit plan,'' as interpreted by the Board,[8] and the Regulation Z definition of ''closed-end credit.'' Paragraph (b) of the proposal defines ''closed-end credit'' to have the same meaning as in Regulation Z (12 CFR 226.2(a)(10)). Paragraph (k) of the proposal defines ''open-end credit plan'' to have the same meaning as set forth in the Truth-in-Lending Act, as implemented by the Board in Regulation Z and the Official Staff Commentary to Regulation Z (15 U.S.C. 1602(i), 12 CFR 226.2(a)(20)).

Credit, Creditor, Credit Card, Credit Card Issuer, and Credit Score

Proposed paragraphs (d), (e), (f), (g), and (h) incorporate the FCRA's statutory definitions of ''credit,'' ''creditor,'' ''credit card,'' ''credit card issuer,'' and

[7] *See* FTC Staff Opinion Letter from Joel Winston to Julie L. Williams, J. Virgil Mattingly, William F. Kroener, III, and Carolyn Buck (June 22, 2001) (available at *http://www.ftc.gov/os/statutes/fcra/tatelbaumw.shtm).*

[8] The Board defines the term ''open-end credit'' in Regulation Z, rather than ''open-end credit plan.'' 12 CFR 226.2(a)(20).

''credit score.'' Each of these terms is used in the proposed rules.

Material Terms

Proposed paragraph (i) contains three separate definitions of ''material terms,'' depending on whether the credit is extended under an open-end credit plan for which there is an annual percentage rate, is closed-end credit for which there is an annual percentage rate, or is credit for which there is no annual percentage rate.

Proposed paragraph (i)(1) defines ''material terms'' for credit extended under an open-end credit plan as the annual percentage rate required to be disclosed in the account-opening disclosures required by Regulation Z (12 CFR 226.6(a)(2)). The definition excludes both any temporary initial rate that is lower than the rate that would apply after the temporary rate expires and any penalty rate that would apply upon the occurrence of one or more specific events, such as a late payment or extension of credit that exceeds the credit limit. The annual percentage rate has historically been one of the most significant pricing terms for open-end credit, and it is probably the term that creditors most often adjust as a result of risk-based pricing.

Credit cards, unlike other open-end credit products, have multiple annual percentage rates, including annual percentage rates for cash advances, balance transfers, and purchases. The Agencies believe that purchases are the most common type of open-end credit card transaction, and thus the annual percentage rate for purchases is the most commonly applied rate in credit card transactions. Moreover, it is one of the most common terms that consumers compare when shopping for credit cards. Therefore, for credit cards (other than those used to access a home equity line of credit), the proposal defines ''material terms'' as the annual percentage rate applicable to purchases (''purchase annual percentage rate''), and no other annual percentage rate.

Similarly, proposed paragraph (i)(2) defines ''material terms'' for closed-end credit as the annual percentage rate required to be disclosed prior to consummation under the provisions of Regulation Z regarding closed-end credit (12 CFR 226.17(c) and 226.18(e)). This definition does not address temporary initial rates or penalty rates, because any such rates are not annual percentage rates for the purposes of the closed-end provisions of Regulation Z.

The related term ''consummation'' is defined in proposed paragraph (c) to mean the time that a consumer becomes contractually obligated on a credit transaction. The proposed definition is identical to the definition of ''consummation'' in Regulation Z. 12 CFR 226.2(a)(13). Consummation is defined in the proposed rules for clarity and completeness.

Most consumer credit products have an annual percentage rate, and it has historically been a significant factor, and often the most significant factor, in the pricing of credit. As discussed below, the Agencies have proposed a definition of ''material terms'' that generally focuses on a single term in order to ensure that there is a feasible way for creditors to identify those consumers who must receive risk-based pricing notices. The Agencies believe that focusing on the annual percentage rate is appropriate because the Agencies understand that when risk-based pricing occurs, it typically affects the annual percentage rate.

The Agencies acknowledge that the pricing of credit products is complex and that the annual percentage rate is only one of the costs of consumer credit. In addition to the annual percentage rate(s) applicable to a given credit product, there may be other terms that affect the cost of credit, such as the amount of any down payment, prepayment penalties, or late fees. In addition, a single credit product may have a number of different rate structures, such as a credit card that has different annual percentage rates for purchases, cash advances, and balance transfers. The Agencies understand that the annual percentage rate is the primary term that varies as a result of risk-based pricing and that, for credit cards, the purchase annual percentage rate is the primary term that varies as a result of risk-based pricing. Thus, the Agencies believe that, in most cases, defining ''material terms'' with reference to the annual percentage rate will effectively target those consumers who are likely to have received credit on terms that are materially less favorable than the terms offered to other consumers. If creditor practices were to change in the future such that other terms of credit begin to vary as a result of risk-based pricing, the Agencies could revise the meaning of ''material terms.''

To satisfy the risk-based pricing notice requirements, creditors must have some feasible means of comparing different credit granted to different consumers. The Agencies believe that it would not be operationally feasible for creditors to compare credit terms on the basis of multiple variables. For example, it is unclear how a creditor would compare one mortgage loan with a certain combination of annual percentage rate, down payment, and points and fees to another such loan where all three variables differ, even for the same product, such as a 30-year fixed-rate loan. The Agencies welcome comment on whether there are other monetary or non-monetary terms that should be included in the definition of ''material terms,'' and how the comparison between terms granted to consumers could be conducted if multiple variables were taken into account.

The Agencies solicit comment as to whether creditors vary temporary initial rates, penalty rates, balance transfer rates, or cash advance rates, on either closed-end or open-end credit, as a result of risk-based pricing. If those rates do vary as a result of risk-based pricing, the Agencies request comment on whether those rates also should be treated as ''material terms,'' and whether it would be possible to apply to those rates the existing tests described in proposed § ____.72(b). If new tests would be required under such a broader definition of ''material terms,'' the Agencies solicit comment on what those tests might be.

The Agencies understand that some home-secured closed-end and home-secured open-end credit plans may charge prepayment penalties. The Agencies invite comment on whether creditors vary prepayment penalties based on information in consumer reports, and whether prepayment penalties should be treated as ''material terms.'' The Agencies also request comment on how the tests in proposed § ____.72(b) could be modified to account for risk-based pricing of prepayment penalties or whether entirely new tests would be required and, if so, what those new tests might be.

Proposed paragraph (i)(3) defines ''material terms'' for credit with no annual percentage rate as any monetary terms that the person varies based on information in a consumer report, such as the down payment or deposit. This provision applies to creditors such as telephone companies or utilities that use consumer reports in extending credit (for example, in determining the amount of a deposit or prepayment requirement) but do not extend credit subject to annual percentage rates. This provision also applies to charge cards for which the annual membership fee varies based on information from a consumer report. The Agencies solicit comment as to whether the definition's reference to ''any monetary terms'' that the person varies based on information from a consumer report is sufficiently specific or too broad.

Materially Less Favorable Material Terms

Proposed paragraph (j) defines ''materially less favorable,'' as it applies to material terms, to mean that the terms granted or extended to a consumer differ from the terms granted or extended to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted or extended to the other consumer. This definition clarifies that a comparison between one set of material terms and another set of material terms is generally required to satisfy the general rule and to identify which consumers must receive the notice.

The statute focuses on whether the material terms granted or extended to a consumer are ''materially less favorable than the most favorable terms available to a substantial proportion of consumers'' from or through a particular person. Therefore, for purposes of making this comparison, creditors must: (1) Select the ''most favorable terms'' available to a group of consumers that represents a substantial proportion of consumers to whom the creditor extends credit; and (2) compare the material terms granted or extended to the individual consumer to the most favorable material terms granted or extended to the comparison group. It would not be acceptable, for example, to compare a consumer's material terms to an arbitrarily selected benchmark, such as the creditor's median or average material terms or to the material terms generally available to the creditor's less creditworthy consumers. On the other hand, a creditor should not use in its comparison material terms that are available to only a tiny percentage of its most exceptionally creditworthy consumers, such as very high net worth individuals.

The proposed rules do not define what constitutes ''a substantial proportion'' of consumers, even though that concept is integrally linked to the concept of ''materially less favorable'' terms under the statute. The Agencies have not identified a definition of ''a substantial proportion'' that could reflect the widely varying pricing practices of creditors generally. For example, one creditor may offer its most favorable material terms to ninety percent of its consumers and materially less favorable material terms to ten percent of its consumers. Another creditor may offer its most favorable material terms to ten percent of its consumers and materially less favorable material terms to ninety percent of its consumers. A third creditor may offer its most favorable material terms to one percent of its consumers, slightly less favorable material terms to twenty percent of its consumers, and materially less favorable material terms to its remaining consumers. For these reasons, the Agencies do not believe it is appropriate to define ''a substantial proportion.'' Nonetheless, the Agencies expect that creditors would consider ''a substantial proportion'' as constituting more than a de minimis percentage, but that may or may not represent a majority.

Within these limitations, however, the proposed definition provides guidance regarding how to determine whether a particular set of terms is materially less favorable. Under the proposed definition, factors relevant to determining the significance of a difference in the cost of credit include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted or extended to the individual consumer and the material terms granted or extended to the comparison group. Consideration of these factors by different creditors may result in two creditors reaching opposite conclusions about the materiality of the same difference in annual percentage rates. For example, a credit card issuer considering these factors may conclude that a one-quarter percentage point difference in the annual percentage rate is not material, whereas a mortgage lender may conclude that a one-quarter percentage point difference in the annual percentage rate is material. In assessing the extent of the difference between two sets of material terms, a creditor should consider how much the consumer's cost of credit would increase as a result of receiving the less favorable material terms and whether that difference is likely to be important to a reasonable consumer.

The Agencies solicit comment on the proposed definition of ''materially less favorable.'' In particular, the Agencies seek comment on whether the proposed definition is helpful, and whether the interrelated terms ''most favorable terms'' and ''a substantial proportion of consumers'' also should be defined and, if so, how they should be defined.

Section ____.72 General Requirements for Risk-Based Pricing Notices General Rule

Proposed § ____.72 establishes the basic rules implementing the risk-based pricing notice requirement of section 615(h). Paragraph (a) states the general requirement that a person must provide the consumer with a notice if that person both: (i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and (ii) based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person. This paragraph mirrors the language in proposed § ____.70(a) and generally tracks the statutory language.

Although the statute would permit various interpretations of ''from or through that person,'' the Agencies interpret the phrase to refer to the person to whom the obligation is initially payable, *i.e.*, the original creditor. Under this interpretation, the original creditor is responsible for determining whether consumers received materially less favorable material terms and providing risk-based pricing notices to consumers, whether or not that person is the source of funding for the loan. When the original creditor is the source of funding for the loan, the consumer obtains credit from the original creditor. This occurs, for example, where the consumer obtains credit directly from a bank or finance company. When the original creditor is not the source of funding for the loan, however, the consumer obtains credit through the original creditor. This occurs, for example, where the consumer enters into a credit contract with an auto dealer, but the dealer does not fund the loan. Instead, the dealer has an agreement with a bank or finance company to purchase the contract. The bank or finance company provides the funding for the loan. The dealer immediately assigns the credit contract to a bank or finance company upon consummation of the transaction. In that case, the consumer has obtained credit through the auto dealer, rather than from the auto dealer.

The Agencies recognize that this interpretation excludes from the scope of the proposed rules brokers and other intermediaries who do not themselves grant, extend, or provide credit, but who, based in whole or in part on a consumer report, shop credit applications to creditors that offer less favorable rates than other creditors. Instead the proposed rules require an intermediary, such as a broker, to provide risk-based pricing notices to consumers only when the intermediary is the person to whom the obligation is initially payable. The Agencies believe this is the most appropriate

interpretation of the statute, given its language and purpose.

With respect to the statutory language, section 615(h) applies to the ''material terms'' granted, extended, or provided to the consumer based on a consumer report. An intermediary's decision regarding where to shop a consumer's credit application generally occurs before the material terms are set. Thus, at the time the application is shopped to various creditors, it is too early in the process to perform the direct comparison of material terms required by the statute, even if a consumer report influenced the intermediary's decision regarding where to shop the consumer's credit application.

The Agencies also believe that their interpretation of the statute with respect to intermediaries is consistent with its purposes. For the reasons described below, requiring intermediaries to provide notices based on the creditors to which they shop a consumer's credit application would not provide a significant benefit to consumers; would likely be confusing to consumers; and would be operationally difficult, burdensome, and costly.

First, a rule requiring intermediaries to provide notices when they shop applications to certain creditors would frequently result in the consumer receiving multiple risk-based pricing notices in connection with a single extension of credit. Under such a rule, consumers who work through intermediaries would in many cases receive two notices: The first from the intermediary when it shops the application, and the second from the creditor itself if the creditor grants credit to the consumer on materially less favorable material terms than it grants to a substantial proportion of its other consumers. In some cases, the intermediary is also the original creditor and could be required to provide two notices to the consumer. This scenario could arise, for example, in the context of an automobile loan. Under a rule requiring a shopping-triggered notice, if a dealer shops the consumer's application to finance companies that offer materially less favorable material terms than do other sources of financing, the dealer would be required to provide a notice to the consumer. In addition, an auto dealer that is the original creditor on the loan must provide a notice to a consumer who receives materially less favorable material terms than those received by a substantial proportion of the dealer's other consumers.

The Agencies generally do not believe that a consumer would benefit from receiving more than one risk-based pricing notice in connection with a single extension of credit. The purpose of the statute is to notify consumers that information in their consumer reports caused them to receive materially less favorable material terms, and to encourage those consumers to check their consumer reports for possible errors. The Agencies do not believe that providing a consumer with a second notice in connection with the same extension of credit is necessary or beneficial to educate or motivate the consumer to obtain a copy of his or her credit report. For that reason, the rules of construction in proposed § ____.75, discussed below, codify the principle that generally one notice for each extension of credit is sufficient.

Second, requiring multiple notices in connection with a single extension of credit would introduce significant compliance burdens and costs. As an operational matter, it would be difficult to establish by regulation appropriate criteria for determining when shopping a consumer's credit application to certain lenders would trigger the requirement to provide a risk-based pricing notice. There is no single, uniform method for distinguishing a prime lender from a subprime lender, for example, and some lenders may make both prime and subprime loans. In addition, requiring multiple notices in connection with a single extension of credit could impose significant costs on the credit reporting system (which costs would be passed on to consumers) in view of the Agencies' reading of the statute as providing consumers with a right to request a free consumer report upon receipt of each risk-based pricing notice.

The Agencies recognize that, under the proposed rules, some consumers who use an intermediary will not receive a risk-based pricing notice, even though their consumer reports, in whole or in part, influenced the intermediary's decision to shop their credit applications only to creditors that generally offer less favorable material terms than other creditors. This would occur if the creditor to whom the application was shopped granted its most favorable material terms to the consumer. Under the statute, however, the same issue exists when a consumer applies directly to subprime lenders because the statute does not require a creditor to compare the material terms it offers to consumers to the material terms offered by other creditors. The Agencies solicit comment on whether intermediaries who are not original creditors, such as brokers, should be required to provide risk-based pricing notices to consumers based upon the intermediaries' decisions regarding the shopping of consumer credit applications to certain creditors and, if so, how such a requirement could be structured.

Direct Comparisons and Materially Less Favorable Material Terms

Creditors may follow the general rule in determining, on a case-by-case basis, whether a consumer has received materially less favorable terms than the terms a substantial proportion of consumers have received from or through that creditor. The general rule is flexible and permits the creditor to determine, consistent with its particular circumstances, when material terms are ''materially less favorable than the most favorable terms available to a substantial proportion'' of its consumers.

When a creditor undertakes direct, consumer-to-consumer comparisons, such comparisons necessarily must account for the unique aspects of that creditor's business. For example, many creditors make pricing decisions based on a number of variables that are not based on information in a consumer report (*e.g.*, debt-to-income ratio or type of collateral) in addition to variables that are based on information in a consumer report. The role each of these variables plays in the pricing decision may vary from creditor to creditor and product to product. Similarly, creditors must compare the transaction at issue with past transactions of a similar type, and must control for changes in interest rates and other market conditions over time. A particular method of comparison that is sensible and feasible for one creditor may not be sensible and feasible for another creditor. No precise regulatory benchmark could account for such creditor-specific and product-specific variations.

Although the proposed rules do not impose a quantitative standard or specific methodology for determining whether a consumer is receiving materially less favorable terms, the determination should be made in a reasonable manner. The Agencies expect that creditors would provide risk-based pricing notices to some, but fewer than all, of the consumers to whom they extend credit. Under the general rule, the creditor would first need to identify the appropriate subset of its current or past consumers to compare to any given consumer. Each consumer would need to be compared to an adequate sample of consumers who have engaged in similar transactions, such as those who have applied for or received the particular credit product for which the consumer has applied. The terms offered to a

consumer in a 30-year fixed-rate purchase money mortgage, for example, cannot be compared to the terms offered to consumers who obtain auto loans, credit cards, student loans, or adjustable-rate mortgages. The creditor also would need to tailor its comparison to disregard any underwriting criteria that do not depend upon consumer report information. Such a comparison also would have to account for changes in the creditor's customer base, product offerings, or underwriting criteria over time. Similarly, adjustments would have to be made if the terms offered to consumers in the past are not presently offered to consumers.

The Agencies recognize that, even with the flexibility provided in the proposed rules, it may not be feasible or practical for many creditors to make the direct comparisons required by the general rule. Many creditors are likely to encounter operational difficulties in determining whether a consumer report played a role in a particular pricing decision that was based on multiple variables, and in identifying an appropriate benchmark with which to compare a given consumer's material terms. Small creditors in particular may have difficulty identifying a sufficient number of comparable benchmark credit transactions, since those creditors may make relatively few loans of any given type.

For these reasons, proposed paragraph (b) sets forth two other methods, the ''credit score proxy method'' and the ''tiered pricing method,'' that creditors can use to identify which consumers must receive notices for a given class of products. These two methods provide alternatives to the direct consumer-to-consumer comparison described in section 615(h) of the FCRA. Consumers identified by either of these two methods will be deemed to have been granted, extended, or otherwise provided credit on materially less favorable material terms.

The Agencies have crafted these two methods in order to enable a creditor to provide the risk-based pricing notice to fewer than all consumers without having to make a direct comparison between the material terms granted to each consumer and the material terms granted to its other consumers. The Agencies recognize that these methods may not result in a precise differentiation in every case between consumers who received the most favorable terms and those who received materially less favorable terms. The Agencies believe, however, that each of these methods is a reasonable proxy or substitute for identifying those consumers who received materially less favorable terms. Permitting the use of proxy methods also recognizes that, at least in some cases, there is no reliable way to determine which consumers received materially less favorable terms. Moreover, through the two alternative methods, the Agencies can provide clear guidance regarding the meaning of materially less favorable material terms.

The Agencies believe that the credit score proxy method and the tiered-pricing method generally will identify those consumers who receive materially less favorable material terms from or through a particular person. In applying either of these methods, however, there may be some instances where a consumer receives a notice, but does not receive material terms that are materially less favorable than the most favorable terms generally available to a substantial proportion of consumers. For example, using the credit score proxy method, a consumer with a credit score below the cutoff score would receive a notice even if he or she received the creditor's most favorable terms. It would not violate the rules to provide risk-based pricing notices to some consumers who receive the most favorable terms so long as the selection of those consumers results from the proper application of either of these two methods. Neither of these methods, however, would permit a creditor to provide the notice to all consumers.

Although the proposed rules set forth two alternate methods that a person may use, for purposes of consistency a person must use the same method to evaluate all consumers who are granted, extended, or otherwise provided substantially similar products from or through that person. For example, if a creditor uses the credit score proxy method to evaluate consumers who obtain credit to finance the purchase of a new automobile, the creditor must use that method for all such consumers for new vehicle loans. On the other hand, the Agencies recognize that the feasibility of these methods may vary among different product lines. Thus, a person may use one method to evaluate consumers who obtain mortgages and the other method to evaluate consumers who obtain auto loans.

The Agencies recognize that there may be other methods that would serve as effective proxies for identifying the appropriate consumers to receive the risk-based pricing notice. Based on the information available to the Agencies, the two methods in the proposed rules appear to represent the approaches that best balance effective targeting of the notice to those consumers who are likely to have received materially less favorable terms with operational feasibility. The Agencies solicit comment on whether there are other methods, in addition to those included in this proposal, that would satisfy the Agencies' criteria and provide other operationally feasible options for identifying those consumers who must receive risk-based pricing notices.

Credit Score Proxy Method

Proposed paragraph (b)(1) sets forth the credit score proxy method. Under this method, a person that sets the material terms of credit granted, extended, or otherwise provided to a consumer, based in whole or in part on a credit score, may comply with the section 615(h) requirements by (i) determining the credit score that represents the point at which approximately 40 percent of its consumers have higher credit scores and approximately 60 percent of its consumers have lower credit scores, and (ii) providing a risk-based pricing notice to each consumer with a credit score below that cutoff score.[9] A creditor that sets its material terms based in whole or in part on a credit score may use the credit score proxy method, and is not required to consider the actual credit terms offered to each consumer. Rather, that creditor is required only to compare the credit score of a given consumer with the pre-calculated cutoff score, which determines whether a notice is required. The Agencies believe that, all other things being equal, consumers with lower credit scores are likely to receive materially less favorable terms than consumers with higher credit scores when the terms are set based in whole or in part on their consumer reports. As a result, the Agencies believe that this method will target the risk-based pricing notice to those consumers who are likely to have received materially less favorable terms due to risk-based pricing.

The credit score proxy method focuses on only one variable, the consumer's credit score. A credit score obtained from an entity regularly engaged in the business of selling credit scores is based on information in a consumer report. For a creditor that obtains such a credit score, the credit score proxy method generally eliminates the influence of variables that are not derived from information in a consumer report, such as the consumer's income, the term of the loan, or the amount of any down payment. In effect, this method substitutes a comparison of the

[9] The proposed rules do not require a precise cutoff point at the 40 percent/60 percent mark. Depending on the available data set and the practices of the creditor, the cutoff point may be approximate.

credit scores of different consumers as a proxy for a comparison of the material terms offered to different consumers.

The Agencies believe that setting the standard for the cutoff score at a point that requires notices to be provided to the approximately 60 percent of a creditor's consumers with the lowest credit scores is appropriate and reasonable. The point at which consumers typically begin to receive materially less favorable material terms from a creditor will vary from creditor to creditor and product to product. The Agencies believe, however, that setting a numerical standard for calculating the cutoff score represents a reasonable balancing of the goal of providing notices to consumers most likely to benefit from them with the need for a clear, bright-line standard that provides certainty and predictability for creditors. If the Agencies did not establish a numerical standard for calculating the cutoff score, each creditor would have to determine how to calculate its own cutoff score based on its own consumer base, which would involve a complex analysis that may be difficult to implement. In addition, setting a numerical standard for determining the cutoff score should enhance the ability of regulators to enforce compliance against creditors using this method.

The Agencies solicit comment on whether the credit score proxy method generally will result in risk-based pricing notices being provided to consumers who are likely to have received materially less favorable terms due to risk-based pricing. The Agencies also request comment on whether setting the cutoff score at approximately the point at which 40 percent of a creditor's consumers have higher scores and 60 percent have lower scores is appropriate and workable, or whether a different point, such as the point at which 50 percent of a creditor's consumers have higher scores and 50 percent have lower scores, would be more appropriate. The Agencies also solicit comment regarding any empirical data regarding the point at which consumers typically begin to receive materially less favorable material terms and that may suggest the most appropriate point at which to set the cutoff score.

Proposed paragraph (b)(1)(ii) describes two methods for determining the cutoff score. In general, creditors will be required to use the sampling approach set forth in paragraph (b)(1)(ii)(A). The sampling approach provides that a person that currently uses risk-based pricing with respect to the credit products it offers must calculate the cutoff score by considering the credit scores of all or a representative sample of the consumers to whom it has granted, extended, or otherwise provided credit for a given class of products. When a creditor's customer base or underwriting standards vary significantly among different classes of products, it may be necessary to calculate separate cutoff scores for each class of products based on representative samples of consumers offered that type of credit. For example, a creditor with a varied portfolio of credit products may have to calculate separate cutoff scores for mortgages, credit cards, automobile loans, and student loans.

The Agencies recognize that the sampling approach will not be feasible for some creditors, such as new entrants to the credit business, entities that introduce new credit products, or entities that have just started to use risk-based pricing and have not yet developed a representative sample of consumers. Proposed paragraph (b)(1)(ii)(B) permits such creditors initially to determine the appropriate cutoff score based on information from appropriate market research or relevant third-party sources for similar products, such as information from companies that develop credit scores. For example, one major provider of credit scores publishes a chart on its web site showing the distribution of credit scores across the U.S. population. In addition, proposed paragraph (b)(1)(ii)(B) permits a creditor that acquires a credit portfolio as a result of a merger or acquisition to determine the cutoff score based on information it received from the merged or acquired party.

