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Presidential Documents

Title 3—

The President

Proclamation 8669 of May 5, 2011

Military Spouse Appreciation Day, 2011

By the President of the United States of America

A Proclamation

Military spouses serve as steady and supportive partners to the heroes in uniform who protect and defend our great Nation every day. Across America and around the world, military spouses serve our country in their own special way, helping families and friends through the stress of a deployment, caring for our wounded warriors, and supporting each other when a loved one has made the ultimate sacrifice.

Our service members and their families seldom ask for support or recognition. They carry out their duties to family and country with the quiet courage and strength that has always exemplified the American spirit. On Military Spouse Appreciation Day, we have an opportunity to not only honor the husbands and wives of our service members, but also thank them by actively expressing our gratitude in both word and deed.

When a member of our Armed Forces is deployed, an entire family is called to serve. The readiness of our troops depends on the readiness of our military families, as millions of parents, children, and loved ones sacrifice as well. This means supporting our military spouses is also a national security imperative. Earlier this year, my Administration released the report on military families, *Strengthening our Military Families: Meeting America's Commitment*, which marshaled resources from across our Government to identify new opportunities to support these patriots.

First Lady Michelle Obama and Dr. Jill Biden are working tirelessly to enlist all sectors of American life to address the unique challenges of military families. Their national initiative, "Joining Forces," mobilizes Americans to give our service members and their families the opportunities and support they have earned. Americans can find service projects, send messages of thanks to military families, and learn more about this initiative by visiting: www.JoiningForces.gov.

On Military Spouse Appreciation Day, let us join together to show our service members we are taking care of their families back home as they serve our Nation across the globe. As neighbors, teachers, parents, and fellow citizens, we can reach out to military husbands and wives in our communities. We can show our appreciation in countless ways, from offering to help with household maintenance and childcare to encouraging the community involvement and career development of military spouses.

It is through our actions that we show our commitment to our service members and their spouses. By embracing military families, we demonstrate our partnership in the defense of our freedom and the security of the United States.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 6, 2011, as Military Spouse Appreciation Day. I call upon the people of the United States to honor military spouses with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0089]

Plum Pox Virus; Update of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the plum pox virus (PPV) regulations by removing portions of Adams County, PA, from the list of quarantined areas and by adding portions of Niagara, Orleans, and Wayne Counties, NY, to the list of quarantined areas and restricted the interstate movement of regulated articles from these quarantined areas. The interim rule was necessary to prevent the spread of PPV from the quarantined areas of New York to uninfected areas of the United States and to relieve restrictions in Pennsylvania that are no longer necessary.

DATES: *Effective Date:* May 11, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. S. Anwar Rizvi, Senior Plant Pathologist/National Program Manager, Plant Pathogen and Weed Programs, EDP, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734–4313.

SUPPLEMENTARY INFORMATION:

Background

The plum pox virus (PPV) is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. PPV is transmitted under natural conditions by several species of aphids. The long-distance spread of PPV occurs by budding and grafting with infected plant material and through movement of farm tools, equipment, and infected budwood, nursery stock, and other plant parts.

The regulations in "Subpart—Plum Pox" (7 CFR 301.74 through 301.74–5, referred to below as the regulations) quarantine areas of the United States where PPV has been detected and restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of PPV into uninfected areas of the United States.

In an interim rule [1] that became effective upon publication in the **Federal Register** on December 27, 2010 (75 FR 81087–81089, Docket No. APHIS–2010–0089), we amended the regulations by adding portions of Niagara, Orleans, and Wayne Counties, NY, to the list of quarantined areas and removing the townships of Latimore and Huntington in Adams County, PA, from that list.

Comments on the interim rule were required to be received on or before February 25, 2011. We did not receive any comments by that date.

In the interim rule, we incorrectly described one of the borders of the quarantined area in the Town of Sodus in Wayne County. Therefore, in this final rule, we are amending § 301.74–3(c), under New York for the entry Wayne County, paragraph (3), to correct the description of that quarantined area.