Proposed paragraph (b)(1)(ii)(C) addresses the recalculation of cutoff scores. In general, persons using the sampling approach will need to recalculate their cutoff scores at least every two years. A person whose cutoff score was determined using the secondary source approach in paragraph (b)(1)(ii)(B), however, will be required to recalculate its cutoff score based on a representative sample of its own consumers within one year after it begins using a cutoff score derived from third-party source data. If, however, a person using the secondary source approach does not grant, extend, or otherwise provide credit to a sufficient number of new consumers during that one-year period, and therefore lacks sufficient data with which to recalculate its cutoff score after one year, the person will be permitted to continue to use a cutoff score derived from third-party source data until it grants, extends, or otherwise provides credit to a sufficient number of new consumers and is able to collect sufficient data on which to base the recalculation.

The distribution of credit scores for a creditor's customer base may shift over time, so it is important to recalculate the cutoff score from time to time. The time period between recalculations, however, should be long enough to avoid requiring continual sampling and to minimize the risk of introducing distortions, such as seasonal variations, into the data used to calculate the cutoff score as a result of having abbreviated sampling periods. The Agencies solicit comment on the recalculation requirements, specifically regarding whether two years, as opposed to a shorter or longer period, is the appropriate interval at which the recalculation generally should be conducted under the sampling approach. The Agencies also solicit comment on whether one year is the appropriate period of time within which a person using the secondary source approach must recalculate its cutoff score using the sampling approach.

Proposed paragraph (b)(1)(ii)(D) addresses the situation where a creditor uses two or more credit scores in setting the material terms of credit. Some creditors may request credit scores from multiple sources and may use more than one of those scores in connection with the underwriting process. Proposed paragraph (b)(1)(ii)(D) states that if a person using the credit score proxy method generally uses two or more scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, the person must determine the appropriate cutoff score based on how the person evaluates the multiple credit scores when making credit decisions. For example, if a creditor generally purchases two scores for each consumer and uses the average of those two scores when setting the material terms of credit, it must use the average of its consumers' scores when calculating its cutoff score.

Some creditors that use multiple scores, however, may not consistently use the same method for evaluating those scores. For example, a creditor may sometimes use the average score and other times use the high score in its credit evaluation. In these circumstances, the proposed rules require that the creditor use reasonable means to determine the appropriate cutoff score and provide a safe harbor to a creditor that uses either a method that the creditor regularly uses or the average credit score for each consumer as the means of calculating the cutoff score.

Some consumers, particularly those with limited credit histories, may not

have credit scores. There is no way to compare those consumers to the cutoff score. A person using the credit score proxy method may sometimes grant, extend, or otherwise provide credit to such a consumer for whom a credit score is not available. Under those circumstances, proposed paragraph (b)(1)(iii) provides that the person using the credit score proxy method must assume that a consumer for whom a credit score is not available receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers, and provide a risk-based pricing notice to that consumer. The Agencies believe this assumption is appropriate because consumers for whom a credit score is not available are likely to receive less favorable terms than those offered to other consumers. The Agencies solicit comment on whether this assumption is appropriate. The Agencies also solicit comment on whether, if no credit score is available, there are other reasonable means by which a person may determine whether the consumer received materially less favorable credit terms.

Proposed paragraph (b)(1)(iv) provides an example of how a credit card issuer could apply the credit score proxy method. The credit card issuer in this hypothetical example calculates a cutoff score of 720. The Agencies expect that cutoff scores will vary for different creditors, depending on the type of credit score used and the score distributions of each creditor's customer base. For example, among creditors using the same scoring model, a subprime-only creditor would likely have a lower cutoff score than a creditor that makes both prime and subprime loans, or a creditor that makes only prime loans.

Tiered Pricing Method

Proposed paragraph (b)(2) sets forth the tiered pricing method for determining which consumers should receive a risk-based pricing notice. The general rule in proposed paragraph (b)(2)(i) provides that a person that sets the material terms of credit granted, extended, or otherwise provided to a consumer by placing the consumer within one of a discrete number of pricing tiers, based in whole or in part on a consumer report, may use the tiered pricing method. Pricing tiers may be reflected, for example, in a rate sheet that lists different rates available to the consumer depending upon information in a consumer report, such as the consumer's credit score, among other factors. The only factor that a person using this method must consider is tiers with different annual percentage rates, or, in the case of credit for which there is no annual percentage rate, other monetary terms that the person varies based on consumer report information such as the down payment or deposit. For example, if a lender offers automobile loans for which the annual percentage rate will be set at seven, nine, or eleven percent based in whole or in part on information from a consumer report, the lender would only need to consider which annual percentage rate pricing tier applies to a consumer in order to determine whether the consumer should receive a risk-based pricing notice, even if factors other than the consumer report influence the annual percentage rate received by the consumer.

Proposed paragraph (b)(2)(i) describes the application of the tiered pricing method when a person using this method has four or fewer pricing tiers. In order to comply with the tiered pricing method in those circumstances, the person must provide a risk-based pricing notice to each consumer who does not qualify for the top, or lowest-priced, tier.

Proposed paragraph (b)(2)(ii) describes the application of the tiered pricing method when a person using this method has five or more tiers. In this circumstance, a person using the tiered pricing method may comply with the rule by sending a risk-based pricing notice to each consumer who does not qualify for the top two (lowest-priced) tiers, plus any other tier that represents at least the top 30 percent but no more than the top 40 percent of the total number of tiers. The example provided in this paragraph explains that in the case of a person with nine pricing tiers, a notice would need to be provided to all consumers who are not priced in the top three tiers.

The Agencies recognize that creditors may use different pricing tiers for different types of products, such as automobile loans and boat loans. If a creditor uses different pricing tiers for different products, a separate analysis will be required for each product for which different tiers apply. If the same tiers apply regardless of the product, then a creditor need not distinguish between those products.

The tiered pricing method focuses only on the number and percentage of tiers, not on the number or percentage of consumers who are assigned to each tier. A test that took into consideration the number of consumers within each tier could be extremely complicated and difficult to administer. The Agencies solicit comment on whether the tiered pricing method should take into account the percentage of consumers placed in each tier and how that could be accomplished without creating undue burdens or introducing excessive complexity to the tiered pricing method.

The Agencies have considered the possibility that creditors may attempt to circumvent the tiered pricing method by establishing an additional tier or tiers for which no consumers will likely qualify. A creditor using the tiered pricing method is not permitted to consider tiers for which no consumers have qualified nor are reasonably expected to qualify. For example, if a creditor's underwriting standards prohibit lending to consumers with credit scores below 640, the creditor would not be able to use any pricing tiers that correlate with scores below 640. Similarly, a creditor should not consider a top tier that is available only to consumers with perfect or near-perfect credit and which the creditor rarely, if ever, uses. The Agencies solicit comment on whether and how the tiered pricing method could be subject to such circumvention by creditors and whether the proposed rules should be modified to prevent circumvention.

Credit Cards

Proposed paragraph (c) sets forth the special requirements applicable to credit card issuers. Proposed paragraph (c)(1) generally requires a credit card issuer to provide a risk-based pricing notice to a consumer if: (i) The consumer applies for a credit card in connection with an application program, such as a direct-mail or take-one offer, or a pre-screened solicitation, for which more than a single possible purchase annual percentage rate may apply; and (ii) based in whole or in part on that consumer's consumer report, the card issuer provides a credit card to the consumer with a purchase annual percentage rate that is higher than the lowest purchase annual percentage rate available under that application or solicitation. The Agencies are basing the proposed rule on the assumption that when a credit card issuer offers a range of rates within a single solicitation or offer, the consumer applies for the best rate available under that offer.

Proposed paragraph (c)(2) describes those circumstances in which a credit card issuer is not required to provide a risk-based pricing notice. Under this provision, a credit card issuer is not required to provide a risk-based pricing notice to a consumer if the consumer applies for a credit card for which the creditor provides a single purchase annual percentage rate (excluding temporary and penalty rates). In

addition, a credit card issuer is not required to provide a risk-based pricing notice to a consumer if the consumer is offered the lowest purchase annual percentage rate available under the credit card offer for which the consumer applied, even if a lower rate is available from that issuer under a different credit card offer. These interpretations are consistent with the statutory exception in section 615(h)(3)(A) of the FCRA, which provides that a risk-based pricing notice is not required if a consumer applies for, and receives, specific material terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after the person obtained a consumer report. In each of the cases described in the proposed rules, the consumer applies for specific material terms and receives them, regardless of what other offers may be available to consumers from or through that credit card issuer. Proposed paragraph (c)(3) sets forth an example of the application of the risk-based pricing rules to a credit card solicitation containing multiple possible purchase annual percentage rates.

Account Review

Proposed paragraph (d) describes how the risk-based pricing rules apply to the account review process. Proposed paragraph (d)(1) provides that a person must provide a risk-based pricing notice to a consumer if it: (i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and (ii) based in whole on in part on that consumer report, increases the annual percentage rate. Proposed paragraph (d)(2) illustrates this provision's applicability to credit card accounts. If a credit card issuer periodically obtains consumer reports in order to review the terms of the credit it has extended to consumers, and based on such a review increases the purchase annual percentage rate applicable to a consumer's card, then it must provide that consumer with a risk-based pricing notice.

Section ____.73 Content, Form, and Timing of Risk-Based Pricing Notices

Proposed § ____.73 establishes the content, form, and timing for risk-based notices required to be given. These proposed rules apply whether the creditor makes the direct, consumer-to-consumer comparisons described in the general rule, or uses one of the proxy methods. Proposed paragraph (a)(1) states the general content requirements. Paragraphs (a)(1)(ii), (a)(1)(v), (a)(1)(vi), and (a)(1)(vii) generally implement the statutory minimum content requirements in section 615(h)(5) of the FCRA, to which the Agencies have added certain supplemental information as described below to provide additional context to consumers.

Terms based on consumer report. Proposed paragraph (a)(1)(ii) requires the notice to contain a statement informing the consumer that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report. This statement generally tracks the statutory requirement in section 615(h)(5)(A) of the FCRA, except that the Agencies also propose to require that the notice include the annual percentage rate as an example of the terms offered. The Agencies believe that this example will help consumers to understand how the terms of credit offered to them may be affected by information in a consumer report.

Identity of consumer reporting agency. Proposed paragraph (a)(1)(v) implements the statutory requirement in paragraph 615(h)(5)(B) of the FCRA. This paragraph requires the risk-based pricing notice to state the identity of each consumer reporting agency that furnished a consumer report used in the credit decision. The statutory language refers to ''the consumer reporting agency'' furnishing the report. The Agencies have expanded this statutory minimum content by requiring that the name of each consumer reporting agency that furnished a consumer report that was used in the credit decision, not just one consumer reporting agency, be disclosed on the notice. The Agencies believe that it is important to inform a consumer that multiple consumer reports were used in the credit decision, because the consumer may wish to check each of those reports for errors.

Copy of consumer report. Proposed paragraph (a)(1)(vi) implements the statutory requirement in paragraph 615(h)(5)(C) of the FCRA that the notice include a statement informing the consumer that the consumer may obtain a copy of a consumer report without charge from the consumer reporting agency identified in the risk-based pricing notice. Proposed paragraph (a)(1)(vi) requires the notice to include a statement that federal law gives the consumer the right to obtain a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice.

Although section 615(h) does not set forth a 60-day time period, the proposed 60-day time period is consistent with the time limit contained in the adverse action notice provisions in section 612(b) of the FCRA. Any right to a free consumer report arising under section 612(b) is valid for 60 days after the consumer receives the notice that gives rise to that right. Incorporation of this 60-day rule is consistent with the Agencies' reading of the statute as giving consumers who receive a risk-based pricing notice the right to a free consumer report separate from the free annual report. The Agencies believe that it is important that the risk-based pricing notice let consumers know that their right to a free report expires after 60 days so that consumers will be encouraged to request any free reports to which they may be entitled in a timely manner. The Agencies solicit comment on whether it is appropriate to require disclosure of the 60-day period in the notice.

Consumer reporting agency contact information. Proposed paragraph (a)(1)(vii) implements the statutory requirement in paragraph 615(h)(5)(D) of the FCRA that the risk-based pricing notice include the contact information specified by the consumer reporting agency identified in the notice for obtaining the free consumer report referenced in the notice. The notice must include a statement informing the consumer how to obtain the free consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information specified by each consumer reporting agency. The Agencies also have clarified that the notice should include a toll-free number, if applicable, for each consumer reporting agency.

Consumer report explanation. In addition to the minimum content requirements imposed by the statute and in some cases supplemented by the Agencies, the proposal also requires that the risk-based pricing notice contain additional background information regarding consumer reports. Proposed paragraph (a)(1)(i) requires a statement explaining that a consumer report includes information about a consumer's credit history and the type of information included in that history. This general background information describing consumer reports will provide additional context that may be helpful to consumers who lack familiarity with consumer reports and what they contain.

Less favorable terms. Proposed paragraph (a)(1)(iii) requires the notice to state that the terms offered to the consumer may be less favorable than the terms offered to consumers with better credit histories. This statement relates the general information about credit history and credit pricing to the specific consumer. Absent this statement, some consumers may assume that the general

information has no relevance to them. This statement is designed to carry out the statutory purpose of prompting consumers to check their consumer reports for any errors.

The proposed rules do not require the notice to state that the terms offered to the consumer ''are'' or ''will be'' less favorable than the terms offered to other consumers. Such a statement would not be accurate in certain cases because the creditor may not be able to precisely distinguish consumers who received the most favorable terms from those who did not. For example, if a creditor applies the credit score proxy method, some consumers may receive a risk-based pricing notice even if they receive the most favorable terms available from that creditor. This may occur, for instance, because factors other than the consumer report, such as income or down payment amount, also influenced the pricing decision.

The Agencies solicit comment on whether the notice should state that the terms ''may be'' less favorable, as proposed, or should use a different phrase, such as that the terms ''are likely to be'' less favorable. The Agencies request comment on what language would best serve the dual goals of most accurately describing the probability that the consumer received materially less favorable material terms and most effectively prompting consumers to obtain and review their consumer reports.

Errors, disputes, and information sources. Proposed paragraph (a)(1)(iv) requires that the notice contain a statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report. The Agencies believe that this additional information may prompt consumers to check their consumer reports for any errors and may be helpful to consumers who lack familiarity with their ability to correct mistakes on their consumer reports. Proposed paragraph (a)(1)(viii) requires the notice to include a statement directing the consumer to the web sites of the Board and the Commission to obtain more information about consumer reports.

Account review notices. Proposed paragraph (a)(2) sets forth the content requirements for any risk-based pricing notice required to be given as a result of the use of a consumer report in account review. The proposal requires this notice to include a statement that the person sending the notice has conducted a review of the account based in whole or in part on information from a consumer report and a statement informing the consumer that as a result of that review the annual percentage rate on the account has been increased. Consistent with the general risk-based pricing notice and with section 615(h)(5), the remaining content of the notice must: (i) State that a consumer report includes information about a consumer's credit history and the type of information included in that credit history; (ii) state that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report; (iii) state the identity of each consumer reporting agency that furnished a consumer report used in the account review; (iv) state that federal law gives the consumer a right to obtain a free copy of his or her consumer report from that consumer reporting agency for 60 days after receipt of the notice; (v) inform the consumer how to obtain such a consumer report; and (vi) direct the consumer to the web sites of the Board and the Commission to obtain more information about consumer reports.

Format. Proposed paragraph (b) sets forth the format requirements for risk-based pricing notices. Proposed paragraph (b)(1)(i) requires that risk-based pricing notices be clear and conspicuous. Proposed paragraph (b)(1)(ii) specifies that persons subject to the rule are permitted to make the disclosures in writing, orally, or electronically. This is consistent with section 615(h)(1) of the FCRA, which permits the risk-based pricing notice to be provided to the consumer in writing, orally, or electronically.

Proposed paragraph (b)(2) references the model forms of the risk-based pricing notices required by § ____.72(a) and (c), and by § ____.72(d), which are contained in Appendices H–1 and H–2 of the Board's rule and Appendices B–1 and B–2 of the Commission's rule. Appropriate use of these model forms will be deemed to be a safe harbor for compliance with the risk-based pricing notice requirements. Use of these model forms is optional.

Timing. Proposed paragraph (c) sets forth the timing requirements for providing risk-based pricing notices in connection with extensions of closed-end and open-end credit, as well as credit account reviews. For closed-end transactions, proposed paragraph (c)(1) requires the notice to be provided to the consumer before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to give the notice. For open-end credit, proposed paragraph (c)(2) requires the notice to be provided to the consumer before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of credit is communicated to the consumer. Finally, for account reviews, proposed paragraph (c)(3) requires that the notice be provided to the consumer at the time the decision to increase the annual percentage rate based on a consumer report is communicated to the consumer by the person required to give the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate, no later than five days after the effective date of the change in the annual percentage rate.

Section 615(h)(2) of the FCRA states that the risk-based pricing notice may be provided at the time of application or at the time that the approval of an application for credit is communicated to the consumer. The Agencies considered whether to allow the risk-based pricing notice to be provided at the time of application, but rejected that approach. Instead, the Agencies have concluded that the notice generally should be provided no earlier than the time when approval is communicated to the consumer. The Agencies have proposed this approach for several reasons.

First, an application notice generally would have to be provided to all consumer applicants before a consumer report is reviewed and would have to be completely generic. The general rule, however, requires persons engaged in risk-based pricing to differentiate between consumers and to provide notice to those consumers who receive materially less favorable material terms than other consumers. The Agencies believe that requiring the notice to be provided later than the time of application gives effect to the general rule and ensures that risk-based pricing notices are provided only to those consumers who may receive materially less favorable material terms.

Second, the Agencies believe that a completely generic and depersonalized notice provided at the time of application may not be effective in communicating to consumers the importance of the consumer report in potentially establishing the terms of credit. The Agencies believe that such a notice is less likely to be noticed, read, and acted upon by consumers than a more targeted, personalized notice.

Third, permitting the notice to be provided at the time of application would likely increase significantly the number of risk-based pricing notices provided to consumers compared to the number of notices that would be provided later in the credit process. If, consistent with the Agencies' reading of the statute, receipt of a risk-based pricing notice entitles the consumer to a free copy of his or her consumer report, then permitting application notices could greatly expand the number of free reports to which consumers may be entitled in ways that could be costly for all parties, including consumers, and offer little or no benefit to consumers. Accordingly, the proposed rules specify that the earliest that the risk-based pricing notice may be provided would be at the time that approval of the extension of credit is communicated to the consumer.

Finally, the Agencies also believe that the notice is likely to have the most utility if it is provided early enough in a transaction that it encourages a consumer to check his or her consumer report for inaccuracies. For this reason, the proposal requires that the notice be given prior to consummation of any closed-end transaction or prior to the first transaction under any open-end plan. The Agencies understand that for some transactions there may be very little time between approval of an application and either consummation or the first transaction under the plan. For example, a credit card account may be opened quickly. For other types of credit, there may be more time between approval of the application and either consummation or the first transaction under the plan. In those cases, a consumer may be more likely to check his or her consumer report for errors and, after reviewing the consumer report, may decide not to go forward with the transaction until any errors in the consumer report are corrected. The Agencies solicit comment on whether there are any circumstances in which the notice should be permitted to be provided after consummation or after the first transaction under the plan, and whether a notice provided after consummation or after the first transaction under the plan would be effective for consumers.

Section ____.74 Exceptions

Proposed § ____.74 sets forth a number of exceptions to the general requirements regarding risk-based pricing notices. Each exception is discussed below.

Statutory Exceptions

Proposed paragraph (a) provides that notice is not required if the consumer applied for specific material terms and was granted those terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after that person obtained a consumer report. This exception implements the statutory exception in FCRA section 615(h)(3)(A). This proposed exception clarifies that ''specific material terms'' means a single material term or set of material terms, such as a single annual percentage rate, and not a range of alternatives, such as an offer that gives multiple annual percentage rates or a range of annual percentage rates. The example in proposed paragraph (a)(ii) explains that if a consumer receives a firm offer of credit from a credit card issuer with a single rate, based in whole or in part on a consumer report, a risk-based pricing notice is not required to be provided if the consumer applies for and receives a credit card with that advertised rate. This is the result because the creditor set the material terms of the offer before, not after, the consumer applied for or requested the credit.

Proposed paragraph (b) provides that a risk-based pricing notice is not required if a creditor has provided or will provide an adverse action notice to the consumer under FCRA section 615(a) in connection with the transaction. This exception implements the statutory exception in FCRA section 615(h)(3)(B). The proposed exception applies to any risk-based pricing notices otherwise required under the general rule, the rule applicable to credit card issuers, or the rule applicable upon account review, so long as an adverse action notice has been or will be provided to the consumer pursuant to section 615(a) of the FCRA.

Prescreened Solicitations Exception

Proposed paragraph (c) provides an exception to the general risk-based pricing rule when consumer reports are used to set the terms in a prescreened solicitation (firm offer of credit). Proposed paragraph (c)(1) states that a person is not required to provide a risk-based pricing notice if that person (i) obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA, and (ii) uses that consumer report for the purpose of making a firm offer of credit to the consumer, as described in section 603(l) of the FCRA. This exception applies regardless of the terms the creditor may offer to other consumers in other firm offers of credit. In other words, a creditor is not required to provide a risk-based pricing notice to a consumer to whom it sends a particular prescreened solicitation just because the creditor sends prescreened solicitations that offer materially more favorable material terms to another group of consumers.

The Agencies note that this exception applies only when a consumer report is used to set the terms offered in a prescreened solicitation to a consumer at the pre-application stage, and does not eliminate the requirement to provide a risk-based pricing notice later in connection with the credit extension, pursuant to proposed § ____.72. For example, a firm offer of credit may contain several possible rates and, if a consumer applies in response to the offer and does not receive the lowest rate, the creditor generally is required to provide a risk-based pricing notice to that consumer.

The Agencies believe that requiring a notice in connection with prescreened solicitations will not significantly benefit consumers, but will impose substantial burdens on creditors and the credit reporting system. The Agencies understand that only about one half of one percent of consumers who receive prescreened solicitations respond to them. Therefore, for the vast majority of consumers who are not interested in obtaining credit via the prescreened solicitation, a risk-based pricing notice would have no relevance.[10] Moreover, a requirement for creditors to provide notices to all consumers who receive certain prescreened solicitations and the corresponding availability of free consumer reports for each of those consumers would impose a significant burden on creditors and the credit reporting system.

This exception also is consistent with the Agencies' determination that the appropriate time for providing a notice is no earlier than the time the decision to approve the credit application, or to grant, extend, or provide credit, is communicated to the consumer. At the time a creditor sends a prescreened solicitation, however, the consumer has

[10] Whether a prescreened solicitation is made ''in connection with an application for, or a grant, extension, or other provision of credit''—and, thus, whether it is covered by section 615(h)—could depend on the circumstances of a particular solicitation, including whether a specific consumer actually applies for credit in response to the solicitation. Because the Agencies have created an exception for prescreened solicitations based on their finding, pursuant to section 615(h)(6)(B)(iii), that there is no significant benefit to consumers, the Agencies do not need to reach the issue of whether such solicitations are ''in connection with'' an application for credit.

not made an application or otherwise indicated any interest in the credit.

Finally, the exception also is consistent with the rule of construction that consumers should receive only one risk-based pricing notice per credit transaction. See detailed discussion of proposed § ____.75 below. Absent this exception, some consumers who respond to prescreened solicitations would receive multiple notices in connection with the transaction: The first at the time they receive the solicitation, and the second when they respond to the solicitation but do not receive the most favorable terms offered in that solicitation (e.g., when the solicitation offers more than one possible annual percentage rate). The Agencies find that there is no significant benefit to consumers from receiving more than one notice, and more than one opportunity to obtain free consumer reports, in connection with a single extension of credit.

Credit Score Disclosure Exceptions

The Agencies are proposing three exceptions to the risk-based pricing notice requirement for creditors that provide a credit score disclosure to consumers. Each exception is described more fully below. The credit score disclosure generally will include the consumer's credit score, along with explanatory information regarding the score and information regarding the use of consumer reports and scores in the underwriting process. Under this exception, a creditor will provide this disclosure to all consumers and will not need to apply a test to determine which consumers likely were offered or received materially less favorable material terms. The Agencies also have proposed an alternate form of the notice to be provided to consumers for whom credit scores are unavailable. As discussed below, the Agencies are proposing these exceptions under section 615(h)(6)(iii) of the FCRA, which gives the Agencies the authority to create exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that the notice would not significantly benefit consumers.

Credit Score Disclosure Exception for Credit Secured by Residential Real Property

Proposed paragraph (d) provides an exception to the risk-based pricing notice requirement for creditors offering loans secured by one to four units of residential real property. This exception permits creditors offering loans to consumers that are secured by residential real property (purchase money mortgages, mortgage refinancings, home-equity lines of credit, and home-equity plans) to comply with the regulations by adding certain supplemental disclosures regarding the use of consumer reports to the credit score disclosure they already are required to provide to consumers pursuant to section 609(g) of the FCRA. These creditors could provide this integrated notice to all consumers in connection with loans secured by real property, and would not be required to do a comparison of terms offered to different consumers, as is required by the general rule.

Proposed paragraph (d)(1) sets forth the requirements that a creditor must meet to avail itself of the exception and states that a creditor is not required to provide a risk-based pricing notice if it complies with this subsection. Paragraph (d)(1)(i) provides that in order to qualify for the exception, the credit requested by the consumer must involve an extension of credit secured by one to four units of residential real property.

Proposed paragraph (d)(1)(ii) sets forth the contents of the notice that must be provided to the consumer in order for a creditor to qualify for the exception. Proposed paragraphs (d)(1)(ii)(A)–(d)(1)(ii)(C) require disclosure of certain background information regarding consumer reports and credit scores, including: (i) A statement that a consumer report is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors; (ii) a statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history; and (iii) a statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be. The Agencies believe that this background information will provide helpful context for consumers who may otherwise lack familiarity with consumer reports and credit scores and how they are used.

Proposed paragraph (d)(1)(ii)(D) requires the notice to include all of the information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA. Section 609(g) requires disclosure of: (i) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated for a purpose related to the extension of credit; (ii) the date on which that score was created; (iii) the name of the person or entity that provided the credit score or credit file on which the credit score was created; (iv) the range of possible credit scores under the model used; and (v) up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of enquiries made with respect to that consumer report is one of the factors).

A person relying upon the exception set forth in proposed paragraph (d) generally is required to provide to the consumer a credit score that was used in connection with the credit decision. If, however, a person uses a credit score that was not created by a consumer reporting agency, such as a proprietary score, that person is permitted to satisfy the exception either by providing the proprietary score to the consumer or by providing to the consumer a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores. In addition, a person that does not use a credit score in its credit evaluation process is permitted to rely on this exception by purchasing and providing to the consumer a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores. This approach is consistent with the approach taken in section 609(g) of the FCRA and provides consumers with relevant summary information from their consumer reports. The Agencies request comment on the types of entities from which a creditor should be permitted to purchase credit scores for use under this exception in circumstances where the creditor does not otherwise use credit scores in the credit evaluation process.

For many consumers, a disclosure of the credit score number alone will provide no indication of whether that credit score is favorable, unfavorable, or about average when compared to the credit scores of other consumers. Therefore, proposed paragraph (d)(1)(ii)(E) contains the additional requirement that the notice disclose by clear and readily understandable means either a distribution of credit scores (*i.e.*, the proportion of consumers who have scores within the specified ranges) or a statement about how the consumer's credit score compares to the scores of other consumers. This additional information will provide important context to help consumers understand their credit scores. Any distribution or comparison of scores should reflect the population of consumers who have been scored under the model used by the person providing the score. If that information is not available from the person providing the score, or if the

creditor is disclosing a proprietary score, then the creditor may base the distribution or comparison on its own consumers who have been scored using the model.

If a creditor chooses to disclose the credit score distribution, this information can be presented in the form of a bar graph containing a minimum of six bars, or by a different form of graphical presentation that is clear and readily understandable. If a credit score has a range of 1 to 100, the distribution must be disclosed using that same 1 to 100 scale. For a creditor using the bar graph, each bar must illustrate the percentage of consumers with credit scores within the range of scores reflected by that bar. A creditor is not required to prepare its own bar graph; use of a bar graph obtained from the person providing the credit score that meets the requirements of this paragraph will be deemed compliant. The Agencies understand that some credit score vendors make such graphs available to interested persons, such as at a Web site. The Agencies believe that providing a graphical depiction of how the consumer's credit score compares to those of other consumers is an effective way of communicating this important contextual information to consumers that they can use to evaluate their individual circumstances.

Alternatively, the notice can inform the consumer by clear and readily understandable means how his or her credit score compares to the scores of other consumers. As discussed more fully in the Model Forms section below, a concise narrative statement informing the consumer that his or her credit score ranks higher than a specified percentage of consumers is a clear and readily understandable means of providing this information.

The Agencies request comment on whether requiring disclosure of either the distribution of credit scores or how a consumer's credit score compares to the scores of other consumers will be helpful to consumers, and whether such a requirement will be unduly burdensome to industry or costly to implement. The Agencies also solicit comment as to whether the bar graph form of the disclosure contained in this proposal is the simplest and most useful form of the disclosure for consumers, or whether there are different graphical or other means that would provide greater consumer benefit. The Agencies also solicit comment on whether the rule should set forth other examples of specific methods of presenting the score distribution or score comparison, such as a narrative, a statement of the midpoint of scores, or different forms of graphical presentation.

Proposed paragraph (d)(1)(ii)(F) requires the notice to include a statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report. The Agencies believe that this statement may encourage consumers who otherwise will not be aware of their right to dispute errors to do so.

Proposed paragraphs (d)(1)(ii)(G) and (d)(1)(ii)(H) require the credit score disclosure to provide the consumer with information about how to obtain his or her consumer report. The notice must state that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period, and provide contact information for the centralized source from which consumers can obtain their free annual reports. Finally, proposed paragraph (d)(1)(ii)(I) requires the notice to include a statement directing the consumer to the Web sites of the Board and the Commission to obtain more information about consumer reports.

Unlike a risk-based pricing notice given under proposed § ____.72, the notice provided with the credit score disclosure under this exception does not give rise to an independent right to a free consumer report for several reasons. First, the exception notice is not a risk-based pricing notice under section 615(h) of the FCRA. Therefore, the Agencies' reading that receipt of a risk-based pricing notice will trigger a free consumer report under section 612(b) of the FCRA does not apply. Second, under this exception, consumers will receive, in addition to the free credit scores they currently receive, specific information to enable consumers to compare their credit scores to the credit scores of other consumers. Finally, consumers who receive free credit scores will have other opportunities to obtain free consumer reports, such as the free annual reports available from the centralized source, if they have not already done so in anticipation of entering into a residential real property transaction.

The Agencies propose to create this exception under FCRA section 615(h)(6)(iii), which gives the Agencies authority to create exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that the risk-based pricing notice will not significantly benefit consumers. For the reasons discussed below, the Agencies believe that a separate risk-based pricing notice will not provide a significant benefit to consumers who receive a credit score disclosure that satisfies the exception.

The credit score disclosure required by section 609(g) of the FCRA provides to the consumer free of charge his or her credit score, which is an important piece of individualized information about the consumer's credit history. The notice required to qualify for the exception will augment the section 609(g) notice by integrating the score disclosure with the additional information that will provide consumers with context for understanding how their credit scores may affect the terms of the offer and how their credit scores compare with the credit scores of other consumers. The Agencies believe it is better for consumers to receive all of this information at the same time in a single disclosure, rather than piecemeal in different notices.

In addition, a consumer who discovers that his or her credit score ranks less favorably than the credit scores of other consumers may have a greater motivation to check his or her consumer report for errors than a consumer who receives the more generic information about consumer reports that will be included in a risk-based pricing notice. The credit score disclosure and notice will encourage consumers to check their consumer reports and will contain the contact information that the consumer needs in order to obtain his or her free annual consumer reports. By providing a consumer with such specific information about his or her own credit history and how it compares to the credit histories of other consumers, the credit score disclosure and notice likely will provide consumers with equal or greater value than the more generic information a consumer will receive in a risk-based pricing notice. Furthermore, this specific information can be provided to consumers without the need for creditors to determine whether the terms of some offers are materially less favorable than the terms of other offers. Finally, a consumer will obtain this valuable information without having to take action to request a consumer report from a consumer reporting agency, something many consumers may fail to do. Thus, the Agencies believe that consumers who receive this information integrated with the section 609(g) notice will not significantly benefit from also receiving a separate risk-based pricing notice.

Proposed paragraph (d)(2) sets forth the form that the credit score disclosure must take in order to satisfy the exception. The notice must be clear and conspicuous, provided on or with the notice required by section 609(g) of the FCRA, and segregated from other information provided to the consumer. The notice also must be provided to the consumer in writing in a form retainable by the consumer. The requirement that the notice be in writing is satisfied if it is provided in electronic form in accordance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

Proposed paragraph (d)(3) describes the timing requirements for the notice that will satisfy the exception. The notice is required to be provided to the consumer concurrently with the notice required by section 609(g) of the FCRA, but in any event at or before consummation of a transaction in the case of closed-end credit or before the first transaction is made under an open-end credit plan. Section 609(g) of the FCRA states that the notice required by that subsection must be provided to the consumer ''as soon as reasonably practicable.'' The Agencies understand that industry practice is generally to provide the credit score disclosure within three business days of obtaining a credit score and will expect the integrated disclosure generally to be provided within the same timeframe.

Proposed paragraph (d)(4) states that a model form of the notice described in paragraph (d)(1)(ii), consolidated with the notice required by section 609(g) of the FCRA, is contained in Appendix H–3 of the Board's rules and Appendix B–3 of the Commission's rules. Appropriate use of this model form will be deemed to be a safe harbor for compliance with the exception. Use of the model form is optional.

Credit Score Disclosure Exception for Non-Mortgage Credit

Proposed paragraph (e)(1) sets forth a credit score disclosure exception for loans that are not secured by one to four units of residential real property, for which creditors are not required to provide the section 609(g) notice. This exception can be used, for example, by auto lenders, credit card issuers, and student loan companies. Creditors offering loans that are not secured by residential real property can comply with the regulations by disclosing a consumer's credit score along with certain additional information.

This exception is similar to the exception proposed for credit secured by residential real property. As discussed in more detail below, consistent with the exception for credit secured by residential real property set forth in proposed paragraph (d), the Agencies propose this exception under the authority conferred by FCRA section 615(h)(6)(iii) to create exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that the risk-based pricing notice will not significantly benefit consumers. Creditors can provide this notice to all consumers in connection with loans that are not secured by real property, without performing a comparison of the terms offered to different consumers.

Proposed paragraph (e)(1) sets forth the requirements that a creditor must meet in order to satisfy the exception and states that a person is not required to provide a risk-based pricing notice if it complies with this subsection. Proposed paragraph (e)(1)(i) states that in order to qualify for the exception, the credit requested by the consumer must involve credit other than an extension of credit secured by one to four units of residential real property. Thus, a creditor that is obligated to give the notice required by FCRA section 609(g)(1) cannot use this exception, but will need to use the exception described in proposed paragraph (d).

Proposed paragraph (e)(1)(ii) requires that the person provide a notice to the consumer that includes certain specified content in order to satisfy the exception. Proposed paragraphs (e)(1)(ii)(A)–(e)(1)(ii)(C) require the notice to include contextual information identical to that required in proposed paragraphs (d)(1)(ii)(A)–(d)(1)(ii)(C) for credit secured by residential real property.

Proposed paragraph (e)(1)(ii)(D) requires disclosure of the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated for a purpose related to the extension of credit. As with the exception under proposed paragraph (d), a person using this exception generally is required to provide a credit score that was used in connection with the credit decision. Also consistent with the proposed exception for credit secured by residential real property, a person that uses a credit score that was not created by a consumer reporting agency, such as a proprietary score, is permitted to satisfy the exception either by providing the proprietary score to the consumer or by providing to the consumer a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores. Similarly, a creditor that does not use a credit score in its credit evaluation process is permitted to rely on this exception by purchasing and providing to the consumer a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores.

Proposed paragraph (e)(1)(ii)(E) requires disclosure of the range of possible credit scores under the model used to generate the credit score disclosed to the consumer. This is consistent with the disclosure that would be provided under proposed paragraph (d) as part of the section 609(g) disclosure given to consumers of credit secured by residential real property.

Proposed paragraph (e)(1)(ii)(F) requires that the notice disclose by clear and readily understandable means either a distribution of credit scores (*i.e.*, the proportion of consumers who have scores within the specified ranges) or a statement about how the consumer's credit score compares to the scores of other consumers. As with the exception in proposed paragraph (d), the distribution of credit scores can be presented in the form of a bar graph containing a minimum of six bars, or by a different form of graphical presentation that is clear and readily understandable. For those creditors using bar graphs, each bar must illustrate the percentage of consumers with credit scores within the range of scores reflected by that bar. Use of a bar graph obtained from the person providing the credit score that meets the requirements of this paragraph will comply with this requirement. Alternatively, the notice can inform the consumer by clear and readily understandable means how his or her credit score compares to the scores of other consumers. As discussed more fully in the Model Forms section below, a concise narrative statement informing the consumer that his or her credit score ranks higher than a specified percentage of consumers is a clear and readily understandable means of providing this information. As discussed above in connection with proposed paragraph (d), the Agencies request comment on the usefulness and form of this requirement and whether there are better alternatives.

Proposed paragraphs (e)(1)(ii)(G)–(e)(1)(ii)(H) require disclosure of additional information regarding the credit score that is consistent with what is required to be disclosed pursuant to section 609(g) for credit secured by residential real property. Proposed paragraph (e)(1)(ii)(G) states that the notice must contain the date on which the credit score was created. Proposed

paragraph (e)(1)(ii)(H) requires the creditor to disclose the name of the consumer reporting agency or other person that provided the credit score. The Agencies solicit comment on whether the disclosures of the score creation date and the source of the score will be beneficial to consumers or will impose undue burdens on industry.

Unlike the notice required by section 609(g), the Agencies are not proposing to require this notice to contain up to four key factors that adversely affected the credit score. The Agencies believe that disclosure of the key factors that affected the credit score may not be helpful to many consumers. Among other things, the short summary descriptions of the four factors that are usually given may not be useful to consumers, and the list of factors does not effectively convey the importance of each factor. For example, a consumer with a high credit score will still receive four factors, even if some of those factors may not have had a significant adverse effect on that consumer's credit score. Although disclosure of the four factors is required by section 609(g), and, for that reason, is included in the notice to be provided when credit is secured by residential real property, it is not necessary for the Agencies to require the disclosure of the key factors in this notice.

The Agencies solicit comment on whether requiring disclosure of the key factors in this notice will be helpful to consumers or will impose undue burdens on industry. The Agencies also solicit comment on whether including the four key factors in this notice will simplify compliance with the rules by making the content of this notice more similar to the content of the notice for credit secured by residential real property.

Proposed paragraphs (e)(1)(ii)(I)–(e)(1)(ii)(L) are identical to proposed paragraphs (d)(1)(ii)(F)–(d)(1)(ii)(I) and require that the notice: contain a statement that the consumer is encouraged to verify the accuracy of the consumer report information and has the right to dispute any inaccurate information in the consumer report; provide the consumer with information about how to obtain his or her consumer report; and include a statement directing the consumer to the web sites of the Board and the Commission to obtain more information about consumer reports.

For reasons similar to those discussed above in connection with proposed paragraph (d), the notice provided with the credit score disclosure under this exception will not give rise to an independent right to a free consumer report for the following reasons. First, the exception notice is not a risk-based pricing notice under section 615(h) of the FCRA. Therefore, the Agencies' reading that receipt of a risk-based pricing notice will trigger a free consumer report under section 612(b) of the FCRA does not apply. Second, under this exception, consumers will receive free credit scores, which themselves are consumer reports, along with specific information to enable consumers to compare their credit scores with the credit scores of other consumers. Third, it would not be equitable to provide some consumers both free credit scores and free consumer reports, while other consumers will only obtain free consumer reports. Finally, consumers who receive free credit scores would have other opportunities to obtain free consumer reports, such as the free annual reports available from the centralized source.

The Agencies propose to create this exception under FCRA section 615(h)(6)(iii), which gives the Agencies authority to create exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that the risk-based pricing notice will not significantly benefit consumers. For the reasons discussed below, the Agencies believe that a separate risk-based pricing notice will not provide a significant benefit to consumers who receive a credit score disclosure that satisfies this exception.

The notice required to qualify for the exception provides consumers with their credit scores without charge along with contextual information to help consumers understand how their credit scores may affect the terms of the offer and how their credit scores compare to the credit scores of other consumers. The credit score disclosure provides tangible value to consumers because free credit scores typically are not available to consumers in connection with non-mortgage transactions. Consumer reporting agencies and other sellers of credit scores typically charge consumers between $6 and $10 for a credit score.

The credit score disclosure and notice provides a consumer with specific information about his or her own credit history that will likely be more effective than the more generic information about consumer reports that will be included in a risk-based pricing notice. A consumer who discovers that his or her credit score is less favorable than the credit scores of other consumers may have a greater motivation to check his or her consumer report for errors than a consumer who receives a more generic risk-based pricing notice. The credit score disclosure and notice will encourage consumers to check their consumer reports and will contain the contact information that a consumer needs in order to obtain his or her free annual consumer reports. By providing a consumer with such specific information about his or her own credit history and how it compares to the credit histories of other consumers, the credit score disclosure and notice likely will provide consumers with equal or greater value than the more generic information a consumer will receive in a risk-based pricing notice. Furthermore, this specific information can be provided to consumers without the need for creditors to determine whether the terms of some offers are materially less favorable than the terms of other offers.

Finally, the credit score disclosure will be provided to the consumer without requiring the consumer to take any action to obtain his or her score. By contrast, a consumer who receives a risk-based pricing notice will have to take action to request his or her consumer report. In this respect, the credit score disclosure exception is superior to a risk-based pricing notice because consumers often do not take action to exercise their rights with regard to consumer reports.

Proposed paragraph (e)(2) sets forth the form that the credit score notice must take in order to satisfy the exception. These requirements are similar to the form prescribed for the exception in proposed paragraph (d). The notice must be clear and conspicuous and segregated from other information provided to the consumer. The notice also must be provided to the consumer in writing in a form retainable by the consumer. The requirement that the notice be in writing will be satisfied if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

Proposed paragraph (e)(3) describes the timing requirements for the notice that would satisfy the exception. The notice must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation of a transaction in the case of closed-end credit or before the first transaction is made under an open-end credit plan. This timing requirement is intended to be consistent with the timing requirement for the exception for loans secured by residential real property.

Proposed paragraph (e)(4) states that a model form of the notice described in paragraph (e)(1)(ii) is contained in Appendix H–4 of the Board's rules and Appendix B–4 of the Commission's rules. Appropriate use of this model form will be deemed to be a safe harbor for compliance with the exception. Use of the model form is optional.

Credit Score Disclosure Exception—No Credit Score Available

The Agencies recognize that a creditor may not be able to obtain a credit score for each consumer for whom it obtains a consumer report. This might occur, for example, when a creditor obtains the consumer report for an individual who has only a limited credit history with few trade lines. A consumer report that contains such limited data may not produce sufficient information to permit the computation of a score.

Proposed paragraph (f) creates an exception to the risk-based pricing notice requirement for creditors that regularly use the credit score disclosure exceptions in proposed paragraph (d) or (e), but are unable to provide the notices described in those paragraphs to a consumer because a credit score is not available for that consumer. To take advantage of this exception, the creditor must provide a notice meeting the requirements of paragraph (f)(1)(ii).

The Agencies believe that consumers with limited credit histories will benefit from receiving a notice indicating that they do not have a credit score because there is insufficient information in their consumer reports. In addition, the Agencies also believe that this exception is appropriate because a creditor that otherwise uses the credit score disclosure exception should not be required to use a different analysis for those consumers for whom no credit score is available. Requiring creditors to undertake a different analysis in these circumstances could impose significant burdens on creditors that exceed any benefits to consumers from such a requirement. In addition, it is unclear what type of analysis would be feasible in those circumstances. The Agencies believe that it is important, however, that a notice be provided to individuals for whom credit scores are not available. Consumers who have limited credit histories are likely to receive less favorable terms than those offered to other consumers and should be encouraged to check their consumer reports for accuracy.

Proposed paragraph (f)(1) sets forth the requirements for the exception that applies when no credit score is available. Proposed paragraph (f)(1)(i) states that in order to qualify for the exception, the person must regularly obtain credit scores from a consumer reporting agency and provide credit score disclosures to consumers in accordance with the exceptions in paragraphs (d) or (e) of this section, and must be unable to obtain a credit score for the particular consumer from the consumer reporting agency from which the person regularly obtains credit scores. This exception is only available to creditors that regularly use one of the credit score disclosure exceptions.

Proposed paragraph (f)(1)(ii) clarifies that a person may qualify for this exception only if that person does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or otherwise providing credit to the consumer. A person is not required, however, to seek a credit score from another consumer reporting agency if the consumer reporting agency from which that person regularly obtains credit scores does not provide a credit score for a particular consumer. In addition, a person that regularly requests a particular type of credit score from a consumer reporting agency to provide to consumers to satisfy the requirements of paragraphs (d) or (e) of this section need not obtain or seek to obtain a different type of credit score if the score that it regularly obtains is not available. For example, a person that regularly requests a credit score from a consumer reporting agency that is based on traditional forms of data, such as credit card, mortgage, and installment loan accounts, need not request a different score that takes into consideration non-traditional forms of data, such as rental payment history, telephone service payment history, and utility service payment history.

Proposed paragraph (f)(1)(iii) requires that the person provide a notice to the consumer that contains certain specified content. Consistent with the exceptions proposed under paragraphs (d) and (e), the notice must include: (i) A statement that the person was not able to obtain a credit score about the consumer from a consumer reporting agency, which must be identified by name, which may be the result of insufficient information regarding the consumer's credit history; (ii) a statement that a consumer report includes information about a consumer's credit history; (iii) a statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time if the consumer's credit history changes; (iv) a statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms; and (v) a statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be. The notice also must include a statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report, and provide the consumer with information about how to obtain his or her consumer report. The notice must inform the consumer that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period, and will give contact information for the centralized source from which consumers can obtain their free annual reports. This notice does not give rise to an independent right to a free consumer report because it is not a risk-based pricing notice provided under section 615(h) of the FCRA. Finally, the notice includes a statement directing the consumer to the Web sites of the Board and the Commission to obtain more information about consumer reports.

As with the exceptions proposed in paragraphs (d) and (e), the Agencies believe that the notice required by this exception provides individualized information that will be more useful to consumers with limited credit histories than the more generalized risk-based pricing notice. A consumer for whom a credit score is not available will be told that a score could not be obtained generally because of insufficient information regarding the consumer's credit history. This notice will help the consumer to understand how his or her limited credit history might affect the consumer's ability to obtain credit, and the terms of such credit, in the absence of a credit score. The Agencies believe that providing a personalized notice to a consumer that no credit score is available and that he or she has a limited credit history gives a consumer more specific information about his or her particular circumstances than the consumer would receive in a risk-based pricing notice. This notice might provide the consumer with greater reason to check his or her consumer report to see what information it contains and to correct any inaccuracies than the more generic risk-based pricing notice will provide. For these reasons, the Agencies believe that a consumer who receives this personalized notice containing specific information

regarding his or her limited credit history will not significantly benefit from also receiving a separate risk-based pricing notice.

Proposed paragraph (f)(2) illustrates this exception with an example. The example describes a person that uses consumer reports to set the material terms of non-mortgage credit provided to consumers, and who regularly requests credit scores from a particular consumer reporting agency and provides those credit scores to consumers to satisfy the exception set forth in proposed paragraph (e). The consumer reporting agency provides a consumer report on a particular consumer that contains one trade line, but does not provide a credit score on that consumer. If the creditor does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, extends credit to the consumer, the creditor may provide the notice described under paragraph (f)(1)(iii) in order to satisfy its obligations under this subsection. If, however, the person obtains a credit score from another consumer reporting agency in connection with offering credit to the consumer, that person may not rely on the exception in paragraph (f) of this section, but must satisfy the requirements of paragraph (e) and disclose the score obtained.

Proposed paragraph (f)(3) sets forth the form that the notice must take in order to satisfy the exception for circumstances where a credit score is not available. These requirements are similar to the form prescribed for the exceptions in proposed paragraphs (d) and (e). The notice must be clear and conspicuous and segregated from other information provided to the consumer. The notice also must be provided to the consumer in writing in a form retainable by the consumer. The requirement that the notice be in writing will be satisfied if the notice were provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

Proposed paragraph (f)(4) describes the timing requirements for the notice that will satisfy the exception. The notice must be provided to the consumer as soon as reasonably practicable after the credit score has been requested, but in any event at or before consummation of a transaction in the case of closed-end credit or before the first transaction is made under an open-end credit plan. This timing requirement is intended to be consistent with the timing requirements for the exceptions in proposed paragraphs (d) and (e).