Therefore, for the reasons given in the interim rule and this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0089.*

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule became effective on December 27, 2010. This rule corrects the description of the quarantined area in the interim rule. Immediate action is necessary to ensure that the description of the quarantined area is accurate in order to prevent the artificial spread of PPV to uninfected areas of the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rule amending 7 CFR part 301 that was published at 75 FR 81087–81089 on December 27, 2010, is adopted as a final rule with the following change:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.74–3, paragraph (c), under the heading "New York," in the entry for Wayne County, paragraph (3) is revised to read as follows:

§ 301.74–3 Quarantined areas.

* * * * *

New York

* * * * *

(c) *Wayne County.* * * *

(3) That area of Wayne County in the Town of Sodus beginning on the Sodus Bay shoreline at Ridge Road; then west on Ridge Road to Boyd Road; then north on Boyd Road to Sergeant Road; then north on Sergeant Road to Morley Road; then east on Morley Road to State Route

14; then north on State Route 14 to South Shore Road; then east on South Shore Road and continuing to the shoreline of Sodus Bay.

Done in Washington, DC, this 4th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–11489 Filed 5–10–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1275; Directorate Identifier 2010–NM–091–AD; Amendment 39–16688; AD 2011–10–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

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

ACTION: Final rule.

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

DGAC [Direction Générale de l'Aviation Civile] France Airworthiness Directive (AD) 1992–106–132(B) * * * was issued to require a set of inspection- and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure.

* * * * *

The unsafe condition is reduced structural integrity of the wings. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 15, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 15, 2011.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 3, 2011 (76 FR 34). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

DGAC [Direction Générale de l'Aviation Civile] France Airworthiness Directive (AD) 1992–106–132(B) original issue up to revision 7 was issued to require a set of inspection- and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure [FAA AD 98–26–01 corresponds to DGAC AD 1992–106–132(B)R4, dated June 5, 1996].

Following the Extended Design Service Goal activities as part of the Structure Task Group for the Airbus A310 program, EASA issued AD 2007–0053 which replaced DGAC France AD F–1992–106–132R7. Since the issuance of that AD, the thresholds and the intervals of some Airbus Service Bulletins (SBs which address structure fatigue related areas on the wing parts), until now part of the requirements of AD 2007–0053, have been updated.

For the reasons stated above, this new [EASA] AD requires the accomplishment of the structural fatigue-related corrective actions in accordance with the latest revision of these SBs which have been reviewed in the context of the A310 Extended Service Goal activities. Consequently, this new AD supersedes the requirements of paragraphs 1.8, 1.9, 1.10, 1.13, 1.18 of EASA AD 2007–0053, which has been revised accordingly.

The unsafe condition is reduced structural integrity of the wings. The required corrective actions are as follows, depending on airplane configuration:

- For certain Model A310–203 and A310–222 airplanes: Repetitive detailed inspections for cracking of the leading edge access panels around the bolt holes, and repair if necessary.
- For certain Model A310–203, A310–204, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes: Repetitive eddy current inspections to detect cracks in the holes around the overwing refueling aperture at ribs 13–14, and repair if necessary.
- For certain Model A310–203, A310–204, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes: Repetitive external detailed inspections for cracking of the top skin at ribs 13–14, repetitive internal detailed inspections for cracking of stringer 7 and stringer 8 of the overwing refuel aperture, and repair if necessary.
- For certain Model A310–203 and A310–222 airplanes: Repetitive detailed inspections for cracking around the bolts in the wing top skin upper surface of the front spar between rib 7 and rib 28, and repair if necessary.
- For certain Model A310–203 and A310–222 airplanes: Repetitive high frequency eddy current (HFEC) or X-ray inspections to detect cracking of the stringer runouts inboard and outboard of rib 14 at stringers 6, 7, 8, and 9, and repair if necessary.
- For certain Model A310–203, A310–204, A310–222, A310–304, A310–322, and A310–324 airplanes: Repetitive ultrasonic inspections for cracking in certain bolt holes where the main landing gear forward pick-up fitting is attached to the rear spar, and repair if necessary.

You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Explanation of Changes to This AD

We have moved the parenthetical information from paragraphs (g), (i), (j), (o), and (q)(1), (q)(2), and (q)(3) of this AD. Instead, we have provided that information in Note 1, Note 3, Note 4, Note 6, and Note 8 of this AD.