Proposed paragraph (f)(5) states that a model form of the notice described in paragraph (f)(1)(iii) is contained in Appendix H–5 of the Board's rules and Appendix B–5 of the Commission's rules. Appropriate use of this model form will be deemed to be a safe harbor for compliance with the exception. Use of the model form is optional.

Request for Comment on Proposed Exceptions

The Agencies request comment on all of the proposed exceptions to the requirement to provide risk-based pricing notices and on whether any other exceptions would be appropriate. In particular, the Agencies solicit comment regarding a possible exception for credit extended in connection with a private banking relationship available only to high net worth consumers.

Section ____.75 Rules of Construction

Proposed paragraph § ____.75 sets forth two rules of construction. Proposed paragraph (a) states that a consumer generally is entitled to no more than one risk-based pricing notice under proposed paragraph § ____.72(a) or (c) or one notice under proposed paragraph § ____.74(d), (e), or (f), for each grant, extension, or other provision of credit. The statute focuses on the material terms granted or extended to a consumer, and consumers receive only a single material term or set of material terms in each extension of credit. Therefore, the Agencies generally do not interpret the statute as requiring the consumer to receive more than one risk-based pricing notice in connection with a single extension of credit. Moreover, the Agencies do not believe that consumers would benefit by receiving multiple notices or multiple free consumer reports in connection with a single credit extension. For example, for an auto loan, the auto dealer and the financing source or assignee may conduct separate underwriting. In that circumstance, the Agencies believe that a consumer should receive only one risk-based pricing notice for the credit extension if the consumer receives materially less favorable terms. One notice is sufficient to encourage a consumer to check his or her consumer report for any errors. Even if a consumer has previously received a risk-based pricing notice, another notice may be required as a result of account review, if the conditions set forth in proposed paragraph § ____.72(d) have been met.

Proposed paragraph (b) sets forth the rules governing multi-party transactions. Proposed paragraph (b)(1) states that the person to whom the loan obligation is initially payable must provide a risk-based pricing notice under § ____.72 or comply with the notice requirements of the exceptions under § ____.74, even if that person immediately assigns the loan to a third party and is not the source of funding for the loan. Correspondingly, proposed paragraph (b)(2) clarifies that a purchaser or assignee of a credit contract with a consumer is not required to provide the risk-based pricing notice or satisfy the conditions for one of the exceptions, even if that purchaser or assignee provides the funding for the loan.

Proposed paragraph (b)(3) illustrates the rules of construction with several examples pertaining to auto finance transactions. The first example in paragraph (b)(3)(i) addresses a transaction in which a consumer obtains credit through an auto dealer to finance the purchase of an automobile, and the auto dealer is the original creditor under a retail installment sales contract. Even if the auto dealer immediately assigns the loan to a bank or finance company, the auto dealer must provide the risk-based pricing notice to the consumer, or satisfy the requirements for one of the exceptions in § ____.74. The bank or finance company, as an assignee, would have no duty to provide a risk-based pricing notice to the consumer.

The second example in paragraph (b)(3)(ii) addresses the situation where the bank or finance company, and not the auto dealer, is the person to whom the loan obligation is initially payable. In that case, the bank or finance company must provide the risk-based pricing notice to the consumer, or satisfy the requirements for one of the exceptions in § ____.74. The auto dealer, under these circumstances, would have no duty to provide a risk-based pricing notice to the consumer.

Model Forms

Proposed Appendix H of the Board's rules and Appendix B of the Commission's rules contain model forms that the Agencies prepared to facilitate compliance with the regulations. Two of the model forms are for risk-based pricing notices and three of the model forms are for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form. Model forms H–1 and B–1 are for use in complying with the general risk-based pricing notice requirements in § ____.72. Model forms H–2 and B–2 are for risk-based pricing notices given in connection with account review. Model forms H–3 and B–3 are for use in

connection with the credit score disclosure exception for loans secured by residential real property. Model forms H–4 and B–4 are for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model forms H–5 and B–5 are for use in connection with the credit score disclosure exception when no credit score is available for a consumer. Each form, including its format, language, and other elements, is designed to communicate key information in a clear and readily understandable manner.

Although the Agencies have not tested the proposed model forms with consumers, the design of the model forms has been informed by consumer testing undertaken in connection with the interagency short-form privacy notice project and the Board's review of its credit card disclosure rules under the Truth in Lending Act.[11] In addition, the Agencies tested the proposed model forms using two widely available readability tests, the Flesch reading ease test and the Flesch-Kincaid grade level test, each of which generates a readability score.[12] Proposed Model Form H–1 and proposed Model Form B–1 have Flesch reading ease scores of 62.0, and Flesch-Kincaid grade level scores of 8.9. Proposed Model Form H–2 and proposed Model Form B–2 have Flesch reading ease scores of 64.2, and Flesch-Kincaid grade level scores of 8.4. Proposed Model Form H–3 and proposed Model Form B–3 (excluding the third page of the notice, which is language mandated by section 609(g)(1)(D) of the FCRA) have Flesch reading ease scores of 63.2, and Flesch-Kincaid grade level scores of 8.3. Proposed Model Form H–4 and proposed Model Form B–4 have Flesch reading ease scores of 63.2, and Flesch-Kincaid grade level scores of 8.3. Proposed Model Form H–5 and proposed Model Form B–5 have Flesch reading ease scores of 55.0, and Flesch-Kincaid grade level scores of 9.8.

Use of the model forms by creditors is optional. If a creditor does use an appropriate Appendix H or Appendix B model form, or modifies a form in accordance with the regulations or the instructions to the appendix, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs § ____.72 and § ____.73, or § ____.74, as applicable, of this regulation. It is intended that appropriate use of model form H–3 or model form B–3 also will be compliant with the disclosure that may be required under section 609(g) of the FCRA.

A creditor may change the forms by rearranging the format without modifying the substance of the disclosures and still rely upon the safe harbor. Rearrangement of the model forms may not be so extensive as to affect materially the substance, clarity, comprehensibility, or meaningful sequence of the forms. Creditors making revisions with that effect will lose the benefit of the safe harbor for appropriate use of Appendix H or Appendix B model forms. As the Agencies have learned from consumer testing on privacy notices and credit card disclosures, format changes can have a significant effect on consumer comprehension.[13] Creditors, however, are not required to undertake consumer testing to compare consumer comprehension of a revised form with consumer comprehension of the relevant model form when rearranging the format of a model form. The Agencies recognize that some format changes will not have a material adverse effect on the model forms, and may even enhance consumer comprehension. A creditor may use different colors or shading in its notice, include graphics or icons in its notice, such as a corporate logo or insignia, or make corrections or updates to telephone numbers, mailing addresses, or web site addresses that may change over time.

In addition, a creditor may use clear and readily understandable means, other than the bar graph set forth in model forms H–3 and H–4 of the Board's rules and B–3 and B–4 of the Commission's rules, to disclose the distribution of credit scores. Other clear and readily understandable means may include a different form of graphical presentation of the distribution. Alternatively, a creditor may include a short narrative statement such as that set forth in model forms H–3 and H–4 of the Board's rules and B–3 and B–4 of the Commission's rules to disclose how a consumer's credit score compares to the scores of other consumers. This statement should be simple and concise; a paragraph-length narrative description about the credit score distribution, such as a narrative description of the information represented in the bar graph set forth in the model forms, would not satisfy the clear and readily understandable standard.

The Agencies solicit comment on the design and content of the proposed model forms. The Agencies also request comment on whether the proposed model forms and the accompanying instructions provide creditors with an appropriate degree of flexibility to change the forms without losing the compliance safe harbor. For example, the Agencies solicit comment on whether the instructions should permit creditors using proposed Model Form H–4 or Model Form B–4 to include the four key factors, even though not required by the proposed rules.

Request for Comment

The Agencies solicit comment on all aspects of the proposal. In particular, the Agencies invite comment on the methods contained in the proposal that creditors may use to identify which consumers must receive risk-based pricing notices, and the approach of providing creditors with several options for complying with the rules. The Agencies also solicit comment on any other operationally feasible tests or approaches that would enable creditors to distinguish consumers who must receive notices from consumers who should not receive notices that commenters believe should be added to the options contained in the proposed rules. The Agencies also solicit comment on the appropriateness of the proposed exceptions, and whether any additional or different exceptions should be adopted. Finally, the Agencies solicit comment on the form and content of each of the proposed model forms.

V. Regulatory Analysis

A. Paperwork Reduction Act

1. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board and the Commission may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

In accordance with the PRA, the Board has reviewed the proposed rule under the authority delegated by OMB. The proposed rule contains requirements subject to the PRA. The collections of information that would be required by this proposed rule are found

[11] *See* 72 FR 32,948, 32,951 (June 14, 2007) (Truth in Lending); 72 FR 14,940, 14,944 (Mar. 29, 2007) (Privacy).

[12] The Flesch reading ease test generates a score between zero and 100, where the higher score correlates with improved readability. The Flesch-Kincaid grade level test generates a numerical assessment of the grade-level at which the text is written. The Flesch-Kincaid readability tests are widely used by government agencies to evaluate readability levels of consumer communications.

[13] *See* 72 FR 32,948 (June 14, 2007) (proposed revisions to credit card disclosures); 72 FR 14,940 (March 29, 2007) (proposed short-form privacy notice).

in 12 CFR 222.72(a), (c), and (d); and 222.74(d), (e), and (f). The Board's OMB control number is 7100–0308.[14]

The information collection requirements contained in this joint notice of proposed rulemaking will be submitted by the Commission to OMB for review and approval under the PRA. The requirements are found in 16 CFR 640.72(a), (c), and (d); and 640.74(d), (e), and (f).

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record.

Comments should be addressed to:

Board: You may submit comments, identified by R–1316, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Commission: Comments should refer to ''FACT ACT Risk-Based Pricing Rule: Project No. R411009,'' and may be submitted by any of the following methods. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.''[15]

- *Web Site:* Comments filed in electronic form should be submitted by clicking on the following web link: *https://secure.commentworks.com/ftc-RiskBasedPricing* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-RiskBasedPricing*.
- *Federal eRulemaking Portal:* If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.
- *Mail or Hand Delivery:* A comment filed in paper form should include ''FACT ACT Risk-Based Pricing Rule: Project No. R411009,'' both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the Commission's Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm*. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the Commission's Web site. More information, including routine uses permitted by the Privacy Act, may be found in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

2. Proposed Information Collection

Title of Information Collection: Fair Credit Reporting Risk-Based Pricing Notices and Disclosure Exceptions.

Frequency of Response: On occasion.

Affected Public: Any creditor that engages in risk-based pricing and uses a consumer report to set the terms on which credit is extended to consumers.

Board: For purposes of the PRA, the Board is estimating the burden for entities regulated by the Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, and the U.S. Department of Housing and Urban Development (collectively, the ''federal financial regulatory agencies''). Such entities are identified in section 621(b)(1)–(3) of the FCRA, 15 U.S.C. 1681s(b)(1)–(3), and may include, among others, state member banks, national banks, insured nonmember banks, savings associations, federally-chartered credit unions, and other mortgage lending institutions.

Commission: For purposes of the PRA, the Commission is estimating the burden for entities that extend credit to consumers for personal, household, or family purposes, and are subject to administrative enforcement by the FTC pursuant to section 621(a)(1) of the FCRA (15 U.S.C. 1681s(a)(1)). These businesses include, among others, non-bank mortgage lenders, consumer lenders, utilities, state-chartered credit unions, and automobile dealers and

[14] The information collections (ICs) in this rule will be incorporated with the Board's Disclosure Requirements Associated with Regulation V (OMB No. 7100–0308). The burden estimates provided in this rule pertain only to the ICs associated with this proposed rulemaking. The current OMB inventory for Regulation V is available at: *http://www.reginfo.gov/public/do/PRAMain*.

[15] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

retailers that directly extend credit to consumers for personal, non-business uses.

Abstract: Proposed § ____.72(a) generally requires a creditor to provide a risk-based pricing notice to a consumer if that creditor both: (1) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and (2) based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. In addition, proposed § ____.72(c), generally requires a credit card issuer to provide a risk-based pricing notice to a consumer if: (1) The consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 226.5a, and more than one possible purchase annual percentage rate may apply under the program or solicitation; and (2) based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with a purchase annual percentage rate that is greater than the lowest purchase annual percentage rate available under that application or solicitation.

Proposed § ____.72(d) sets forth the rule applicable to account reviews. That paragraph generally requires a creditor to provide a risk-based pricing notice to a consumer if the creditor: (1) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and (2) based in whole or in part on the consumer report, increases the annual percentage rate (the purchase annual percentage rate in the case of a credit card).

Proposed § ____.73 describes the content, form and timing of the notice requirements found in § ____.72(a), (c), and (d). Appropriate use of the model forms contained in Appendices H–1 and B–1 may be used to satisfy the notice requirements in § ____.72(a) or (c). Likewise, appropriate use of the model forms contained in Appendices H–2 and B–2 may be used to satisfy the notice requirements in § ____.72(d).

Proposed § ____.74(a) and (b) implement exceptions to the risk-based pricing notice requirements that are set forth in section 615(h)(3) of the FCRA. Proposed § ____.74(a) states that in general a creditor is not required to provide a risk-based pricing notice to the consumer if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the creditor using the consumer report after the consumer applied for or requested credit and after the creditor obtained the consumer report. Proposed § ____.74(b) states that a creditor is not required to provide a risk-based pricing notice to the consumer if the creditor provides an adverse action notice to the consumer pursuant to section 615(a) of the FCRA.

Proposed § ____.74(c) provides an exception from the risk-based pricing notice requirement for a creditor that uses a consumer report for the purpose of making a prescreened solicitation, also known as a firm offer of credit, to the consumer.

Proposed § ____.74(d), (e), and (f) provides additional exceptions for creditors that provide their consumers with an alternative credit score disclosure notice. In the case of credit secured by one to four units of residential real property, an exception applies under § ____.74(d) for creditors that provide the consumer with a notice containing the credit score disclosure required by section 609(g) of the FCRA along with certain additional information that provides context for the credit score disclosure. Appropriate use of the model forms contained in Appendices H–3 and B–3 may be used to satisfy the notice requirements in § ____.74(d).

Proposed § ____.74(e) creates an exception similar to the exception in proposed § ____.74(d) for credit that is not secured by one to four units of residential real property, and is thus not subject to the credit score disclosure requirements of section 609(g). As with the credit score disclosure exception that applies to credit secured by residential real property, this disclosure will provide consumers with specific information about their own credit histories in the form of individual credit scores, as well as certain additional information that provides context for the credit score disclosure. Appropriate use of the model forms contained in Appendices H–4 and B–4 may be used to satisfy the notice requirements in § ____.74(e).

Proposed § ____.74(f) permits creditors that regularly use the credit score disclosure exceptions in proposed § ____.74(d) or (e), but are unable to provide the notices described in those paragraphs to a consumer because a credit score is not available for that consumer, to provide an alternative notice to that consumer. Appropriate use of the model forms contained in Appendices H–5 and B–5 may be used to satisfy the notice requirements in § ____.74(f).

Estimated Burden:

To ease creditors' burden and cost of complying with the notice and disclosure requirements the Agencies have provided model forms in Appendices H and B of the proposed regulations.

Board:

The Board believes that since financial institutions are familiar with the existing provisions of section 615 of the FCRA, which require specific disclosures in connection with adverse action notices whenever a lender uses a credit report to either deny credit, or to make a counteroffer to the credit applicant that is rejected, implementation of the proposed requirements should not be overly burdensome.

The Board estimates that there are 18,173 respondents regulated by the federal financial regulatory agencies potentially affected by the new notice and disclosure requirements. The Board estimates that the 18,173 respondents would take, on average, 40 hours (1 business week) to reprogram and update systems, provide employee training, and modify model notices with respondent information [16] to comply with proposed requirements. This one-time annual burden is estimated to be 725,600 hours. In addition, the Board estimates that, on a continuing basis, respondents would take 5 hours a month to modify and distribute notices to consumers. This annualized burden is estimated to be 1,090,380 hours. The Board estimates the total annual burden to be 1,815,980 hours.

Commission:

Number of respondents:

As discussed above, the proposed regulations require creditors to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report in connection with an application for, or a grant, extension, or other provision of credit, and, based in whole or in part on the consumer report, grants, extends, or provides credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person. Given the broad scope of creditors, it is difficult to determine precisely the number of them

[16] These modifications may include corrections or updates to telephone numbers, mailing addresses, or Web site addresses that may change over time, the addition of graphics or icons, such as the creditor's corporate logo, the alteration of the shading or color contained in the model forms, and the use of a different form of graphical presentation to depict the distribution of credit scores.

that are subject to the Commission's jurisdiction and that engage in risk-based pricing. As a whole, the entities under the Commission's jurisdiction are so varied that there are no general sources that provide a record of their existence, and they include many small entities for which there is no formal tracking method. Nonetheless, Commission staff estimates that the proposed regulations will affect approximately 199,500 creditors subject to the Commission's jurisdiction.[17] The Commission invites comment and information about the categories and number of creditors subject to its jurisdiction.

Estimated Hours Burden:

As detailed below, Commission staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 14,630,000 hours (rounded). The estimated annual labor cost associated with this burden is $236,870,000 (rounded).

Commission staff believes that because creditors already are familiar with the existing provisions of section 615 of the FCRA, which require specific disclosures in connection with adverse action notices whenever a lender uses a credit report to deny credit, implementation of the proposed requirements should not be overly burdensome. The proposed rule also offers several different ways that entities can perform a risk-based pricing analysis, allowing them to choose the method that is least burdensome and best-suited to their particular business model. Additionally, the proposed rule provides a model risk-based pricing notice that entities can use, thereby significantly limiting the time and effort required by them to comply with the proposed rule.

Commission staff believes that during the first year that the proposed rule is in effect businesses likely will develop automated or other processes for determining whether a consumer should receive a risk-based pricing notice. Commission staff estimates that it will take businesses, on average, forty (40) hours (1 business week) to reprogram and update their systems to incorporate the new notice requirements, to provide employee training, and to modify model notices with respondent information to comply with the proposed requirements. This one-time burden in the aggregate would be 7,980,000 hours (199,500 creditors x 40 hours) (rounded to the nearest thousand) for the first year. In addition, Commission staff estimates that, on a continuing basis, businesses would need five (5) hours per month to modify and distribute notices to consumers. This annual burden is estimated to be 11,970,000 hours (rounded to the nearest thousand). Commission staff estimates the average annual burden over the three-year PRA clearance sought will be 14,630,000 hours [(7,980,000 ÷ 3) + 11,970,000].

Estimated Cost Burden:

Commission staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the proposed regulations, as they entail varying compensation levels of clerical, management, and/or technical staff among companies of different sizes. In calculating the cost figures, Commission staff assumes that managerial and/or professional technical personnel will develop procedures for conducting the risk-based pricing analyses, adapt the written notices as necessary, and train staff, at an hourly rate of $38.93.[18] To distribute and update the notices, Commission staff assumes that personnel involved in sales and similar responsibilities will update and distribute the notices at an hourly rate of $11.14.[19]

Based on the above estimates and assumptions, the estimated average annual labor cost for all categories of covered entities under the proposed regulations is $236,870,000 (rounded to the nearest thousand) [((40 hours × $38.93) + (180 hours × $11.14)) × 199,500 ÷ 3].

Commission staff does not anticipate that compliance with the proposed rule will require any new capital or other non-labor expenditures. The proposed rule provides a simple and concise model notice that creditors may use to comply, and as creditors already are providing notices to consumers in the adverse action context under the FCRA, they are likely to have the necessary resources to generate and distribute these risk-based pricing notices. Similarly, those creditors who provide 609(g) notices may incorporate the risk-based pricing notice into their existing 609(g) notices. Thus, any capital or non-labor costs associated with compliance would be negligible.

B. Regulatory Flexibility Act

Board: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed regulations cover certain banks, other depository institutions, and non-bank entities that extend credit to consumers. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[20] The size standard to be considered a small business is: $165 million or less in assets for banks and other depository institutions; and $6.5 million or less in annual revenues for the majority of non-bank entities that are likely to be subject to the proposed regulations. The Board requests public comment in the following areas.

1. Reasons for the Proposed Rule

Section 311 of the FACT Act (which amends section 615 of the FCRA by adding a new subsection (h)) requires the Agencies to prescribe regulations jointly to implement the duty of users of consumer reports to provide risk-based pricing notices in certain circumstances. Specifically, the regulations must address, but are not limited to, the following aspects of section 615(h) of the FCRA: (i) The form, content, time, and manner of delivery of any risk-based pricing notice; (ii) clarification of the meaning of terms used in section 615(h), including what credit terms are material, and when credit terms are materially less favorable; (iii) exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that notice would

[17] This estimate derives in part from an analysis of the figures obtained from the North American Industry Classification System (NAICS) Association's database of U.S. businesses. *See http://www.naics.com/search.htm.* Commission staff identified categories of entities under its jurisdiction that also directly provide credit to consumers. Those categories include retail, vehicle dealers, consumer lenders, and utilities. The estimate also includes state-chartered credit unions, which are subject to the Commission's jurisdiction. *See* 15 U.S.C. 1681s. For the latter category, Commission staff relied on estimates from the National Credit Union Administration for the number of non-federal credit unions. See *http://www.ncua.gov/news/quick_facts/Facts2007.pdf.* For purposes of estimating the burden, Commission staff made the conservative assumption that all of the included entities engage in risk-based pricing.

[18] This cost is derived from the median hourly wage for management occupations found in the 2006 National Occupational Employment and Wage Estimates of the Bureau of Labor Statistics.

[19] This cost is derived from the median hourly wage for sales and related occupations found in the 2006 National Occupational Employment and Wage Estimates of the Bureau of Labor Statistics.

[20] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

not significantly benefit consumers; (iv) a model notice that may be used to comply with section 615(h); and (v) the timing of the risk-based pricing notice, including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report. The Agencies are issuing the proposed regulations to fulfill their statutory duty to implement the risk-based pricing notice provisions of section 615(h) of the FCRA.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains this information. The legal basis for the proposed regulations is section 311 of the FACT Act.

3. Description of Small Entities to Which the Regulation Applies

The proposed regulations apply to any person that both (i) uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and (ii) based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person. The proposed regulations do not apply to any person that uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer or to any other applicant primarily for a business purpose.

The total number of small entities likely to be affected by the proposal is unknown because the Agencies do not have data on the number of small entities that use consumer reports for risk-based pricing in connection with consumer credit. The risk-based pricing provisions of the FACT Act have broad applicability to persons who use consumer reports and engage in risk-based pricing in connection with the provision of consumer credit.

Based on estimates compiled by the federal bank and thrift regulatory agencies [21] in connection with a recent proposed rule, there are approximately 6,208 depository institutions that could be considered small entities and that are potentially subject to the proposed rule.[22] The available data are insufficient to estimate the number of non-bank entities that would be subject to the proposed rule and that are small as defined by the SBA. Such entities would include non-bank mortgage lenders, auto finance companies, automobile dealers, other non-bank finance companies, telephone companies, and utility companies.

It also is unknown how many of these small entities that meet the SBA's size standards and are potentially subject to the proposed regulations engage in risk-based pricing based in whole or in part on consumer reports. The proposed regulations do not impose any requirements on small entities that do not use consumer reports or that do not engage in risk-based pricing of consumer credit on the basis of consumer reports.

The Board invites comment regarding the number and type of small entities that would be affected by the proposed rule.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the proposed regulations are described in detail in the **SUPPLEMENTARY INFORMATION** above.

The proposed regulations generally require a person to provide a risk-based pricing notice to a consumer when that person uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person. A person can identify consumers to whom it must provide the notice by directly comparing the material terms offered to its consumers or by using one of two alternative methods specified in the proposed regulations. The proposed regulations also include several exceptions to the general rule, including exceptions that would allow a person otherwise subject to the risk-based pricing notice requirement to provide a consumer with a credit score disclosure in conjunction with additional information that provides context for the credit score disclosure.

A person would need to determine if it engages in risk-based pricing, based in whole or in part on consumer reports, in connection with the provision of consumer credit. A person that does engage in such risk-based pricing would need to analyze the regulations. Subject to the exceptions set forth in the proposed rule, the person generally would need to establish procedures for identifying those consumers to whom it must provide risk-based pricing notices. These procedures could involve either applying the general rule and performing a direct comparison among the terms offered to the person's consumers or utilizing one of the alternative methods set forth in the proposed regulations. Persons required to provide risk-based pricing notices also would need to design, generate, and provide those notices to the consumers that they have identified. Alternatively, a person that complies with the regulations by providing notices that meet the requirements of any of the credit score disclosure exceptions would need to design, generate, and provide those notices to its consumers.

The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed regulations. The proposed credit score disclosure for credit secured by residential real property has been designed to work in conjunction with the existing requirements of section 609(g) of the FCRA. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed regulations.

6. Discussion of Significant Alternatives

The Board welcomes comments on any significant alternatives, consistent with section 311 of the FACT Act, that would minimize the impact of the proposed regulations on small entities.

Commission: The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA) with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of entities. *See* 5 U.S.C. 603–605. The Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

[21] The Office of the Comptroller of the Currency, Board, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.

[22] The estimate includes 948 national banks, 1,448 institutions regulated by the Board, 3,400 FDIC-insured state nonmember banks, and 412 savings associations. *See* 72 FR 70944, 70961–70967 (Dec. 13, 2007).

1. Description of the Reasons That Action by the Agency Is Being Taken

Section 311 of the FACT Act (which amends section 615 of the FCRA by adding a new subsection (h)) requires the Agencies jointly to prescribe rules to implement the duty of users of consumer reports to provide risk-based pricing notices in certain circumstances. Specifically, the rules must address, but are not limited to, the following aspects of section 615(h) of the FCRA: (i) The form, content, time, and manner of delivery of any risk-based pricing notice; (ii) clarification of the meaning of terms used in section 615(h), including what credit terms are material, and when credit terms are materially less favorable; (iii) exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that notice would not significantly benefit consumers; (iv) a model notice that may be used to comply with section 615(h); and (v) the timing of the risk-based pricing notice, including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report. The Agencies are issuing the proposed rules to fulfill their statutory duty to implement the risk-based pricing notice provisions of section 615(h) of the FCRA.

2. Statement of Objectives of and Legal Basis for the Proposed Rule

The **SUPPLEMENTARY INFORMATION** above contains information concerning the objectives of the proposed rule. The legal basis for the proposed rule is section 311 of the FACT Act.

3. Description of Small Entities to Which the Proposed Rule Will Apply

The proposed rule applies to any creditor that both (i) uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and (ii) based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. The proposed rule does not apply to any creditor that uses a consumer report in connection with an application for, or a grant, extension or other provision of, credit primarily for a business purpose.

The total number of small entities likely to be affected by the Commission's proposal is unknown, because the Commission does not have data on the number of small entities that use consumer reports for risk-based pricing in connection with consumer credit. Moreover, the entities under the Commission's jurisdiction are so varied that there is no way to identify them in general and, therefore, no way to know how many of them qualify as small businesses. Generally, the entities under the Commission's jurisdiction that also are covered by section 311 include state-chartered credit unions, non-bank mortgage lenders, auto dealers, and utility companies. The available data, however, is not sufficient for the Commission to realistically estimate the number of small entities, as defined by the U.S. Small Business Administration (SBA), that the Commission regulates and that would be subject to the proposed rule.[23] The Commission invites comment and information regarding the number and type of small entities affected by the proposed rule.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the proposed rules are described in detail in the **SUPPLEMENTARY INFORMATION** above.

The proposed rule generally requires a creditor to provide a risk-based pricing notice to a consumer when that creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. A creditor can identify consumers to whom it must provide the notice by directly comparing the material terms offered to its consumers or by using one of the two alternative methods specified in the proposed rule. The proposed rule also includes several exceptions to the general rule, including exceptions that would allow a creditor otherwise subject to the risk-based pricing notice requirement to provide a consumer with a credit score disclosure in conjunction with additional information that provides context for the credit score disclosure.

The proposed rule will involve some expenditure of time and resources for entities to comply, although Commission staff anticipates that the costs will not be significant. Most of the costs will be incurred initially as entities develop systems for determining which of their consumers should receive risk-based pricing notices and as they train staff to comply with the rule. In calculating these costs, Commission staff assumes that for all entities managerial and/or professional technical personnel will handle the initial aspects of compliance with the proposed rule, and that sales associates or administrative personnel will handle any ongoing responsibilities.

To minimize these costs, the proposed rule offers several different ways that businesses can perform a risk-based pricing analysis, allowing businesses to choose the method that is least burdensome and best-suited to their particular business model. Additionally, Commission staff believes that, as creditors, most of the covered entities are familiar already with the existing provisions of section 615 of the FCRA, which require specific disclosures in connection with adverse action notices whenever a creditor uses a credit report to deny credit. Commission staff anticipates that many businesses already have systems in place to handle the existing requirements under section 615 and that they will be able to incorporate the risk-based pricing notice requirements into those systems. As for any continuing costs such as those involved in preparing and distributing the notices, the proposed rule provides a model risk-based pricing notice, thereby significantly limiting the ongoing time and effort required by businesses to comply with the rule.

For these reasons, Commission staff does not expect that the costs associated with the proposed rule will place a significant burden on small entities. Nonetheless, the Commission requests information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small businesses.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The proposed credit score disclosure for credit secured by residential real property has been designed to work in conjunction with the existing requirements of section 609(g) of the

[23] Under the SBA's size standards, many creditors, including the majority of non-bank entities that are likely to be subject to the proposed regulations and are subject to the Commission's jurisdiction, are considered small if their average annual receipts do not exceed $6.5 million. Auto dealers have a higher size standard of $26.5 million in average annual receipts for new car dealers and $21 million in average annual receipts for used car dealers. A list of the SBA's size standards for all industries can be found in the SBA's Table of Small Business Size Standards Matched to North American Industry Classification Codes, which is available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

FCRA. The Commission invites comment and information about any statutes or rules, including state or local statutes or rules, which would duplicate, overlap, or conflict with the proposed rule.

6. Discussion of Significant Alternatives to the Proposed Rule

The compliance requirements of the proposed rules are described in detail in the **SUPPLEMENTARY INFORMATION** above. The requirements provide flexibility so that a covered entity, regardless of its size, may tailor its practices to its individual needs. For example, the rule identifies several different ways that an entity can perform a risk-based pricing analysis, allowing each entity to choose the approach that fits best with its business model. A small business may find it easiest to make individual, consumer-to-consumer comparisons. If it uses a tiered system to determine a consumer's interest rate, however, then it may prefer to use the tiered pricing method to conduct the risk-based pricing analysis. Alternatively, a business may find the credit score disclosure notice to be least burdensome, and opt for that approach to comply with the rule. By providing a range of options, the Agencies have sought to help businesses of all sizes reduce the burden or inconvenience of complying with the proposed rule.

Similarly, the proposed rule provides model notices and model credit score disclosures to facilitate compliance. By using these model notices, businesses qualify for a safe harbor. They are not required to use the model notices, however, as long as they provide a notice that effectively conveys the required information, these businesses simply would not receive the benefit of the safe harbor. Having this option, again, provides businesses of all sizes flexibility in how to comply with the proposed rule.

Notwithstanding the Agencies' efforts to consider the impact of the proposed rule on small entities, the Commission welcomes comments on any significant alternatives, consistent with section 311 of the FACT Act, which would minimize the impact of the proposed rules on small entities.

VI. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 102, section 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make this proposed regulation easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

List of Subjects

12 CFR Part 222

Banks, Banking, Consumer protection, Fair Credit Reporting Act, Holding companies, Privacy, Reporting and recordkeeping requirements, State member banks.

16 CFR Part 640

Consumer reporting agencies, Consumer reports, Credit, Fair Credit Reporting Act, Trade practices.

16 CFR Part 698

Consumer reporting agencies, Consumer reports, Credit, Fair Credit Reporting Act, Trade practices.

Board of Governors of the Federal Reserve System

12 CFR Chapter II.

Authority and Issuance

For the reasons discussed in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend chapter II of title 12 of the Code of Federal Regulations by amending 12 CFR part 222 as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

1. The authority citation for part 222 is revised to read as follows:

Authority: 15 U.S.C. 1681b, 1681c, 1681m and 1681s; Secs. 3, 214, and 216, Pub. L. 108–159, 117 Stat. 1952.

2. Add Subpart H to part 222 to read as follows:

Subpart H—Duties of Users Regarding Risk-Based Pricing

Sec.

222.70 Scope.
222.71 Definitions.
222.72 General requirements for risk-based pricing notices.
222.73 Content, form, and timing of risk-based pricing notices.
222.74 Exceptions.
222.75 Rules of construction.

Subpart H—Duties of Users Regarding Risk-Based Pricing

§ 222.70 Scope.

(a) *Coverage.* (1) *In general.* This subpart applies to any person that both—

(i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and

(ii) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(2) *Business credit excluded.* This subpart does not apply to any person that uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer or to any other applicant primarily for a business purpose.

(b) *Relation to Federal Trade Commission rules.* These rules were developed jointly with the Federal Trade Commission (Commission) and are substantively identical to the Commission's risk-based pricing rules in 16 CFR part 640. Both rules apply to the covered person described in paragraph (a) of this section. Compliance with either the Board's rules or the Commission's rules satisfies the requirements of the statute.

(c) *Enforcement.* The provisions of this subpart will be enforced in accordance with the enforcement authority set forth in sections 621(a) and (b) of the FCRA.

§ 222.71 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Annual percentage rate* has the same meaning as in 12 CFR 226.14(b) with respect to an open-end credit plan and as in 12 CFR 226.22 with respect to closed-end credit.

(b) *Closed-end credit* has the same meaning as in 12 CFR 226.2(a)(10).

(c) *Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.

(d) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(e) *Creditor* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(f) *Credit card* has the same meaning as in 15 U.S.C. 1681a(r)(2).

(g) *Credit card issuer* has the same meaning as in 15 U.S.C. 1681a(r)(1)(A).

(h) *Credit score* has the same meaning as in 15 U.S.C. 1681g(f)(2)(A).

(i) *Material terms* means—

(1) (i) In the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 226.6(a)(2), excluding both any temporary initial rate that is lower than the rate that will apply after the temporary rate expires and any penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit;

(ii) In the case of a credit card (other than a credit card that is used to access a home equity line of credit), the annual percentage rate that applies to purchases (''purchase annual percentage rate'') and no other annual percentage rate;

(2) In the case of closed-end credit, the annual percentage rate required to be disclosed prior to consummation under 12 CFR 226.17(c) and 226.18(e); and

(3) In the case of credit for which there is no annual percentage rate, such as credit extended to consumers by a telephone company or a utility, any monetary terms that the person varies based on information in a consumer report, such as the down payment or deposit.

(j) *Materially less favorable* means, when applied to material terms, that the terms granted or extended to a consumer differ from the terms granted or extended to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted or extended to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted or extended to the two consumers.

(k) *Open-end credit plan* has the same meaning as in 15 U.S.C. 1602(i), as interpreted by the Board of Governors of the Federal Reserve System in Regulation Z (12 CFR part 226) and the Official Staff Commentary to Regulation Z (Supplement I to Part 226).

§ 222.72 General requirements for risk-based pricing notices.

(a) *In general*. Except as otherwise provided in this subpart, a person must provide to a consumer a notice (''risk-based pricing notice'') in the form and manner required by this subpart if the person both—

(1) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and

(2) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(b) *Determining when consumers must receive a notice*. A person may make a determination under paragraph (a) of this section by directly comparing the material terms offered to each consumer and the material terms offered to other consumers in similar types of transactions. As an alternative to making this direct comparison, a person may make the determination for a given class of products by using one of the following methods:

(1) *Credit score proxy method*. (i) *In general*. A person that sets the material terms of credit granted, extended, or otherwise provided to a consumer, based in whole or in part on a credit score, may comply with the requirements of paragraph (a) of this section by—

(A) Determining the credit score that represents the point at which approximately 40 percent of its consumers have higher credit scores and approximately 60 percent of its consumers have lower credit scores (hereafter referred to as the ''cutoff score''); and

(B) Providing a risk-based pricing notice to each consumer whose credit score is lower than the cutoff score.

(ii) *Determining the cutoff score*. (A) *Sampling approach*. A person that currently uses risk-based pricing with respect to the credit products it offers must calculate the appropriate cutoff score by considering the credit scores of all or a representative sample of the consumers to whom it has granted, extended, or otherwise provided credit for a given class of products, such as mortgages, credit cards, or auto loans.

(B) *Secondary source approach in limited circumstances*. A person that is a new entrant into the credit business, introduces new credit products, or starts to use risk-based pricing with respect to the credit products it currently offers may initially determine the appropriate cutoff score based on information derived from appropriate market research or relevant third-party sources for similar products, such as research or data from companies that develop credit scores. A person that acquires a credit portfolio as a result of a merger or acquisition may determine the appropriate cutoff score based on information from the merged or acquired party.

(C) *Recalculation of cutoff scores*. A person using the credit score proxy method must recalculate its cutoff score(s) no less than every two years in the manner described in paragraph (b)(1)(ii)(A) of this section. A person using the credit score proxy method using market research, third-party data, or information from a merged or acquired party as permitted by paragraph (b)(1)(ii)(B) of this section generally must calculate its own cutoff score(s) based on the credit scores of its own consumers in the manner described in paragraph (b)(1)(ii)(A) of this section within one year after it begins using a cutoff score derived from data supplied by third-party sources. If such a person does not grant, extend, or otherwise provide credit to new consumers during that one-year period, and therefore lacks any data with which to recalculate a cutoff score based on the credit scores of its own consumers, the person may continue to use a cutoff score derived from third-party source data as provided in paragraph (b)(1)(ii)(B) until it grants, extends, or otherwise provides credit to new consumers and is able to collect data on which to base the recalculation.

(D) *Use of two or more credit scores*. A person that generally uses two or more credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer must determine the appropriate cutoff score using the same method the person uses to evaluate multiple scores when making credit decisions. These evaluation methods may include, but are not limited to, selecting the low, median, high, most recent, or average credit score of each consumer. If a person that uses two or more credit scores does not consistently use the same method for evaluating multiple credit scores (*e.g.*, if the person sometimes chooses the median score and other times calculates the average score), the person must determine the appropriate cutoff score using a reasonable means. In such cases, use of either one of the methods that the person regularly uses or the average credit score of each consumer is deemed

to be a reasonable means of calculating the cutoff score.

(iii) *Lack of availability of a credit score.* For purposes of this section, a person using the credit score proxy method who grants, extends, or otherwise provides credit to a consumer for whom a credit score is not available must assume that the consumer receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers from or through that person and must provide a risk-based pricing notice to the consumer.

(iv) *Examples.* (A) A credit card issuer engages in risk-based pricing and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the credit scores of consumers to whom it issued credit cards within the preceding 3 months. The credit card issuer determines that approximately 40 percent of the sampled consumers have a credit score at or above 720 (on a scale of 350 to 850) and approximately 60 percent of the sampled consumers have a credit score below 720. Thus, 720 is an appropriate cutoff score for this card issuer. A consumer applies to the credit card issuer for a credit card. The card issuer obtains a credit score for the consumer. The consumer's credit score is 700. Since the consumer's 700 credit score falls below the 720 cutoff score, the credit card issuer provides a risk-based pricing notice to the consumer.

(B) An auto lender engaged in risk-based pricing obtains credit scores from one of the nationwide consumer reporting agencies and uses the credit score proxy method to determine which consumers must receive a risk-based pricing notice. A consumer applies to the auto lender for credit to finance the purchase of an automobile. A credit score about that consumer is not available from the consumer reporting agency from which the lender obtains credit scores. The lender nevertheless extends credit to the consumer. The lender must provide a risk-based pricing notice to the consumer.

(2) *Tiered pricing method.* (i) *In general.* A person that sets the material terms of credit granted, extended, or otherwise provided to a consumer by placing the consumer within one of a discrete number of pricing tiers, based in whole or in part on a consumer report, may comply with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who is not placed within the top pricing tier or tiers, as described below.

(ii) *Four or fewer pricing tiers.* If a person using the tiered pricing method has four or fewer pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who does not qualify for the top tier (that is, the lowest-priced tier). For example, a creditor that uses a tiered pricing structure with annual percentage rates of 8, 10, 12, and 14 percent would comply by providing the risk-based pricing notice to all consumers who are granted credit at annual percentage rates of 10, 12, and 14 percent, based in whole or in part on information from their consumer reports.

(iii) *Five or more pricing tiers.* If a person using the tiered pricing method has five or more pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who does not qualify for the top two tiers (that is, the two lowest-priced tiers) and any other tier that, together with the top tiers, comprise no less than the top 30 percent but no more than the top 40 percent of the total number of tiers. Each consumer placed within the remaining tiers must receive a risk-based pricing notice. For example, if a creditor has nine pricing tiers, the top three tiers (that is, the three lowest-priced tiers) comprise no less than the top 30 percent but no more than the top 40 percent of the tiers. Therefore, a person using this method would provide a risk-based pricing notice to each consumer placed within the bottom six tiers.

(c) *Application to credit card issuers.* (1) *In general.* Except as otherwise provided by this subpart, a credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this subpart if—

(i) A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 226.5a, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and

(ii) Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with a purchase annual percentage rate that is greater than the lowest purchase annual percentage rate available under that application or solicitation.

(2) *No requirement to compare different offers.* A credit card issuer is not subject to the requirements of paragraph (a) of this section and is not required to provide a risk-based pricing notice to a consumer if—

(i) The consumer applies for a credit card for which the creditor provides a single purchase annual percentage rate, excluding both a temporary initial rate that is lower than the rate that will apply after the temporary rate expires and a penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit; or

(ii) The credit card issuer offers the consumer the lowest purchase annual percentage rate available under the credit card offer for which the consumer applied, even if a lower purchase annual percentage rate is available under a different credit card offer issued by the credit card issuer.

(3) *Example.* A credit card issuer sends a solicitation to the consumer that discloses several possible purchase annual percentage rates that may apply, such as 10, 12, or 14 percent, or a range of purchase annual percentage rates from 10 to 14 percent. The consumer applies for a credit card in response to the solicitation. The credit card issuer provides a credit card to the consumer with a purchase annual percentage rate of 12 percent based in whole or in part on a consumer report. Unless an exception applies, the credit card issuer must provide a risk-based pricing notice to the consumer because the consumer received credit at a purchase annual percentage rate greater than the lowest purchase annual percentage rate available under that solicitation. On the other hand, if the credit card issuer provided a credit card to the consumer at a purchase annual percentage rate of 10 percent, the credit card issuer would not be required to provide a risk-based pricing notice to that consumer, even if under a different credit card solicitation, that consumer or other consumers might qualify for a purchase annual percentage rate of 8 percent.

(d) *Account review.* (1) *In general.* Except as otherwise provided in this subpart, a person is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this subpart if the person—

(i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and

(ii) Based in whole or in part on the consumer report, increases the annual percentage rate (the purchase annual percentage rate in the case of a credit card).

(2) *Example*. A credit card issuer periodically obtains consumer reports for the purpose of reviewing the terms of credit it has extended to consumers in connection with credit cards. As a result of this review, the credit card issuer increases the purchase annual percentage rate applicable to a consumer's credit card based in whole or in part on information in a consumer report. The credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to the consumer.

§ 222.73 Content, form, and timing of risk-based pricing notices.

(a) *Content of the notice*. (1) *In general*. The risk-based pricing notice required by § 222.72(a) or (c) must include:

(i) A statement informing the consumer that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(ii) A statement informing the consumer that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report;

(iii) A statement informing the consumer that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

(vi) A statement that federal law gives the consumer the right to obtain a copy of a consumer report from that consumer reporting agency without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain such a consumer report from the consumer reporting agency identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency; and

(viii) A statement directing consumers to the Web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports.

(2) *Account review*. The risk-based pricing notice required by § 222.72(d) must include:

(i) A statement informing the consumer that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that credit history;

(ii) A statement that the person has conducted a review of the account based in whole or in part on information from a consumer report;

(iii) A statement informing the consumer that as a result of the review, the annual percentage rate on the account has been increased based on information from a consumer report;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the account review;

(vi) A statement that federal law gives the consumer the right to obtain a copy of a consumer report from that consumer reporting agency without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain such a consumer report from the consumer reporting agency identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency; and

(viii) A statement directing consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports.

(b) *Form of the notice*. (1) *In general*. The risk-based pricing notice required by § 222.72(a), (c), or (d) must be:

(i) Clear and conspicuous; and

(ii) Provided to the consumer in oral, written, or electronic form.

(2) *Model forms*. A model form of the risk-based pricing notice required by § 222.72(a) and (c) is contained in Appendix H–1 of this part. Appropriate use of Model Form H–1 is deemed to comply with the requirements of § 222.72(a) and (c). A model form of the risk-based pricing notice required by § 222.72(d) is contained in Appendix H–2 of this part. Appropriate use of Model Form H–2 is deemed to comply with the requirements of § 222.72(d). Use of the model forms is optional.

(c) *Timing*. A risk-based pricing notice must be provided to the consumer—

(1) In the case of a grant, extension, or other provision of closed-end credit, before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to provide the notice;

(2) In the case of credit granted, extended, or provided under an open-end credit plan, before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to provide the notice; or

(3) In the case of a review of credit that has been extended to the consumer, at the time the decision to increase the annual percentage rate (purchase annual percentage rate in the case of a credit card) based on a consumer report is communicated to the consumer by the person required to provide the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate, no later than five days after the effective date of the change in the annual percentage rate.

§ 222.74 Exceptions.

(a) *Application for specific terms*. (1) *In general*. A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a) or (c) if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the person using the consumer report after the consumer applied for or requested credit and after the person obtained the consumer report. For purposes of this section, ''specific material terms'' means a single material term, or set of material terms, such as an annual percentage rate of 10 percent, and not a range of alternatives, such as an annual percentage rate that may be 8, 10, or 12 percent, or between 8 and 12 percent, based in whole or in part upon the consumer's creditworthiness as reflected in a consumer report.

(2) *Example*. A consumer receives a solicitation from a credit card issuer that is a firm offer of credit. The terms of the solicitation are based in whole or in part on information from a consumer report that the credit card issuer obtained in accordance with the FCRA's provisions regarding firm offers of credit. The solicitation offers the consumer a credit card with a single purchase annual percentage rate of 12 percent. The consumer applies for and receives a credit card with an annual percentage rate of 12 percent. Other customers with the same credit card have a purchase annual percentage rate of 10 percent. The exception applies because the

consumer applied for specific material terms and was granted those terms. Although the credit card issuer specified the material term or terms in the firm offer of credit based in whole or in part on a consumer report, the credit card issuer specified that term or those terms before, not after, the consumer applied for or requested credit.

(b) *Adverse action notice.* A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a), (c), or (d) if the person provides an adverse action notice to the consumer pursuant to section 615(a) of the FCRA.

(c) *Prescreened solicitations.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a) or (c) if the person:

(i) Obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA; and

(ii) Uses the consumer report for the purpose of making a firm offer of credit to the consumer, as described in section 603(l) of the FCRA, without regard to the material terms that the person includes in other firm offers of credit.

(2) *Example.* A credit card issuer obtains two prescreened lists from a consumer reporting agency. One list includes consumers with high credit scores. The other list includes consumers with low credit scores. The issuer mails a firm offer of credit to the high credit score consumers with a single purchase annual percentage rate of 10 percent. The issuer also mails a firm offer of credit to the low credit score consumers with a single purchase annual percentage rate of 14 percent. The credit card issuer is not required to provide a risk-based pricing notice to the low credit score consumers who receive the 14 percent offer because use of a consumer report to make a firm offer of credit does not trigger the risk-based pricing notice requirement based on differences in the material terms of two or more firm offers of credit.

(d) *Loans secured by residential real property—credit score disclosure.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a) or (c) if:

(i) The credit requested by the consumer involves an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to the consumer a notice that contains the following—

(A) A statement informing the consumer that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA;

(E) The distribution of credit scores among all consumers using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (d)(1)(ii)(E) is deemed to comply with this requirement;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(G) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports.

(2) *Form of the notice.* The notice described in paragraph (d)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Provided on or with the notice required by section 609(g) of the FCRA;

(iii) Segregated from other information provided to the consumer, except for the notice required by section 609(g) of the FCRA; and

(iv) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (d)(1)(ii) of this section must be provided to the consumer at the time the disclosure required by section 609(g) of the FCRA is provided to the consumer, but in any event at or before consummation of a transaction in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Model form.* A model form of the notice described in paragraph (d)(1)(ii) of this section consolidated with the notice required by section 609(g) of the FCRA is contained in Appendix H–3 of this part. Appropriate use of Model Form H–3 is deemed to comply with the requirements of § 222.74(d). Use of the model form is optional.