We have also revised tables 3 and 4 of this AD to refer to Model "A310–322" instead of "A310A–322." We inadvertently referred to "A310A–322" in the NPRM.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But

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

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

Costs of Compliance

We estimate that this AD will affect 44 products of U.S. registry. We also estimate that it will take about 97 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $362,780, or $8,245 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–10–07 Airbus: Amendment 39–16688. Docket No. FAA–2010–1275; Directorate Identifier 2010–NM–091–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 15, 2011.

Affected ADs

(b) This AD affects AD 90–19–07, Amendment 39–6731 (55 FR 37455, September 12, 1990); and AD 91–06–18, Amendment 39–6940 (56 FR 10796, March 14, 1991).

Applicability

(c) This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all certified models, all serial numbers.

Subject

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

Reason

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

DGAC [Direction Générale de l'Aviation Civile] France Airworthiness Directive (AD) 1992–106–132(B) * * * was issued to require a set of inspection- and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure.

* * * * *

The unsafe condition is reduced structural integrity of the wings.

Compliance

(f) 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 98–26–01, Amendment 39–10942 (63 FR 69179, December 16, 1998), With Reduced Compliance Times

Leading Edge Access Panels Landing—Lower Skin—Inspection for Cracks at Bolt Holes

(g) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2002, Revision 2, dated January 4, 1996, except airplanes on which Airbus modification No. 05101 has been embodied in production, or on which Airbus Service Bulletin A310–57–2003 has been embodied in service before the accumulation of 9,400 total flight cycles and 18,800 total flight hours: At the times specified in paragraph (h) of this AD, perform a detailed visual inspection to detect cracks in the external surface of the wing lower skin around the landing access panel holes of the leading edge, in accordance with the Airbus Service Bulletin A310–57–2002, Revision 1, dated July 2, 1992; Airbus Service Bulletin A310–57–2002, Revision 2, dated January 4, 1996; or Airbus Mandatory Service Bulletin A310–57–2002, Revision 03, dated November 28, 2006. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent) or EASA (or its delegated agent). Except as required by paragraph (n) of this AD, repeat the detailed inspection specified in this paragraph at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD; and thereafter at intervals not to exceed 2,300 flight cycles or 4,700 flight hours, whichever occurs first. As of the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–57–2002, Revision 03, dated November 28, 2006. Accomplishment of Airbus Modification 05101 before the effective date of this AD terminates the repetitive inspection requirements of this paragraph; however, airplanes identified in paragraph (n) of this AD are applicable to the new inspections required by paragraph (n) of this AD. As of the effective date of this AD: Accomplishment of Airbus Modification 05101 before the accumulation of 9,400 total flight cycles and 18,800 total flight hours terminates the repetitive inspection requirements of this paragraph.

Note 1: Airbus Service Bulletin A310–57–2003, Revision 03, dated October 16, 2006, is

an additional source of guidance for accomplishing Airbus Modification 05101.

Note 2: As of the effective date of this AD, if Airbus Service Bulletin A310–57–2003 is done on or after the accumulation of 9,400 total flight cycles or on or after the accumulation of 18,800 total flight hours, the actions specified in paragraph (g) of this AD are still required.

(1) Within 3,000 flight cycles after doing the detailed inspection specified in paragraph (g) of this AD.

(2) At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within 2,300 flight cycles or 4,700 flight hours, whichever occurs first, after doing the detailed inspection required by paragraph (g) of this AD.

(ii) Within 1,500 flight cycles or 3,000 flight hours, whichever occurs first, after the effective date of this AD.

(h) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2002, Revision 2, dated January 4, 1996, except airplanes on which Airbus modification No. 05101 has been embodied in production, or on which Airbus Service Bulletin A310–57–2003 has been embodied in service before the accumulation of 9,400 total flight cycles and 18,800 total flight hours: At the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD, do the detailed inspection required by paragraph (g) of this AD.

(1) Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999 (the effective date of AD 98–26–01, amendment 39–10942), whichever occurs later.