(e) *Other extensions of credit—credit score disclosure.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a) or (c) if:

(i) The credit requested by the consumer involves an extension of credit other than an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to the consumer a notice that contains the following—

(A) A statement informing the consumer that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

(E) The range of possible credit scores under the model used to generate the credit score;

(F) The distribution of credit scores among all consumers using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a

minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar, or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (e)(1)(ii)(F) is deemed to comply with this requirement;

(G) The date on which the credit score was created;

(H) The name of the consumer reporting agency or other person that provided the credit score;

(I) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(J) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(K) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(L) A statement directing consumers to the Web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports.

(2) *Form of the notice.* The notice described in paragraph (e)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (e)(1)(ii) of this section must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation of a transaction in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Model form.* A model form of the notice described in paragraph (e)(1)(ii) of this section is contained in Appendix H–4 of this part. Appropriate use of Model Form H–4 is deemed to comply with the requirements of § 222.74(e). Use of the model form is optional.

(f) *Credit score not available.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a) or (c) if the person:

(i) Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with paragraphs (d) or (e) of this section, but a credit score is not available from the consumer reporting agency from which the person regularly obtains credit scores for a consumer to whom the person grants, extends, or otherwise provides credit based in whole or in part on information in a consumer report;

(ii) Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or otherwise providing credit to the consumer; and

(iii) Provides to the consumer a notice that contains the following—

(A) A statement informing the consumer that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

(C) A statement informing the consumer that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

(D) A statement informing the consumer that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(E) A statement that the person was not able to obtain a credit score about the consumer from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(G) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports.

(2) *Example.* A person that uses consumer reports to set the material terms of non-mortgage credit granted, extended, or otherwise provided to consumers regularly requests credit scores from a particular consumer reporting agency and provides those credit scores and additional information to consumers to satisfy the requirements of paragraph (e) of this section. That consumer reporting agency provides to the person a consumer report on a particular consumer that contains one trade line, but does not provide the person with a credit score on that consumer. If the person does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or otherwise provides credit to the consumer, the person may provide the notice described in paragraph (f)(1)(iii) of this section. If, however, the person obtains a credit score from another consumer reporting agency, the person may not rely upon the exception in paragraph (f) of this section, but may satisfy the requirements of paragraph (e) of this section.

(3) *Form of the notice.* The notice described in paragraph (f)(1)(iii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(4) *Timing.* The notice described in paragraph (f)(1)(iii) of this section must be provided to the consumer as soon as reasonably practicable after the person has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan.

(5) *Model form.* A model form of the notice described in paragraph (f)(1)(iii) of this section is contained in Appendix H–5 of this part. Appropriate use of Model Form H–5 is deemed to comply with the requirements of § 222.74(f). Use of the model form is optional.

§ 222.75 Rules of construction.

For purposes of this subpart, the following rules of construction apply:

(a) *One notice per credit extension.* A consumer is entitled to no more than one risk-based pricing notice under

§ 222.72(a) or (c), or one notice under § 222.74(d), (e), or (f), for each grant, extension, or other provision of credit. Notwithstanding the foregoing, even if a consumer has previously received a risk-based pricing notice in connection with a grant, extension, or other provision of credit, another risk-based pricing notice is required if the conditions set forth in § 222.72(d) have been met.

(b) *Multi-party transactions.* (1) *Initial creditor.* The person to whom a credit obligation is initially payable must provide the risk-based pricing notice described in § 222.72(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 222.74(d), (e), or (f), even if that person immediately assigns the credit agreement to a third party and is not the source of funding for the credit.

(2) *Purchasers or assignees.* A purchaser or assignee of a credit contract with a consumer is not subject to the requirements of this subpart and is not required to provide the risk-based pricing notice described in § 222.72(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 222.74(d), (e), or (f).

(3) *Examples.* (i) A consumer obtains credit to finance the purchase of an automobile. If the auto dealer is the person to whom the loan obligation is initially payable, such as where the auto dealer is the original creditor under a retail installment sales contract, the auto dealer must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above), even if the auto dealer immediately assigns the loan to a bank or finance company. The bank or finance company, which is an assignee, has no duty to provide a risk-based pricing notice to the consumer.

(ii) A consumer obtains credit to finance the purchase of an automobile. If a bank or finance company is the person to whom the loan obligation is initially payable, the bank or finance company must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above) based on the terms offered by that bank or finance company only. The auto dealer has no duty to provide a risk-based pricing notice to the consumer.

3. In Part 222, Appendix H is added to read as follows:

Appendix H—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains two model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form H–1 is for use in complying with the general risk-based pricing notice requirements in § 222.72. Model form H–2 is for risk-based pricing notices given in connection with account review. Model form H–3 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form H–4 is for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model form H–5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. All forms contained in this appendix are models; their use is optional.

3. A creditor may change the forms by rearranging the format without modifying the substance of the disclosures. The rearrangement of the model forms may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Creditors making revisions with that effect will lose the benefit of the safe harbor for appropriate use of Appendix H model forms. A creditor is not required to conduct consumer testing when rearranging the format of the model forms. Acceptable changes include, for example:

a. Corrections or updates to telephone numbers, mailing addresses, or Web site addresses that may change over time.

b. The addition of graphics or icons, such as the creditor's corporate logo.

c. Alteration of the shading or color contained in the model forms.

d. Use of a different form of graphical presentation to depict the distribution of credit scores.

4. If a creditor uses an appropriate Appendix H model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of § 222.72 and § 222.73, or § 222.74, as applicable, of this regulation. It is intended that appropriate use of model form H–3 also will be compliant with the disclosure that may be required under section 609(g) of the FCRA.

H–1 Model form for risk-based pricing notice

H–2 Model form for account review risk-based pricing notice

H–3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property

H–4 Model form for credit score disclosure exception for loans not secured by residential real property

H–5 Model form for credit score disclosure exception for loans where credit score is not available

H-1. Model form for risk-based pricing notice

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

H-2. Model form for account review risk-based pricing notice

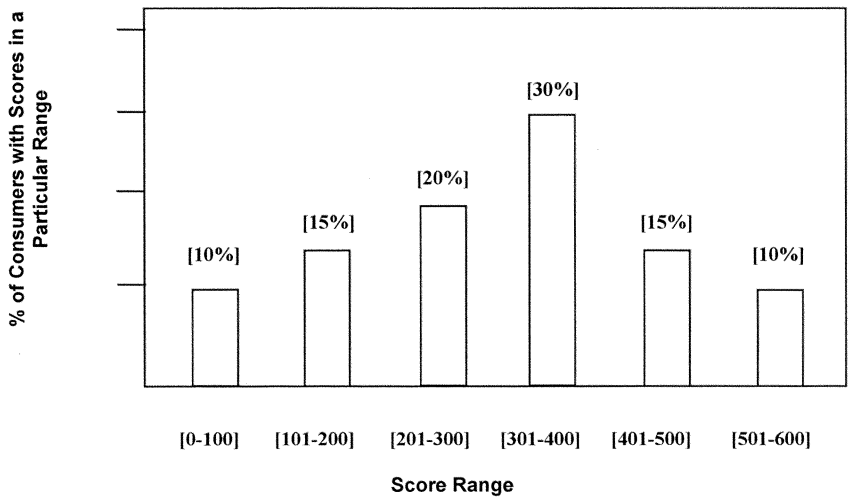
[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

H-3. Model form for credit score disclosure exception for loans secured by one to four units of residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Notice to the Home Loan Applicant

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

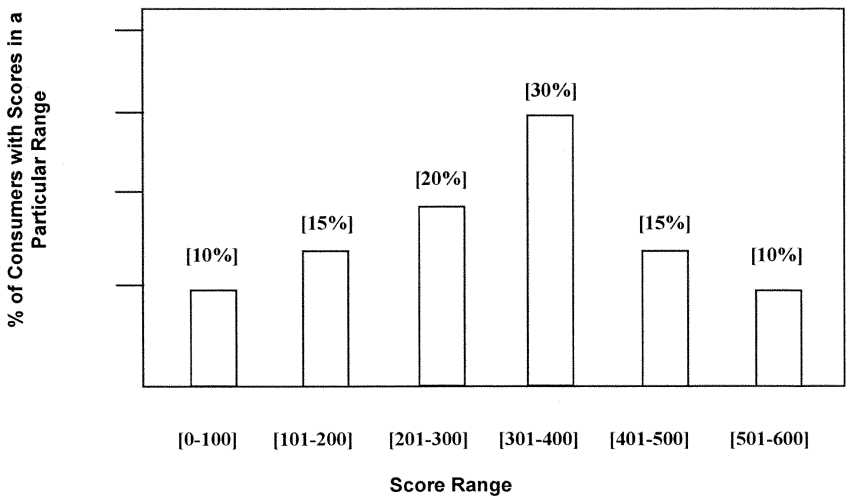
If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

H-4. Model form for credit score disclosure exception for loans not secured by residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

H-5. Model form for loans where credit score is not available

[Name of Entity Providing the Notice]
Credit Scores and the Price You Pay for Credit

Your Credit Score	
Your credit score	Your credit score is not available from **[Insert name of CRA]**, which is a consumer reporting agency, because they may not have enough information about your credit history to calculate a score.
What you should know about credit scores	A credit score is a number that reflects the information in a credit report. A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. A credit score can change, depending on how a consumer's credit history changes.
Why credit scores are important	Credit scores are important because consumers who have higher credit scores generally will get more favorable credit terms. Not having a credit score can affect whether you can get a loan and how much you will have to pay for that loan.

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281

Checking Your Credit Report (continued)	
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Federal Trade Commission

16 CFR Chapter I

For the reasons discussed in the joint preamble, the Federal Trade Commission proposes to amend chapter I, title 16, Code of Federal Regulations, as follows:

1. Add new part 640 to read as follows:

PART 640—DUTIES OF CREDITORS REGARDING RISK-BASED PRICING

Sec.
640.1 Scope.
640.2 Definitions.
640.3 General requirements for risk-based pricing notices.
640.4 Content, form, and timing of risk-based pricing notices.
640.5 Exceptions.
640.6 Rules of construction.

Authority: Pub. L. 108–159, sec. 311; 15 U.S.C. 1681m(h).

§ 640.1 Scope.

(a) *Coverage.* (1) *In general.* This part applies to any person that both—

(i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and

(ii) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(2) *Business credit excluded.* This part does not apply to any person that uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer or to any other applicant primarily for a business purpose.

(b) *Relation to Board of Governors of the Federal Reserve System rules.* The rules in this part were developed jointly with the Board of Governors of the Federal Reserve System (Board) and are substantively identical to the Board's risk-based pricing rules in 12 CFR 222. Both rules apply to the covered person described in paragraph (a) of this section. Compliance with either the Board's rules or the Commission's rules satisfies the requirements of the statute.

(c) *Enforcement.* The provisions of this part will be enforced in accordance with the enforcement authority set forth in sections 621(a) and (b) of the FCRA.

§ 640.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Annual percentage rate* has the same meaning as in 12 CFR 226.14(b) with respect to an open-end credit plan and as in 12 CFR 226.22 with respect to closed-end credit.

(b) *Closed-end credit* has the same meaning as in 12 CFR 226.2(a)(10).

(c) *Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.

(d) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(e) *Creditor* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(f) *Credit card* has the same meaning as in 15 U.S.C. 1681a(r)(2).

(g) *Credit card issuer* has the same meaning as ''card issuer'' in 15 U.S.C. 1681a(r)(1)(A).

(h) *Credit score* has the same meaning as in 15 U.S.C. 1681g(f)(2)(A).

(i) *Material terms* means—

(1)(i) In the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 226.6(a)(2), excluding both any temporary initial rate that is lower than the rate that will apply after the temporary rate expires and any penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit;

(ii) In the case of a credit card (other than a credit card that is used to access a home equity line of credit), the annual percentage rate that applies to purchases (''purchase annual percentage rate'') and no other annual percentage rate;

(2) In the case of closed-end credit, the annual percentage rate required to be disclosed prior to consummation under 12 CFR 226.17(c) and 226.18(e); and

(3) In the case of credit for which there is no annual percentage rate, such as credit extended to consumers by a telephone company or a utility, any monetary terms that the person varies based on information in a consumer report, such as the down payment or deposit.

(j) *Materially less favorable* means, when applied to material terms, that the terms granted or extended to a consumer differ from the terms granted or extended to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted or extended to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted or extended to the two consumers.

(k) *Open-end credit plan* has the same meaning as in 15 U.S.C. 1602(i), as interpreted by the Board in Regulation Z (12 CFR part 226) and the Official Staff Commentary to Regulation Z (Supplement I to Part 226).

§ 640.3 General requirements for risk-based pricing notices.

(a) *In general.* Except as otherwise provided in this part, a person must provide to a consumer a notice (''risk-based pricing notice'') in the form and manner required by this part if the person both—

(1) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and

(2) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(b) *Determining when consumers must receive a notice.* A person may make a determination under paragraph (a) of this section by directly comparing the material terms offered to each consumer and the material terms offered to other consumers in similar types of transactions. As an alternative to making this direct comparison, a person may make the determination for a given class of products by using one of the following methods:

(1) *Credit score proxy method.* (i) *In general.* A person that sets the material terms of credit granted, extended, or otherwise provided to a consumer, based in whole or in part on a credit score, may comply with the requirements of paragraph (a) of this section by—

(A) Determining the credit score that represents the point at which approximately 40 percent of its consumers have higher credit scores and approximately 60 percent of its consumers have lower credit scores (hereafter referred to as the ''cutoff score''); and

(B) Providing a risk-based pricing notice to each consumer whose credit score is lower than the cutoff score.

(ii) *Determining the cutoff score.* (A) *Sampling approach.* A person that currently uses risk-based pricing with respect to the credit products it offers must calculate the appropriate cutoff score by considering the credit scores of all or a representative sample of the

consumers to whom it has granted, extended, or otherwise provided credit for a given class of products, such as mortgages, credit cards, or auto loans.

(B) *Secondary source approach in limited circumstances.* A person that is a new entrant into the credit business, introduces new credit products, or starts to use risk-based pricing with respect to the credit products it currently offers may initially determine the appropriate cutoff score based on information derived from appropriate market research or relevant third-party sources for similar products, such as research or data from companies that develop credit scores. A person that acquires a credit portfolio as a result of a merger or acquisition may determine the appropriate cutoff score based on information from the merged or acquired party.

(C) *Recalculation of cutoff scores.* A person using the credit score proxy method must recalculate its cutoff score(s) no less than every two years in the manner described in paragraph (b)(1)(ii)(A) of this section. A person using the credit score proxy method using market research, third-party data, or information from a merged or acquired party as permitted by paragraph (b)(1)(ii)(B) of this section generally must calculate its own cutoff score(s) based on the credit scores of its own consumers in the manner described in paragraph (b)(1)(ii)(A) of this section within one year after it begins using a cutoff score derived from data supplied by third-party sources. If such a person does not grant, extend, or otherwise provide credit to new consumers during that one-year period, and therefore lacks any data with which to recalculate a cutoff score based on the credit scores of its own consumers, the person may continue to use a cutoff score derived from third-party source data as provided in paragraph (b)(1)(ii)(B) until it grants, extends, or otherwise provides credit to new consumers and is able to collect data on which to base the recalculation.

(D) *Use of two or more credit scores.* A person that generally uses two or more credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer must determine the appropriate cutoff score using the same method the person uses to evaluate multiple scores when making credit decisions. These evaluation methods may include, but are not limited to, selecting the low, median, high, most recent, or average credit score of each consumer. If a person that uses two or more credit scores does not consistently use the same method for evaluating multiple credit scores (e.g., if the person sometimes chooses the median score and other times calculates the average score), the person must determine the appropriate cutoff score using a reasonable means. In such cases, use of either one of the methods that the person regularly uses or the average credit score of each consumer is deemed to be a reasonable means of calculating the cutoff score.

(iii) *Lack of availability of a credit score.* For purposes of this section, a person using the credit score proxy method who grants, extends, or otherwise provides credit to a consumer for whom a credit score is not available must assume that the consumer receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers from or through that person and must provide a risk-based pricing notice to the consumer.

(iv) *Examples.* (A) A credit card issuer engages in risk-based pricing and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the credit scores of consumers to whom it issued credit cards within the preceding 3 months. The credit card issuer determines that approximately 40 percent of the sampled consumers have a credit score at or above 720 (on a scale of 350 to 850) and approximately 60 percent of the sampled consumers have a credit score below 720. Thus, 720 is an appropriate cutoff score for this card issuer. A consumer applies to the credit card issuer for a credit card. The card issuer obtains a credit score for the consumer. The consumer's credit score is 700. Since the consumer's 700 credit score falls below the 720 cutoff score, the credit card issuer provides a risk-based pricing notice to the consumer.

(B) An auto lender engaged in risk-based pricing obtains credit scores from one of the nationwide consumer reporting agencies and uses the credit score proxy method to determine which consumers must receive a risk-based pricing notice. A consumer applies to the auto lender for credit to finance the purchase of an automobile. A credit score about that consumer is not available from the consumer reporting agency from which the lender obtains credit scores. The lender nevertheless extends credit to the consumer. The lender must provide a risk-based pricing notice to the consumer.

(2) *Tiered pricing method.* (i) *In general.* A person that sets the material terms of credit granted, extended, or otherwise provided to a consumer by placing the consumer within one of a discrete number of pricing tiers, based in whole or in part on a consumer report, may comply with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who is not placed within the top pricing tier or tiers, as described below.

(ii) *Four or fewer pricing tiers.* If a person using the tiered pricing method has four or fewer pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who does not qualify for the top tier (that is, the lowest-priced tier). For example, a creditor that uses a tiered pricing structure with annual percentage rates of 8, 10, 12, and 14 percent would comply by providing the risk-based pricing notice to all consumers who are granted credit at annual percentage rates of 10, 12, and 14 percent, based in whole or in part on information from their consumer reports.

(iii) *Five or more pricing tiers.* If a person using the tiered pricing method has five or more pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who does not qualify for the top two tiers (that is, the two lowest-priced tiers) and any other tier that, together with the top tiers, comprise no less than the top 30 percent but no more than the top 40 percent of the total number of tiers. Each consumer placed within the remaining tiers must receive a risk-based pricing notice. For example, if a creditor has nine pricing tiers, the top three tiers (that is, the three lowest-priced tiers) comprise no less than the top 30 percent but no more than the top 40 percent of the tiers. Therefore, a person using this method would provide a risk-based pricing notice to each consumer placed within the bottom six tiers.

(c) *Application to credit card issuers.* (1) *In general.* Except as otherwise provided by this part, a credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this part if—

(i) A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 226.5a, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and

(ii) Based in whole or in part on a consumer report, the credit card issuer

provides a credit card to the consumer with a purchase annual percentage rate that is greater than the lowest purchase annual percentage rate available under that application or solicitation.

(2) *No requirement to compare different offers.* A credit card issuer is not subject to the requirements of paragraph (a) of this section and is not required to provide a risk-based pricing notice to a consumer if—

(i) The consumer applies for a credit card for which the creditor provides a single purchase annual percentage rate, excluding both a temporary initial rate that is lower than the rate that will apply after the temporary rate expires and a penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit; or

(ii) The credit card issuer offers the consumer the lowest purchase annual percentage rate available under the credit card offer for which the consumer applied, even if a lower purchase annual percentage rate is available under a different credit card offer issued by the credit card issuer.

(3) *Example.* A credit card issuer sends a solicitation to the consumer that discloses several possible purchase annual percentage rates that may apply, such as 10, 12, or 14 percent, or a range of purchase annual percentage rates from 10 to 14 percent. The consumer applies for a credit card in response to the solicitation. The credit card issuer provides a credit card to the consumer with a purchase annual percentage rate of 12 percent based in whole or in part on a consumer report. Unless an exception applies, the credit card issuer must provide a risk-based pricing notice to the consumer because the consumer received credit at a purchase annual percentage rate greater than the lowest purchase annual percentage rate available under that solicitation. On the other hand, if the credit card issuer provided a credit card to the consumer at a purchase annual percentage rate of 10 percent, the credit card issuer would not be required to provide a risk-based pricing notice to that consumer, even if under a different credit card solicitation, that consumer or other consumers might qualify for a purchase annual percentage rate of 8 percent.

(d) *Account review.* (1) *In general.* Except as otherwise provided in this part, a person is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this part if the person—

(i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and

(ii) Based in whole or in part on the consumer report, increases the annual percentage rate (the purchase annual percentage rate in the case of a credit card).

(2) *Example.* A credit card issuer periodically obtains consumer reports for the purpose of reviewing the terms of credit it has extended to consumers in connection with credit cards. As a result of this review, the credit card issuer increases the purchase annual percentage rate applicable to a consumer's credit card based in whole or in part on information in a consumer report. The credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to the consumer.

§ 640.4 Content, form, and timing of risk-based pricing notices.

(a) *Content of the notice.* (1) *In general.* The risk-based pricing notice required by § 640.3(a) or (c) must include:

(i) A statement informing the consumer that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(ii) A statement informing the consumer that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report;

(iii) A statement informing the consumer that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

(vi) A statement that federal law gives the consumer the right to obtain a copy of a consumer report from that consumer reporting agency without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain such a consumer report from the consumer reporting agency identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency; and

(viii) A statement directing consumers to the web sites of the Board and Commission to obtain more information about consumer reports.

(2) *Account review.* The risk-based pricing notice required by § 640.3(d) must include:

(i) A statement informing the consumer that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that credit history;

(ii) A statement that the person has conducted a review of the account based in whole or in part on information from a consumer report;

(iii) A statement informing the consumer that as a result of the review, the annual percentage rate on the account has been increased based on information from a consumer report;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the account review;

(vi) A statement that federal law gives the consumer the right to obtain a copy of a consumer report from that consumer reporting agency without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain such a consumer report from the consumer reporting agency identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency; and

(viii) A statement directing consumers to the Web sites of the Board and Commission to obtain more information about consumer reports.

(b) *Form of the notice.* (1) *In general.* The risk-based pricing notice required by § 640.3(a), (c), or (d) must be:

(i) Clear and conspicuous; and

(ii) Provided to the consumer in oral, written, or electronic form.

(2) *Model forms.* A model form of the risk-based pricing notice required by § 640.3(a) and (c) is contained in 16 CFR Part 698, Appendix B. Appropriate use of Model Form B–1 is deemed to comply with the requirements of § 640.3(a) and (c). A model form of the risk-based pricing notice required by § 640.3(d) is contained in Appendix B–2. Appropriate use of Model Form B–2 is deemed to comply with the requirements of § 640.3(d). Use of the model forms is optional.

(c) *Timing.* A risk-based pricing notice must be provided to the consumer—

(1) In the case of a grant, extension, or other provision of closed-end credit, before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit, is communicated to the consumer by the person required to provide the notice;

(2) In the case of credit granted, extended, or provided under an open-end credit plan, before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to provide the notice; or

(3) In the case of a review of credit that has been extended to the consumer, at the time the decision to increase the annual percentage rate (purchase annual percentage rate in the case of a credit card) based on a consumer report is communicated to the consumer by the person required to provide the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate, no later than five days after the effective date of the change in the annual percentage rate.

§ 640.5 Exceptions.

(a) *Application for specific terms.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the person using the consumer report after the consumer applied for or requested credit and after the person obtained the consumer report. For purposes of this section, ''specific material terms'' means a single material term, or set of material terms, such as an annual percentage rate of 10 percent, and not a range of alternatives, such as an annual percentage rate that may be 8, 10, or 12 percent, or between 8 and 12 percent, based in whole or in part upon the consumer's creditworthiness as reflected in a consumer report.

(2) *Example.* A consumer receives a solicitation from a credit card issuer that is a firm offer of credit. The terms of the solicitation are based in whole or in part on information from a consumer report that the credit card issuer obtained in accordance with the FCRA's provisions regarding firm offers of credit. The solicitation offers the consumer a credit card with a single purchase annual percentage rate of 12 percent. The consumer applies for and receives a credit card with an annual percentage rate of 12 percent. Other customers with the same credit card have a purchase annual percentage rate of 10 percent. The exception applies because the consumer applied for specific material terms and was granted those terms. Although the credit card issuer specified the material term or terms in the firm offer of credit based in whole or in part on a consumer report, the credit card issuer specified that term or those terms before, not after, the consumer applied for or requested credit.

(b) *Adverse action notice.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a), (c), or (d) if the person provides an adverse action notice to the consumer pursuant to section 615(a) of the FCRA.