(2) At the later of the times specified in paragraph (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Prior to the accumulation of 9,400 total flight cycles or 18,800 total flight hours, whichever occurs first.

(ii) Within 1,500 flight cycles or 3,000 flight hours, whichever occurs first, after the effective date of this AD.

Inspect Area around Overwing Refueling Aperture at Ribs 13–14

(i) For Model A310–203, A310–204, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes that are listed in Airbus Service Bulletin A310–57–2006, Revision 3, dated May 2, 1996, and are identified as Configuration 1 in Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007: Prior to the accumulation of 6,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later, perform an eddy current inspection to detect cracks in the holes around the overwing refueling aperture at ribs 13–14, in accordance with Airbus Service Bulletin A310–57–2006, Revision 3, dated May 2, 1996; or Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007. If any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Airbus Service Bulletin A310–57–2006, Revision 3, dated May 2, 1996; or Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007; except where the service bulletin specifies to contact Airbus for repair, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the DGAC (or its delegated agent) or EASA (or its delegated agent). Repeat the inspection specified in this paragraph at the earlier of the times specified in paragraphs (i)(1) and (i)(2) of this AD, and thereafter at intervals not to exceed 2,300 flight cycles or 4,600 flight hours, whichever occurs first. As of the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007. Accomplishment of Airbus Modification 05891H5128 terminates the repetitive inspections required by this paragraph.

(1) Within 3,000 flight cycles after doing the last inspection required by paragraph (i) of this AD.

(2) At the later of the times specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD.

(i) Within 2,300 flight cycles or 4,600 flight hours, whichever occurs first, after doing the most recent inspection required by paragraph (i) of this AD.

(ii) Within 380 flight cycles or 770 flight hours, whichever occurs first, after the effective date of this AD.

Note 3: Airbus Service Bulletin A310–57–2020, Revision 07, dated June 5, 2006, is an additional source of guidance for accomplishing Airbus Modification 05891H5128.

Upper Skin Forward of Front Spar—Inspection for Cracks

(j) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2032, Revision 3, dated January 4, 1996, except airplanes on which Airbus modification 05026 has been embodied in production, or on which Airbus Service Bulletin A310–57–2005 has been done in service before the accumulation of 10,500 total flight cycles and 21,000 total flight hours: At the times specified in paragraph (k) of this AD, perform a detailed visual inspection to detect cracks around the bolts in the wing top skin upper surface of the front spar between rib 7 and rib 28, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2032, Revision 3, dated January 4, 1996; or Airbus Mandatory Service Bulletin A310–57–2032, Revision 04, dated December 1, 2006. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or DGAC (or its delegated agent) or EASA (or its delegated agent). Except as required by paragraph (p) of this AD, repeat the detailed inspection specified in this paragraph at the earlier of the times specified in paragraphs (j)(1) and (j)(2) of this AD, and thereafter at intervals not to exceed 3,900 flight cycles or 7,900 flight hours, whichever occurs first. As of the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–57–2032, Revision 04, dated December 1, 2006. Accomplishment of Airbus Modification 05026H0878 before the effective date of this AD terminates the repetitive inspection requirements of this paragraph; however, airplanes identified in paragraph (p) of this AD are applicable to the new inspections required by paragraph (p) of this AD. As of the effective date of this AD: Accomplishment of Airbus Modification 05026H0878 before the accumulation of 10,500 total flight cycles and 21,000 total flight hours terminates the repetitive inspection requirements of this paragraph.

(1) Within 4,500 flight cycles after doing the last inspection required by paragraph (j) of this AD.

(2) At the later of the times specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this AD.

(i) Within 3,900 flight cycles or 7,900 flight hours, whichever occurs first, after doing the most recent inspection required by paragraph (j) of this AD.

(ii) Within 850 flight cycles or 1,700 flight hours, whichever occurs first, after the effective date of this AD.

Note 4: Airbus Service Bulletin A310–57–2005, Revision 03, dated October 2, 2006, is an additional source of guidance for accomplishing Airbus Modification 05026H0878.

Note 5: As of the effective date of this AD, if Airbus Service Bulletin A310–57–2005 is done on or after the accumulation of 10,500 total flight cycles or on or after the accumulation of 21,000 total flight hours, the actions specified in paragraph (j) of this AD are still required.

(k) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2032, Revision 3, dated January 4, 1996, except airplanes on which Airbus modification 05026 has been embodied in production, or on which Airbus Service Bulletin A310–57–2005 has been done in service before the accumulation of 10,500 total flight cycles and 21,000 total flight hours: At the earlier of the times specified in paragraphs (k)(1) and (k)(2) of this AD, do the detailed inspection required by paragraph (j) of this AD.

(1) Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later.

(2) At the later of the times specified in paragraphs (k)(2)(i) and (k)(2)(ii) of this AD.

(i) Prior to the accumulation of 10,500 total flight cycles or 21,000 total flight hours, whichever occurs first.

(ii) Within 850 flight cycles or 1,700 flight hours, whichever occurs first, after the effective date of this AD.

Stringer Flanges at Rib 14 Wing Bottom Skin—Inspect for Cracks

(l) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996, except airplanes on which Airbus modification 04987 has been done in production: At the compliance time specified in paragraph (m) of this AD, perform a high frequency eddy current (HFEC) or X-ray inspection to detect cracking of the stringer runouts inboard and outboard of rib 14 at stringers 6, 7, 8, and 9, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996; or Airbus Mandatory

Service Bulletin A310–57–2038, Revision 04, dated October 19, 2006. Do the next inspection at the earlier of the times specified in paragraph (l)(1) and (l)(2) of this AD, and repeat the inspection thereafter at intervals not to exceed the applicable times specified in table 1 of this AD. If any crack is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or DGAC (or its delegated agent) or EASA (or its delegated agent). As of the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–57–2038, Revision 04, dated October 19, 2006.

(1) Within the applicable interval specified in paragraph 1.B.(5) of Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996.

(2) At the later of the times specified in paragraph (l)(2)(i) and (l)(2)(ii) of this AD.

(i) Within the applicable interval specified in table 1 of this AD after doing the most recent inspection specified in paragraph (l) of this AD.

(ii) Within 1,100 flight cycles or 2,300 flight hours, whichever occurs first, after the effective date of this AD.

TABLE 1—REPETITIVE INTERVALS, DEPENDING ON INSPECTION TYPE

Type of inspection	Repetitive interval (not to exceed)
X-Ray	7,200 flight cycles or 14,500 flight hours, whichever occurs first.
HFEC	9,400 flight cycles or 18,800 flight hours, whichever occurs first.

(m) For Model A310–203 and A310–222 airplanes listed in Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996, except airplanes on which Airbus modification 04987 has been done in production: At the earlier of the times specified in paragraphs (m)(1) and (m)(2) of this AD, perform an inspection required by paragraph (l) of this AD.

(1) Prior to the accumulation of 12,000 total flight cycles, or within 1,500 flight cycles after January 20, 1999, whichever occurs later.

(2) At the later of the times specified in paragraphs (m)(2)(i) and (m)(2)(ii) of this AD.

(i) Prior to the accumulation of 12,000 total flight cycles or 24,000 total flight hours, whichever occurs first.

(ii) Within 1,100 flight cycles or 2,300 flight hours after the effective date of this AD, whichever occurs first.

New Requirements of This AD

Leading Edge Access Panels Landing—Lower Skin—Inspection for Cracks at Bolt Holes—Additional Inspections for Certain Airplanes

(n) For Model A310–203 and A310–222 airplanes, on which Airbus Service Bulletin A310–57–2003 has been done in service on or after the accumulation of 9,400 total flight cycles or on or after the accumulation of 18,800 total flight hours: Do the inspection required by paragraph (g) of this AD at the later of the times specified in paragraphs (n)(1) and (n)(2) of this AD. Repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 2,300 flight cycles or 4,700 flight hours, whichever occurs first.

(1) Within 2,300 flight cycles or 4,700 flight hours, whichever occurs first, after doing the most recent detailed inspection required by paragraph (g) of this AD.

(2) Within 1,500 flight cycles or 3,000 flight hours, after the effective date of this AD, whichever occurs first.