(c) *Prescreened solicitations.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if the person:

(i) Obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA; and

(ii) Uses the consumer report for the purpose of making a firm offer of credit to the consumer, as described in section 603(l) of the FCRA, without regard to the material terms that the person includes in other firm offers of credit.

(2) *Example.* A credit card issuer obtains two prescreened lists from a consumer reporting agency. One list includes consumers with high credit scores. The other list includes consumers with low credit scores. The issuer mails a firm offer of credit to the high credit score consumers with a single purchase annual percentage rate of 10 percent. The issuer also mails a firm offer of credit to the low credit score consumers with a single purchase annual percentage rate of 14 percent. The credit card issuer is not required to provide a risk-based pricing notice to the low credit score consumers who receive the 14 percent offer because use of a consumer report to make a firm offer of credit does not trigger the risk-based pricing notice requirement based on differences in the material terms of two or more firm offers of credit.

(d) *Loans secured by residential real property—credit score disclosure.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if:

(i) The credit requested by the consumer involves an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to the consumer a notice that contains the following—

(A) A statement informing the consumer that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA;

(E) The distribution of credit scores among all consumers using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (d)(1)(ii)(E) is deemed to comply with this requirement;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(G) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web sites of the Board and Commission to obtain more information about consumer reports.

(2) *Form of the notice.* The notice described in paragraph (d)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Provided on or with the notice required by section 609(g) of the FCRA;

(iii) Segregated from other information provided to the consumer, except for the notice required by section 609(g) of the FCRA; and

(iv) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (d)(1)(ii) of this section must be provided to the consumer at the time the disclosure required by section 609(g) of the FCRA is provided to the consumer, but in any event at or before consummation of a transaction in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Model form.* A model form of the notice described in paragraph (d)(1)(ii) of this section consolidated with the notice required by section 609(g) of the FCRA is contained in Appendix B–3 of 16 CFR part 698. Appropriate use of Model Form B–3 is deemed to comply with the requirements of § 640.3(d). Use of the model form is optional.

(e) *Other extensions of credit—credit score disclosure.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if:

(i) The credit requested by the consumer involves an extension of credit other than an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to the consumer a notice that contains the following—

(A) A statement informing the consumer that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

(E) The range of possible credit scores under the model used to generate the credit score;

(F) The distribution of credit scores among all consumers using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar, or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (e)(1)(ii)(F) is deemed to comply with this requirement;

(G) The date on which the credit score was created;

(H) The name of the consumer reporting agency or other person that provided the credit score;

(I) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(J) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(K) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(L) A statement directing consumers to the Web sites of the Board and Commission to obtain more information about consumer reports.

(2) *Form of the notice.* The notice described in paragraph (e)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (e)(1)(ii) of this section must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation of a transaction in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Model form.* A model form of the notice described in paragraph (e)(1)(ii) of this section is contained in Appendix B–4 in 16 CFR part 698. Appropriate use of Model Form B–4 is deemed to comply with the requirements of § 640.5(e). Use of the model form is optional.

(f) *Credit score not available.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if the person:

(i) Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with paragraphs (d) or (e) of this section, but a credit score is not available from the consumer reporting agency from which the person regularly obtains credit scores for a consumer to whom the person grants, extends, or otherwise provides credit based in whole or in part on information in a consumer report;

(ii) Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or otherwise providing credit to the consumer; and

(iii) Provides to the consumer a notice that contains the following—

(A) A statement informing the consumer that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

(C) A statement informing the consumer that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

(D) A statement informing the consumer that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(E) A statement that the person was not able to obtain a credit score about the consumer from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(G) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from

each of the nationwide consumer reporting agencies once during any 12-month period;

(H) The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web sites of the Board and Commission to obtain more information about consumer reports.

(2) *Example.* A person that uses consumer reports to set the material terms of non-mortgage credit granted, extended, or otherwise provided to consumers regularly requests credit scores from a particular consumer reporting agency and provides those credit scores and additional information to consumers to satisfy the requirements of paragraph (e) of this section. That consumer reporting agency provides to the person a consumer report on a particular consumer that contains one trade line, but does not provide the person with a credit score on that consumer. If the person does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or otherwise provides credit to the consumer, the person may provide the notice described in paragraph (f)(1)(iii) of this section. If, however, the person obtains a credit score from another consumer reporting agency, the person may not rely upon the exception in paragraph (f) of this section, but may satisfy the requirements of paragraph (e) of this section.

(3) *Form of the notice.* The notice described in paragraph (f)(1)(iii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(4) *Timing.* The notice described in paragraph (f)(1)(iii) of this section must be provided to the consumer as soon as reasonably practicable after the person has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan.

(5) *Model form.* A model form of the notice described in paragraph (f)(1)(iii) of this section is contained in Appendix B–5 in 16 CFR part 698. Appropriate use of Model Form B–5 is deemed to comply with the requirements of § 640.5(f). Use of the model form is optional.

§ 640.6 Rules of construction.

For purposes of this part, the following rules of construction apply:

(a) *One notice per credit extension.* A consumer is entitled to no more than one risk-based pricing notice under § 640.3(a) or (c), or one notice under § 640.5(d), (e), or (f), for each grant, extension, or other provision of credit. Notwithstanding the foregoing, even if a consumer has previously received a risk-based pricing notice in connection with a grant, extension, or other provision of credit, another risk-based pricing notice is required if the conditions set forth in § 604.3(d) have been met.

(b) *Multi-party transactions.* (1) *Initial creditor.* The person to whom a credit obligation is initially payable must provide the risk-based pricing notice described in § 604.3(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 640.5(d), (e), or (f), even if that person immediately assigns the credit agreement to a third party and is not the source of funding for the credit.

(2) *Purchasers or assignees.* A purchaser or assignee of a credit contract with a consumer is not subject to the requirements of this part and is not required to provide the risk-based pricing notice described in § 640.3(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 640.5(d), (e), or (f).

(3) *Examples.* (i) A consumer obtains credit to finance the purchase of an automobile. If the auto dealer is the person to whom the loan obligation is initially payable, such as where the auto dealer is the original creditor under a retail installment sales contract, the auto dealer must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above), even if the auto dealer immediately assigns the loan to a bank or finance company. The bank or finance company, which is an assignee, has no duty to provide a risk-based pricing notice to the consumer.

(ii) A consumer obtains credit to finance the purchase of an automobile. If a bank or finance company is the person to whom the loan obligation is initially payable, the bank or finance company must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above) based on the terms offered by that bank or finance company only. The auto dealer has no duty to provide a risk-based pricing notice to the consumer.

PART 698—MODEL FORMS AND DISCLOSURES

2. Revise the authority citation in part 698 to read as follows:

Authority: 15 U.S.C. 1681e, 1681g, 1681j, 1681m, 1681s, and 1681s–3; Pub. L. 108–159, sections 211(d), 214(b), and 311; 117 Stat. 1952.

3. Amend § 698.1 by revising paragraph (b) to read as follows:

§ 698.1 Authority and purpose.

* * * * *

(b) *Purpose.* The purpose of this part is to comply with sections 607(d), 609(c), 609(d), 612(a), 615(d), 615(h) and 624 of the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act of 2003, and sections 211(d) and 214(b) of the Fair and Accurate Credit Transactions Act of 2003.

4. In part 698, Appendix B is added to read as follows:

Appendix B—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains two model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form B–1 is for use in complying with the general risk-based pricing notice requirements in § 640.2 of this chapter. Model form B–2 is for risk-based pricing notices given in connection with account review. Model form B–3 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form B–4 is for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model form B–5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. All forms contained in this appendix are models; their use is optional.

3. A creditor may change the forms by rearranging the format without modifying the substance of the disclosures. The rearrangement of the model forms may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Creditors making revisions with that effect will lose the benefit of the safe harbor for appropriate use of Appendix B model forms. A creditor is not required to conduct consumer testing when rearranging the format of the model forms. Acceptable changes include, for example:

a. Corrections or updates to telephone numbers, mailing addresses, or web site addresses that may change over time.

b. The addition of graphics or icons, such as the creditor's corporate logo.

c. Alteration of the shading or color contained in the model forms.

d. Use of a different form of graphical presentation to depict the distribution of credit scores.

4. If a creditor uses an appropriate Appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of 16 CFR 660.3, 660.4, and 660.5, as applicable. It is intended that appropriate use of model form B–3 also will be compliant with the disclosure that may be required under section 609(g) of the FCRA.

B–1 Model form for risk-based pricing notice

B–2 Model form for account review risk-based pricing notice

B–3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property

B–4 Model form for credit score disclosure exception for loans not secured by residential real property

B–5 Model form for credit score disclosure exception for loans where credit score is not available

B-1. Model form for risk-based pricing notice

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

B-2. Model form for account review risk-based pricing notice

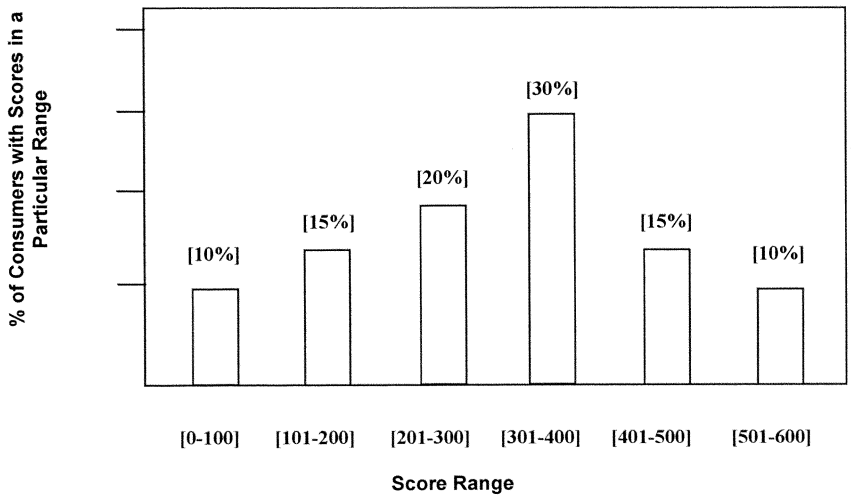
[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

B-3. Model form for credit score disclosure exception for loans secured by one to four units of residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Notice to the Home Loan Applicant

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

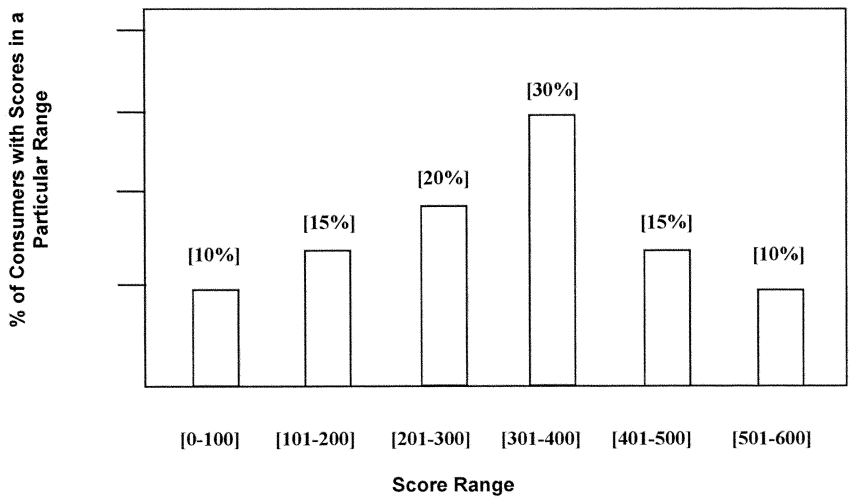
If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

B-4. Model form for credit score disclosure exception for loans not secured by residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

B-5. Model form for loans where credit score is not available

[Name of Entity Providing the Notice]
Credit Scores and the Price You Pay for Credit

Your Credit Score	
Your credit score	Your credit score is not available from **[Insert name of CRA]**, which is a consumer reporting agency, because they may not have enough information about your credit history to calculate a score.
What you should know about credit scores	A credit score is a number that reflects the information in a credit report. A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. A credit score can change, depending on how a consumer's credit history changes.
Why credit scores are important	Credit scores are important because consumers who have higher credit scores generally will get more favorable credit terms. Not having a credit score can affect whether you can get a loan and how much you will have to pay for that loan.

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281

Checking Your Credit Report (continued)	
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

By order of the Board of Governors of the Federal Reserve System, May 8, 2008.

Jennifer J. Johnson,

Secretary of the Board.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–10640 Filed 5–16–08; 8:45 am]

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Federal Register

Monday,
May 19, 2008

Part V

Department of Veterans Affairs

38 CFR Part 74

VA Veteran-Owned Small Business Verification Guidelines; Interim Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 74

RIN 2900–AM78

VA Veteran-Owned Small Business Verification Guidelines

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006. This law requires the Department of Veterans Affairs (VA) to verify ownership and control of veteran-owned small businesses, including service-disabled veteran-owned small businesses. According to this interim final rule, a contracting officer in the Department of Veterans Affairs may restrict competition for a requirement to a service-disabled veteran-owned small business (SDVOSB) or to a veteran-owned small business (VOSB) if that business is listed as ''verified'' in the VetBiz.gov Vendor Information Pages (VIP) database. The interim final rule defines the eligibility requirements for businesses to obtain ''verified'' status, explains examination procedures, and establishes records retention and review processes.

DATES: *Effective Date:* May 19, 2008. Comments must be received on or before July 18, 2008.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AM78–VA Veteran-Owned Small Business Verification Guidelines.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online in through the Federal Docket Management System at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Gail Wegner, Center for Veterans Enterprise (00VE), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC, 20420, phone (866) 584–2344.

SUPPLEMENTARY INFORMATION: It is the mission of the Department of Veterans Affairs (VA) to serve veterans, and buying from veteran-owned small businesses (VOSBs) and service-disabled veteran-owned small businesses (SDVOSBs) directly supports VA's mission. Supporting the service-disabled veterans who own their own businesses contributes significantly toward restoring their capability and the quality of their lives and contributes toward smoothing their transition from active duty to civilian life. Such purchases from service-disabled veteran-owned businesses support the socioeconomic well-being of the Nation and support VA's Strategic Goals. It is public policy, as expressed in 15 U.S.C. 637 and 644, that small businesses owned by veterans and service-disabled veterans, among others, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

On December 22, 2006, President Bush signed Pub. L. 109–461, Veterans Benefits, Health Care, and Information Technology Act of 2006. Title V—Housing and Small Business Matters, contains provisions that enable VA to create a unique procurement program among Federal agencies. This program permits VA contracting officers to conduct acquisition actions limited to SDVOSBs or VOSBs in the Department's requirements when such businesses appear as ''verified'' in the VetBiz.gov VIP database. In addition, prime contractors of the Department are required to use verified SDVOSBs and VOSBs to obtain credit in their subcontract plan achievement reports submitted to the Department.

On October 20, 2004, President Bush issued Executive Order 13360, which directs the heads of agencies to significantly increase opportunities for service-disabled veteran businesses in Federal prime contracting and subcontracting actions. To achieve that objective, agencies shall more effectively implement section 15(g) of the Small Business Act (15 U.S.C. 644(g)) through various efforts, including the development of a strategic plan to implement the policy set forth in the Executive Order. The Executive Order also directs the Center for Veterans Enterprise (CVE) to assist agencies in verifying the accuracy of contractor databases.

This rulemaking establishes regulations that implement Pub. L. 109–461. Much of the content of these regulations simply reflects the language of the authorizing law, as well as Pub. L. 106–50, the Veterans Entrepreneurship and Small Business Development Act of 1999, and comparable regulations governing similar programs administered by the Small Business Administration (SBA) (*see generally* chapter 1 of 13 CFR).

This rulemaking requires VOSBs, including SDVOSBs, to register in the VetBiz.gov Vendor Information Pages database, available at *http://www.VetBiz.gov*, in order to be eligible to participate in set-asides for SDVOSBs and VOSBs issued by VA contracting officers, pursuant to section 502 of Pub. L. 109–461. In completing registration, businesses must provide information establishing that the business is owned and controlled by eligible parties, according to the criteria defined in section 502 of Pub. L. 109–461. The Department of Veterans Affairs will examine the information provided by the owners and approve or disapprove applications for ''verified'' status.

A verification examination is an investigation by VA's CVE officials which verifies the accuracy of any statement or information provided as part of the VetBiz VIP Verification application process. Thus, examiners may verify that the concern currently meets the program's eligibility requirements, and that it met such requirements at the time of its application or its most recent size recertification.

Examiners may conduct the review, or parts of the review, by phone, by electronic message exchange or in person at one or all of the concern's offices. Representatives from the Department will determine the location of the examination. Examiners may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the legal structure, ownership and control of the concern. As a minimum, examiners shall review all documents supporting VA Form 0877. These include: Financial statements; Federal personal and business tax returns; personal history statements; and a Transcript of Tax Form, obtained by submitting an IRS Form 4506. Two–three years of transcripts are preferred. Other documents, which may be reviewed when necessary based on the application of these regulations to a particular application include: Articles of Incorporation/Organization; corporate By-Laws or Operating Agreements; Organizational, Annual and Board/Member meeting records; stock ledgers and certificates; State-issued Certificates of Good Standing; contract, lease and loan agreements; payroll records; bank account signature cards; and licenses.

Upon receipt of specific and credible information alleging that a participant no longer meets eligibility requirements, CVE will review the concern's eligibility and will decide to withdraw the firm's verified status or continue its verified status.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), we find that there is good cause to dispense with advance public notice and opportunity to comment on this rule and with publication not less than 30 days before the rule's effective date.

Public Law 109–461 requires VA to complete examination before June 19, 2008 of all businesses registered in VIP on the date the law was enacted. After that date, such businesses will be ineligible to participate in Public Law 109–461 opportunities until such time as they complete verification. This will require VA to verify up to 13,380 businesses, if all businesses desire to participate in VA's unique procurement opportunities for SDVOSBs and VOSBs. The majority of businesses that have registered in the VIP database have affirmed their interest in selling to VA. In addition, with unique procurement tools available, it is imperative that businesses be formally examined for eligibility to participate in VA contracts in order to protect the integrity of the database. Advance solicitation of comments for this rule would be impracticable and contrary to the public interest, as it would delay the initiation of the examination procedures by a minimum of 3 to 6 months. Any such delay would be extremely detrimental to SDVOSBs and VOSBs. It is likely that contracting personnel would not offer acquisition as a sole source or set-aside for VOSBs due to uncertainty that the businesses are actually owned and controlled by veterans, disabled veterans or their eligible surviving spouses. Currently, there is no mechanism other than U.S. Small Business Administration (SBA)'s regulations to validate Veteran-Owned Small Businesses and Service-Disabled Veteran-Owned Small Businesses (VOSBs/SDVOSBs) status through protests and appeals. There appear to be business concerns that are representing themselves as VOSBs/SDVOSBs to contracting officers. Under Public Law 109–461, VA contracting officers may now award sole source and set-aside contracts to business concerns that represent themselves as VOSBs/SDVOSBs. VA has good cause to publish this rule as an interim final rule in light of the urgent need to implement procedures to assure that a business concern is a VOSB/SDVOSB. This will be accomplished through verification of ownership and control.

Moreover, immediate implementation of these rules will, at a minimum, permit VA to begin reviewing the basic information necessary to the verification process. This information will be necessary even if, as a result of comments received after this rulemaking, VA needs to revise any of the rules set forth herein.

In addition, many of these rules simply codify statutory language or instruction, adding mere descriptions of procedural or practice with no interpretation or substantive revision. To that extent, these rules are not subject to the notice requirement of 5 U.S.C. 553(b)(3)(A). For example, the definition of ''service-disabled veteran-owned small business concern'' simply reflects the definition set forth in section 103 of Public Law 106–50.

Finally, VA also believes, based upon its contacts with interested members of the public, that there is strong interest in implementation of this rule. VA is aware of many acquisition opportunities and business concerns that will be assisted by the adoption of this rule. In order to implement the legislation and benefit these veterans as quickly as possible, it is critical that we begin our verification process immediately.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

This interim final rule would generally be small business neutral. Any negative impact on small businesses that are not owned by veterans would be off-set with an equal benefit to small businesses that are owned by veterans. The overall impact of the interim final rule will be of benefit to small businesses owned by veterans or service-disabled veterans. On this basis, the Secretary certifies that the adoption of this interim rule would not have a significant economic impact on a substantial number of small entities as they are defined in the RFA. Therefore, under 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined to be a significant regulatory action under the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments, or the private sector.

Paperwork Reduction Act

This interim final rule contains provisions that constitute collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). OMB has approved these collections and has assigned control number 2900–0675. VA displays this control number under the applicable sections of the regulations in this interim final rule. OMB assigns control numbers to collections of information it approves. VA 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.

List of Subjects in 38 CFR Part 74

Administrative practice and procedures, Privacy, Reporting and

recordkeeping requirements, Small business, Veteran, Veteran-owned small business, Verification.

Approved: February 1, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, the Department of Veterans Affairs is amending 38 CFR chapter I by adding part 74 to read as follows:

PART 74—VETERANS SMALL BUSINESS REGULATIONS

General Guidelines

Sec.
74.1 What definitions are important for VetBiz Vendor Information Pages (VIP) verification?
74.2 What are the eligibility requirements a concern must meet for VetBiz VIP Verification?
74.3 Who does Center for Veterans Enterprise (CVE) consider to own a veteran-owned small business?
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Records Management

74.25 What types of personally identifiable information will VA collect?
74.26 What types of business information will VA collect?
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74.28 Who may examine records?
74.29 When will VA dispose of records?

Authority: 38 U.S.C. 501, 513, and as noted in specific sections.

General Guidelines

§ 74.1 What definitions are important for VetBiz Vendor Information Pages (VIP) verification?

For the purposes of part 74, the following definitions apply.

Center for Veterans Enterprise (CVE) is an office within the U.S. Department of Veterans Affairs (VA) and is a subdivision of VA's Office of Small and Disadvantaged Business Utilization. The CVE helps veterans interested in forming or expanding their own small businesses. It also helps VA contracting offices identify veteran-owned small businesses and works with the Small Business Administration's Veterans Business Development Officers and Small Business Development Centers nationwide regarding veterans' business financing, management, and technical assistance needs.

Days are calendar days. In computing any period of time described in Part 74, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where CVE is closed for all or part of the last day, the period extends to the next day on which the agency is open.

Day-to-day management means supervising the executive team, formulating sound policies and setting strategic direction.

Day-to-day operations mean the marketing, production, sales, and administrative functions of the firm.

Eligible individual means a veteran, service-disabled veteran or surviving spouse, as defined in this section.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, and mother-in-law.

Joint venture is an association of two or more small business concerns to engage in and carry out a single, specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. For VA contracts, a joint venture must be in the form of a separate legal entity.

Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's chapter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

Non-veteran means any individual who does not claim veteran status, or upon whose status an applicant or participant does not rely in qualifying for VetBiz Vendor Information Pages (VIP) Verification Program participation.

Office of Small and Disadvantaged Business Utilization is the office within the Department of Veterans Affairs that establishes and monitors small business program goals at the prime and subcontract levels and which functions as the ombudsman for veterans and service-disabled veterans seeking procurement opportunities with the Department.

Participant means a veteran-owned small business concern that has verified status in the VetBiz Vendor Information Pages database.

Primary industry classification means the six-digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the participant. The NAICS code designations are described in the North American Industry Classification System (NAICS) Manual published by the U.S. Office of Management and Budget.

Principal place of business means the business location where the individuals who manage the concern's day-to-day operations spend most working hours and where top management's current business records are kept. If the office from which management is directed and where the current business records are kept are in different locations, CVE will determine the principal place of business for program purposes.

Same or similar line of business means business activities within the same three-digit ''Major Group'' of the NAICS Manual as the primary industry classification of the applicant or participant. The phrase ''same business area'' is synonymous with this definition.

Service-disabled veteran is a veteran who possesses either a disability rating letter issued by the Department of Veterans Affairs, establishing a service-connected rating between 0 and 100 percent, or a disability determination from the Department of Defense.

Service-disabled veteran-owned small business concern is a business not less than 51 percent of which is owned by one or more service-disabled veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; the management and daily business operations of which are controlled by one or more service-disabled veterans, or in the case of a veteran with a permanent and severe disability, a spouse or permanent caregiver of such veteran. In addition, some businesses may be owned and operated by an eligible surviving spouse. Reservists or members of the National Guard disabled from a disease or injury incurred or aggravated in the line of duty or while in training status also qualify.

Small business concern is—

(1) A small business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. For purposes of this program, a small business concern must meet Federal size standards.

(2) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative.

Surviving spouse is any individual identified as such by VA's Veterans Benefits Administration and listed in its database of veterans and family members. To be eligible for VetBiz VIP Verification, the following conditions must apply:

(1) If the death of the veteran causes the small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business shall, for the period described in paragraph (2) of this definition, be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a service-disabled veteran-owned small business.

(2) The period referred to in paragraph (1) of this definition is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) The date that is 10 years after the date of the veteran's death; or

(iv) The date on which the business concern is no longer small under Federal small business size standards,

(3) The veteran must have had a 100 percent service-connected disability.

Note to definition of surviving spouse: For program eligibility purposes, the surviving spouse has the same rights and entitlements of the service-disabled veteran who transferred ownership upon his or her death.

Unconditional ownership means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

VA is the U.S. Department of Veterans Affairs.

Vendor Information Pages (VIP) is a database of businesses eligible to participate in VA's Veteran-owned Small Business Program. The online database may be accessed at no charge via the Internet at *http://www.VetBiz.gov*.

Verification eligibility period is a 12-month period that begins on the date the Center for Veterans Enterprise issues the approval letter establishing verified status. The participant must submit a new application each year to continue eligibility.

VetBiz.gov (VetBiz) is a Web portal VA maintains at *http://www.VetBiz.gov*. It hosts the Vendor Information Pages database.

Veteran is a person who served on active duty with the U.S. Army, Air Force, Navy, Marine Corps or Coast Guard, for any length of time and at any place and who was discharged or released under conditions other than dishonorable. Reservists or members of the National Guard called to Federal active duty or disabled from a disease or injury incurred or aggravated in the line of duty or while in training status also qualify as a veteran.

Veteran-owned small business concern (VOSB) is a small business concern that is not less than 51 percent owned by one or more veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; the management and daily business operations of which are controlled by one or more veterans and qualifies as ''small'' for Federal business size standard purposes. All service-disabled veteran-owned small business concerns (SDVOSBs) are also, by definition, veteran-owned small business concerns. When used in these guidelines, the term ''VOSB'' includes SDVOSBs.

Veterans Affairs Acquisition Regulation (VAAR) is the set of rules that specifically govern requirements exclusive to the U.S. Department of Veterans Affairs (VA) prime and subcontracting actions. The VAAR is chapter 8 of title 48, Code of Federal Regulations, and supplements the Federal Acquisition Regulation (FAR), which contains guidance applicable to most Federal agencies.

§ 74.2 What are the eligibility requirements a concern must meet for VetBiz VIP Verification?

(a) *Ownership and control.* A small business concern must be unconditionally owned and controlled by one or more eligible veterans, service-disabled veterans or surviving spouses, have completed the online Vendor Information Pages database forms at *http://www.VetBiz.gov*, and has been examined by VA's Center for Veterans Enterprise. Such businesses appear in the VIP database as ''verified.''

(b) *Good character.* Veterans, service-disabled veterans and surviving spouses with ownership interests in VetBiz verified businesses must have good character. Debarred or suspended concerns or concerns owned or controlled by debarred or suspended persons are ineligible for VetBiz VIP Verification.

(c) *False Statements.* If, during the processing of an application, CVE determines that an applicant has knowingly submitted false information, regardless of whether correct information would cause CVE to deny the application, and regardless of whether correct information was given to CVE in accompanying documents, CVE will deny the application. If, after verifying the Participant's eligibility, CVE discovers that false information has been knowingly submitted by a firm, CVE will remove the ''verified'' status from the VIP database and notify the business by phone and mail. Whenever CVE determines that the applicant submitted false information, the matter will be referred to the Office of Inspector General for review. In addition, the CVE will request that debarment proceedings be initiated by the Department.

(d) *Federal financial obligations.* Neither a firm nor any of its eligible individuals that fails to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing, is eligible for VetBiz VIP Verification.

§ 74.3 Who does Center for Veteran's Enterprise (CVE) consider to own a veteran-owned small business?

An applicant or participant must be at least 51 percent unconditionally and directly owned by one or more veterans or service-disabled veterans.

(a) *Ownership must be direct.* Ownership by one or more veterans or service-disabled veterans must be direct ownership. An applicant or participant owned principally by another business entity or by a trust (including employee

stock ownership trusts) that is in turn owned by one or more veterans or service-disabled veterans does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a veteran or service-disabled veteran where the trust is revocable, and the veteran or service-disabled veteran is the grantor, a trustee, and the sole current beneficiary of the trust.

(b) *Ownership must be unconditional*. Ownership by one or more veterans or service-disabled veterans must be unconditional ownership. Ownership must not be subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms. In particular, CVE will evaluate ownership according to the following criteria for specific types of small business concerns.

(1) *Ownership of a partnership*. In the case of a concern that is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more veterans or service-disabled veterans. The ownership must be reflected in the concern's partnership agreement.

(2) *Ownership of a limited liability company*. In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more veterans or service-disabled veterans.

(3) *Ownership of a corporation*. In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more veterans or service-disabled veterans.

(c) *Stock options' effect on ownership*. In determining unconditional ownership, CVE will disregard any unexercised stock options or similar agreements held by veterans or service-disabled veterans. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-veterans will be treated as exercised, except for any ownership interests that are held by investment companies licensed under part 107 of title 13, Code of Federal Regulations.

(d) *Profits and distributions*. One or more veterans or service-disabled veterans must be entitled to receive:

(1) At least 51 percent of the annual distribution of profits paid on the stock of a corporate applicant concern;

(2) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and

(3) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock owned in the event of dissolution of the corporation.

(e) *Change of ownership*. (1) A participant may remain eligible after a change in its ownership or business structure, so long as one or more veterans or service-disabled veterans own and control it after the change and the participant files a new application identifying the new veteran owners or their new business interest.

(2) Any participant that is performing contracts and desires to substitute one veteran owner for another shall submit a proposed novation agreement and supporting documentation in accordance with FAR Subpart 42.12 to the contracting officer prior to the substitution or change of ownership for approval.

(3) Where the transfer results from the death or incapacity due to a serious, long-term illness or injury of an eligible principal, prior approval is not required, but the concern must file a new application with the contracting officer and CVE within 60 days of the change. Existing contracts may be performed to the end of the instant term. However, no options may be exercised.

(4) Continued eligibility of the participant with new ownership and the award of any new contracts require that CVE verify all eligibility requirements are met by the concern and the new owners.

(f) *Community property laws given effect*. In determining ownership interests when an owner resides in any of the community property States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims veteran status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.

§ 74.4 Who does CVE consider to control a veteran-owned small business?

(a) Control means both the day-to-day management and long-term decision-making authority for the VOSB. Many persons share control of a concern, including each of those occupying the following positions: officer, director, general partner, managing partner, managing member and manager. In addition, key employees who possess expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. CVE will consider the control potential of such key employees on a case-by-case basis.

(b) Control is not the same as ownership, although both may reside in the same person. CVE regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. An applicant or participant's management and daily business operations must be conducted by one or more veterans or service-disabled veterans. Individuals managing the concern must have managerial experience of the extent and complexity needed to run the concern. A veteran need not have the technical expertise or possess a required license to be found to control an applicant or participant if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, where a critical license is held by a non-veteran having an equity interest in the applicant or participant firm, the non-veteran may be found to control the firm.

(c)(1) An applicant or participant must be controlled by one or more veterans or service-disabled veterans who possess requisite management capabilities. Owners need not work full-time but must show sustained and significant time invested in the business.

(2) An eligible full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or participant.

(3) One or more veterans or service-disabled veterans who manage the applicant or participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business. Work in a wholly-owned subsidiary of the applicant or participant may be considered to meet the requirement of full-time devotion. This applies only to a subsidiary owned by the VOSB itself, and not to firms in which the veteran has a mere ownership interest.

(4) Except as provided in paragraph (d)(1) of this section, a veteran owner's unexercised right to cause a change in the management of the applicant

concern does not in itself constitute veteran control, regardless of how quickly or easily the right could be exercised.

(d) In the case of a partnership, one or more veterans or service-disabled veterans must serve as general partners, with control over all partnership decisions. A partnership in which no veteran is a general partner will be ineligible for participation.

(e) In the case of a limited liability company, one or more veterans or service-disabled veterans must serve as management members, with control over all decisions of the limited liability company.

(f) One or more veterans or service-disabled veterans must control the board of directors of a corporate applicant or participant.

(1) CVE will deem veterans or service-disabled veterans to control the board of directors where:

(i) A single veteran owns 100 percent of all voting stock of an applicant or participant concern;

(ii) A single veteran owns at least 51 percent of all voting stock of an applicant or participant, the individual is on the board of directors and no super majority voting requirements exist for shareholders to approve corporation actions. Where supermajority voting requirements are provided for in the concern's articles of incorporation, its by-laws, or by State law, the veteran must own at least the percent of the voting stock needed to overcome any such supermajority voting requirements; or

(iii) No single veteran owns 51 percent of all voting stock but multiple veterans in combination do own at least 51 percent of all voting stock, each such veteran is on the board of directors, no supermajority voting requirements exist, and the veteran shareholders can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block without a shareholder meeting. Where the concern has supermajority voting requirements, the veteran shareholders must own at least that percentage of voting stock needed to overcome any such supermajority ownership requirements.

(2) Where an applicant or participant does not meet the requirements set forth in paragraph (d)(1) of this section, the veteran(s) upon whom eligibility is based must control the board of directors through actual numbers of voting directors or, where permitted by state law, through weighted voting (e.g., in a concern having a two-person board of directors where one individual on the board is a veteran and one is not, the veteran vote must be weighted—worth more than one vote—in order for the concern to be eligible for VetBiz VIP Verification). Where a concern seeks to comply with this paragraph:

(i) Provisions for the establishment of a quorum cannot permit non-veteran directors to control the board of directors, directly or indirectly;

(ii) Any executive committee of the board of directors must be controlled by veteran directors unless the executive committee can only make recommendations to and cannot independently exercise the authority of the board of directors.

(3) Non-voting, advisory, or honorary directors may be appointed without affecting veterans' or service-disabled veterans' control of the board of directors.

(4) Arrangements regarding the structure and voting rights of the board of directors must comply with applicable state law.

(g) Non-veterans may be involved in the management of an applicant or participant, and may be stockholders, partners, limited liability members, officers, or directors of the applicant or participant. With the exception of a spouse or personal caregiver who represents a severely disabled veteran owner, no such non-veteran or immediate family member may:

(1) Exercise actual control or have the power to control the applicant or participant;

(2) Be a former employer or a principal of a former employer of any affiliated business of the applicant or participant, unless it is determined by the CVE that the relationship between the former employer or principal and the eligible individual or applicant concern does not give the former employer actual control or the potential to control the applicant or participant and such relationship is in the best interests of the participant firm; or

(3) Receive compensation from the applicant or participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually chief executive officer or president). The highest ranking officer may elect to take a lower salary than a non-veteran only upon demonstrating that it helps the applicant or participant.

(h) Non-veterans who transfer majority stock ownership or control of the firm to an immediate family member within 2 years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm. The presumption may be rebutted by showing that the transferee has independent management experience necessary to control the operation of the firm, and indeed is participating in the management of the firm.

(i) Non-veterans or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) Non-veterans control the board of directors of the applicant or participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-veterans effectively to prevent a quorum or block actions proposed by the veterans or service-disabled veterans.

(2) A non-veteran or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or participant which directly or indirectly allows the non-veteran significantly to influence business decisions of the participant, unless an exception is authorized by the Office of Small and Disadvantaged Business Utilization.

(3) A non-veteran or entity controls the applicant or participant or an individual veteran owner through loan arrangements. Providing a loan guaranty on commercially reasonable terms does not, by itself, give a non-veteran or entity the power to control a firm.

(4) Business relationships exist with non-veterans or entities which cause such dependence that the applicant or participant cannot exercise independent business judgment without great economic risk.

§ 74.5 How does CVE determine affiliation?

The Center for Veterans Enterprise applies the affiliation rules established by the Small Business Administration in 13 CFR 121.

Application Guidelines

§ 74.10 Where must an application be filed?

An application for VetBiz VIP Verification status must be electronically filed in the Vendor Information Pages database located in the Center for Veterans Enterprise's Web portal, *http://www.VetBiz.gov*. Guidelines and forms are located on the Web portal. Upon receipt of the applicant's electronic submission, an acknowledgment message will be dispatched to the concern, containing estimated processing time and other information. Address information for the CVE is also contained on the Web portal. Correspondence may be

dispatched to: Director, Center for Veterans Enterprise (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0675.)

§ 74.11 How does CVE process applications for VetBiz VIP Verification?

(a) The Director, Center for Veterans Enterprise, is authorized to approve or deny applications for VetBiz VIP Verification. The CVE will receive, review and evaluate all VetBiz VIP Verification applications. CVE will advise each applicant within 30 days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. CVE will process an application for VetBiz VIP Verification status within 60 days of receipt of a complete application package. Incomplete application packages will not be processed.

(b) CVE, in its sole discretion, may request clarification of information contained in the application at any time in the eligibility determination process. CVE will take into account any clarifications made by an applicant in response to a request for such by CVE.

(c) An applicant's eligibility will be based on circumstances existing on the date of application, except where clarification is made pursuant to paragraph (b) of this section or as provided in paragraph (d) of this section.

(d) Changed circumstances for an applicant occurring subsequent to its application and which adversely affect eligibility will be considered and may constitute grounds for denial of the application. The applicant must inform CVE of any changed circumstances that could adversely affect its eligibility for the program (i.e., ownership or control changes) during its application review. Failure to inform CVE of any such changed circumstances constitutes good cause for which CVE may withdraw verified status for the participant if non-compliance is discovered after a participant has been verified.

(e) The decision of the Director, CVE, to approve or deny an application will be in writing. A decision to deny verification status will state the specific reasons for denial, and will inform the applicant of any appeal rights.

(f) If the Director, CVE, approves the application, the date of the approval letter is the date of participant verification for purposes of determining the participant's verification eligibility term.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0675.)

§ 74.12 What must a concern submit to apply for VetBiz VIP Verification?

Each VetBiz VIP Verification applicant must submit the electronic forms and attachments CVE requires. All electronic forms are available on the VetBiz.gov Vendor Information Pages database Web pages. At the time the applicant dispatches the electronic forms, the applicant must also retain on file at the principal place of business a completed copy of the electronic forms supplemented by manual records that will be used in verification examinations. These forms and attachments will include, but not be limited to, financial statements, Federal personal and business tax returns, payroll records and personal history statements. An applicant must also retain in the application file IRS Form 4506, Request for Copy or Transcript of Tax Form. These materials shall be filed together to maximize efficiency of verification examination visits. Together with the electronic documents, these manual records will provide the CVE verification examiner with sufficient information to establish the management, control and operating status of the business on the date of submission.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0675.)

§ 74.13 Can an applicant ask CVE to reconsider its initial decision to deny an application?

(a) An applicant may request that the Director, CVE, reconsider his or her decision to deny an application by filing a request for reconsideration with CVE within 30 days of receipt of CVE's denial decision. ''Filing'' means a document is received by CVE by 5:30 p.m., eastern time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt at CVE.

(b) The Director, CVE, will issue a written decision within 30 days of receipt of the applicant's request. The Director, CVE, may either approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the Director, CVE, will explain why the applicant is not eligible for the VetBiz VIP Verification and give specific reasons for the denial.

(c) If the Director, CVE denies the application solely on issues not raised in the initial denial, the applicant may ask for reconsideration as if it were an initial denial.

(d) If CVE determines that a concern may not qualify as small, they may directly deny an application for VetBiz VIP Verification or may request a formal size determination from the U.S. Small Business Administration (SBA). A concern whose application is denied because it is other than a small business concern by CVE may request a formal size determination from the SBA Associate Administrator, Office of Government Contracting (ATTN: Director, Office of Size Standards), 409 3rd Street, SW., Washington, DC 20416. A favorable determination by SBA will enable the firm to immediately submit a new VetBiz VIP Verification.

(e) A denial decision that is based on the failure to meet any veteran or service-disabled veteran eligibility criteria is not subject to a request for reconsideration and is the final decision of CVE.

(f) Except as provided in paragraph (c) of this section, the decision on the request for reconsideration shall be final.

§ 74.14 Can an applicant reapply for admission to the VetBiz VIP Verification program?

A concern which has been denied eligibility for VetBiz VIP Verification program on the basis of ineligibility of veteran, service-disabled veteran or surviving spouse status may submit a new application for admission to the program as soon as eligibility status is finalized. In cases in which the denial stemmed from ownership, control or size factors, the applicant may file as soon as identified issues have been corrected. Once an application and its appeal have been denied, the applicant will be required to wait for a period of 6 months before a new application will be considered.

§ 74.15 What length of time may a business participate in VetBiz VIP Verification?

(a) A participant receives an eligibility term of 1 year from the date of CVE's approval letter establishing verified status. The participant must maintain its eligibility during its tenure and must inform CVE of any changes that would

adversely affect its eligibility. The eligibility term may be shortened by cancellation by CVE or voluntary withdrawal by the participant (i.e., no longer eligible as a small business concern), as provided for in this subpart.

(b) When at least 50 percent of the assets of a concern are the same as those of an affiliated business, the concern will not be eligible for verification.

(c) CVE may initiate a verification examination whenever it receives credible information calling into the question a participant's eligibility as a VOSB. Upon its completion of the examination, CVE will issue a written decision regarding the continued eligibility status of the questioned participant.

(d) If CVE finds that the participant does not qualify as a VOSB, CVE will immediately remove the ''verified'' status of the firm from the VetBiz Vendor Information Pages database. CVE will call and mail the participant with specifics that led to the cancellation action. The participant may file a request for reconsideration of CVE's decision in accordance with § 74.13.

(e) If CVE finds that the participant continues to qualify as a VOSB, the program term remains in effect.

Oversight Guidelines

§ 74.20 What is a verification examination and what will CVE examine?

(a) *General.* A verification examination is an investigation by CVE officials, which verifies the accuracy of any statement or information provided as part of the VetBiz VIP Verification application process. Thus, examiners may verify that the concern currently meets the eligibility requirements, and that it met such requirements at the time of its application or its most recent size recertification. An examination may be conducted on a random basis, or upon receipt of specific and credible information alleging that a participant no longer meets eligibility requirements.

(b) *Scope of examination.* CVE may conduct the examination, or parts of the program examination, at one or all of the participant's offices. CVE will determine the location of the examination. Examiners may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the legal structure, ownership and control of the concern. As a minimum, examiners shall review all documents supporting the application, as described in § 74.12. These include: financial statements; Federal personal and business tax returns; personal history statements; and Request for Copy or Transcript of Tax Form (IRS Form 4506) for up to 3 years. Other documents, which may be reviewed include (if applicable): Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; State-issued Certificates of Good Standing; contract, lease and loan agreements; payroll records; bank account signature cards; and licenses.

§ 74.21 What are the ways a business may exit VetBiz VIP Verification status?

A participant may:

(a) Voluntarily cancel its status by submitting a written request to CVE requesting that the ''verified'' status button be removed from the Vendor Information Pages database; or

(b) Delete its record entirely from the Vendor Information Pages database; or

(c) CVE may cancel the ''verified'' status button for good cause upon formal notice to the participant. Examples of good cause include, but are not limited to, the following:

(1) Submission of false information in the participant's VetBiz VIP Verification application.

(2) Failure by the participant to maintain its eligibility for program participation.

(3) Failure by the participant for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, management, and control by veterans, service-disabled veterans or surviving spouses.

(4) Failure by the concern to disclose to CVE the extent to which non-veteran persons or firms participate in the management of the participant.

(5) Debarment, suspension, voluntary exclusion, or ineligibility of the participant or its owners.

(6) A pattern of failure to make required submissions or responses to CVE in a timely manner, including a failure to make available financial statements, requested tax returns, reports, information requested by CVE or VA's Office of Inspector General, or other requested information or data within 30 days of the date of request.

(7) Cessation of the participant's business operations.

(8) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(9) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the business.

(10) Failure by the concern to provide an updated application (VA Form 0877) within 60 days of any change in ownership.

(d) The examples of good cause listed in paragraph (c) of this section are intended to be illustrative only. Other grounds for canceling a participant's verified status include any other cause of so serious or compelling a nature that it affects the present responsibility of the participant.

§ 74.22 What are the procedures for cancellation?

(a) *General.* When CVE believes that a participant's verified status should be cancelled prior to the expiration of its eligibility term, CVE will notify the participant in writing. The Notice of Proposed Cancellation Letter will set forth the specific facts and reasons for CVE's findings, and will notify the participant that it has 30 days from the date it receives the letter to submit a written response to CVE explaining why the proposed ground(s) should not justify cancellation.

(b) *Recommendation and decision.* Following the 30-day response period, the Director, CVE, will consider any information submitted by the participant. Upon determining that cancellation is not warranted, the Director, CVE, will notify the participant in writing. If cancellation appears warranted, the Director, CVE, will make a decision whether to cancel the participant's verified status.

(c) *Notice requirements.* Upon deciding that cancellation is warranted, the Director, CVE, will issue a Notice of Verified Status Cancellation. The Notice will set forth the specific facts and reasons for the decision, and will advise the concern that it may re-apply after it has met all eligibility criteria.

(d) *Effect of verified status cancellation.* After the effective date of cancellation, a participant is no longer eligible to appear as ''verified'' in the VetBiz VIP database. However, such concern is obligated to perform previously awarded contracts to the completion of their existing term of performance.

Records Management

§ 74.25 What types of personally identifiable information will VA collect?

In order to establish owner eligibility, the Department will collect individual names and Social Security numbers for veterans, service-disabled veterans and surviving spouses who represent themselves as having ownership and control interests in a specific business seeking to obtain verified status.

§ 74.26 What types of business information will VA collect?

VA will examine a variety of business records. See § 74.12, ''What is a verification examination and what will CVE examine?''

§ 74.27 How will VA store information?

VA intends to store records provided to complete the VetBiz Vendor Information Pages registration fully electronically on the Department's secure servers. CVE personnel will compare information provided concerning owners who have veteran status, service-disabled veteran status or surviving spouse status against electronic records maintained by the Department's Veterans Benefits Administration. Records collected during examination visits will be scanned onto portable media and fully secured in the Center for Veterans Enterprise, located in Washington, DC.

§ 74.28 Who may examine records?

Personnel from the Department of Veterans Affairs, Center for Veterans Enterprise and its agents, including personnel from the Small Business Administration, may examine records to ascertain the ownership and control of the applicant or participant.

§ 74.29 When will VA dispose of records?

The records, including those pertaining to businesses not determined to be eligible for the program, will be kept intact and in good condition for seven years following a program examination or the date of the last Notice of Verified Status Approval letter. Longer retention will not be required unless a written request is received from the Government Accountability Office not later than 30 days prior to the end of the retention period.

(Authority: 38 U.S.C. 8127(f)).

[FR Doc. E8–10489 Filed 5–16–08; 8:45 am]

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Federal Register

Monday,
May 19, 2008

Part VI

The President

Notice of May 16, 2008—Continuation of the National Emergency With Respect to Burma

Federal Register
Vol. 73, No. 97
Monday, May 19, 2008

Presidential Documents

Title 3—

The President

Notice of May 16, 2008

Continuation of the National Emergency With Respect to Burma

On May 20, 1997, the President issued Executive Order 13047, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma has engaged in large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons contained in that section. The President also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq*.

On July 28, 2003, I issued Executive Order 13310 taking additional steps with respect to that national emergency by putting in place an import ban required by the Burmese Freedom and Democracy Act of 2003 and prohibiting exports of financial services to Burma and the dealing in property in which certain designated Burmese persons have an interest. On October 18, 2007, I issued Executive Order 13448 to expand prohibitions to include the Burmese regime's financial supporters and their companies, as well as individuals determined to be responsible for or to have participated in human rights abuses or to have engaged in activities facilitating public corruption. On April 30, 2008, I issued Executive Order 13464 taking additional steps with respect to the Government of Burma's continued repression of the democratic opposition in Burma.

Because the actions and policies of the Government of Burma continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 20, 1997, and expanded on October 18, 2007, and April 30, 2008, and the measures adopted to deal with that emergency, must continue in effect beyond May 20, 2008. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Burma. This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
May 16, 2008.

[FR Doc. 08–1280
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

S. 2929/P.L. 110–230
To temporarily extend the programs under the Higher Education Act of 1965. (May 13, 2008; 122 Stat. 877)
Last List May 9, 2008

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
***1**	(869–064–00001–7)	5.00	[4] Jan. 1, 2008
2	(869–064–00002–5)	8.00	Jan. 1, 2008
***3** (2006 Compilation and Parts 100 and 102)	(869–064–00003–3)	35.00	[1] Jan. 1, 2008
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1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
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50 Parts:			
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17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
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17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.