Inspect Area Around Overwing Refueling Aperture at Ribs 13–14 for Additional Airplanes

(o) For Model A310–203, A310–204, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes, except for airplanes identified in paragraph (i) of this AD on which Airbus Modification 05891H5128 has not been done: At the applicable compliance time specified in table 2 of this AD, do the applicable actions specified in paragraph (o)(1) or (o)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007. If any cracking is found, before further flight, repair in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007; except where this service bulletin specifies to contact Airbus for repair, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or EASA (or its delegated agent). Repeat the inspections thereafter at the applicable interval specified in table 2 of this AD. Certain compliance times specified in table 2 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 4.0 hours, or long range use, AFT exceeding 4.0 hours. For airplanes identified as Configuration 01 in Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007, accomplishment of Airbus Modification 05891H5128 terminates the repetitive inspections required by this paragraph for Configuration 01 airplanes; thereafter do the applicable actions specified in paragraph (o)(2) of this AD at the times specified in table 2 of this AD.

Note 6: Airbus Service Bulletin A310–57–2020, Revision 07, dated June 5, 2006, is an additional source of guidance for accomplishing Airbus Modification 05891H5128.

(1) For Configuration 01 airplanes, as identified in Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007: Do a rotating probe eddy current inspection for cracking in the holes around the overwing refueling aperture at ribs 13–14.

(2) For Configuration 02 through 06 airplanes, as identified in Airbus Mandatory Service Bulletin A310–57–2006, Revision 04, dated May 21, 2007: Do an external detailed inspection for cracking of the top skin at ribs 13–14, and an internal detailed inspection for cracking of string 7 and string 8 of the overwing refuel aperture.

TABLE 2—COMPLIANCE TIMES FOR CONFIGURATION 01 THROUGH 06 AIRPLANES

Airplanes as Identified in Airbus Mandatory Service Bulletin A310–57–2006, revision 04, dated May 21, 2007	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
Configuration 01 airplanes	Prior to the accumulation of 6,000 total flight cycles.	Within 380 flight cycles or 770 flight hours, whichever occurs first, after the effective date of this AD.	2,300 flight cycles or 4,600 flight hours, whichever occurs first.
Configuration 02 airplanes	Within 30,900 flight cycles or 61,900 flight hours, whichever occurs first, after accomplishing Airbus Service Bulletin A310–57–2020.	Within 1,500 flight cycles or 18 months, whichever occurs first, after the effective date of this AD.	11,300 flight cycles or 22,600 flight hours, whichever occurs first.
Configuration 03 airplanes	Within 30,900 flight cycles or 61,900 flight hours, whichever occurs first, after Airbus Modification 05891H5128 is done or Airbus Service Bulletin A310–57–2020 is accomplished.	Within 1,500 flight cycles or 18 months, whichever occurs first, after the effective date of this AD.	12,000 flight cycles or 24,000 flight hours, whichever occurs first.

TABLE 2—COMPLIANCE TIMES FOR CONFIGURATION 01 THROUGH 06 AIRPLANES—Continued

Configuration 04 and 05 short range airplanes.	Before the accumulation of 25,900 total flight cycles or 72,500 total flight hours, whichever occurs first.	Within 1,500 flight cycles or 18 months, whichever occurs first, after the effective date of this AD.	12,000 flight cycles or 33,600 flight hours, whichever occurs first.
Configuration 04 and 05 long range airplanes.	Before the accumulation of 18,800 total flight cycles or 94,200 total flight hours, whichever occurs first.	Within 1,500 flight cycles or 18 months, whichever occurs first, after the effective date of this AD.	9,400 flight cycles or 47,200 flight hours, whichever occurs first.
Configuration 06	Before the accumulation of 30,900 total flight cycles or 61,900 total flight hours, whichever occurs first.	Within 1,500 flight cycles or 18 months, whichever occurs first, after the effective date of this AD.	12,000 flight cycles or 24,000 flight hours, whichever occurs first.

Upper Skin Forward of Front Spar—Inspection for Cracks—Additional Inspections for Certain Airplanes

(p) For Model A310–203 and A310–222 airplanes on which Airbus Service Bulletin A310–57–2005 has been done in service on or after the accumulation of 10,500 total flight cycles or on or after 21,000 total flight hours: Do the inspection required by paragraph (j) of this AD at the later of the times specified in paragraphs (p)(1) and (p)(2) of this AD. Repeat the inspection specified in paragraph (j) of this AD thereafter at intervals not to exceed 3,900 flight cycles or 7,900 flight hours, whichever occurs first.

(1) Within 3,900 flight cycles or 7,900 flight hours, whichever occurs first, after doing the most recent inspection required by paragraph (j) of this AD.

(2) Within 850 flight cycles or 1,700 flight hours, whichever occurs first, after the effective date of this AD.

Inspection of Rear Spar at Selected Bolt Locations for Attachment of Main landing Gear Forward Pick-Up Fitting

(q) For Model A310–203, A310–204, A310–222, A310–304, A310–322, and A310–324 airplanes, except airplanes on which Airbus modification 07601 has been done in production: Do the applicable actions specified in paragraphs (q)(1), (q)(2), and (q)(3) of this AD. If any cracking is found during any inspection, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or EASA (or its delegated agent).

Note 7: For Model A310–304, A310–322, and A310–324 airplanes on which Airbus modification 07601 has been done, guidance for post-modification inspections can be found in Structure Significant Item (SSI) 57.21.16 of the Maintenance Review Board Document (MRBD).

(1) For airplanes on which Airbus Modification 07925H1113 and Modification 11578H5436 have not been done: At the applicable time specified in table 3 of this AD, perform an ultrasonic inspection for cracking in certain bolt holes where the main landing gear forward pick-up fitting is attached to the rear spar, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2046, Revision 08, dated December 1, 2006. Repeat the inspection thereafter at the applicable interval specified in table 3 of this AD until Airbus Modification 07925H1113 or 11578H5436 has been done. After doing Airbus Modification 07925H1113 or 11578H5436 do the applicable actions specified in paragraph (q)(2) or (q)(3) of this AD at the times specified in paragraph (q)(2) or (q)(3) of this AD, as applicable. Certain compliance times specified in table 3 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 4.0 hours, or long range use, AFT exceeding 4.0 hours.

Note 8: Airbus Service Bulletin A310–57–2049, Revision 6, dated November 26, 1997, is an additional source of guidance for accomplishing Airbus Modification 07925H1113. Airbus Service Bulletin A310–57–2074, Revision 03, dated July 3, 2006, is an additional source of guidance for accomplishing Airbus Modification 11578H5436.

TABLE 3—COMPLIANCE TIMES FOR AIRPLANES PRE-MOD 07925 AND PRE-MOD 11578

Airplanes	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
Model A310–203, A310–204, and A310–222 airplanes.	Prior to the accumulation of 9,800 total flight cycles or 19,600 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	2,800 flight cycles or 5,700 flight hours, whichever occurs first.
Model A310–304, A310–322, and A310–324 short range airplanes.	Prior to the accumulation of 7,100 total flight cycles or 20,100 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	2,400 flight cycles or 6,900 flight hours, whichever occurs first.
Model A310–304, A310–322, and A310–324 long range airplanes.	Prior to the accumulation of 5,700 total flight cycles or 28,600 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	1,900 flight cycles or 9,800 flight hours, whichever occurs first.

(2) For airplanes on which Airbus Modification 07925H1113 has been done: At the applicable time specified in table 4 of this AD, perform an ultrasonic inspection for cracking in certain bolt holes where the main landing gear forward pick-up fitting is attached to the rear spar, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2046, Revision 08, dated December 1, 2006. Repeat the inspection thereafter at the applicable interval specified in table 4 of this AD. Certain compliance times specified in table 4 of this AD are applicable to short range use, AFT equal to or less than 4.0 hours, or long range use, AFT exceeding 4.0 hours.

TABLE 4—COMPLIANCE TIMES FOR AIRPLANES POST-MOD 07925

Airplanes	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
Model A310–203, A310–204, and A310–222 airplanes.	Prior to the accumulation of 14,700 total flight cycles or 29,400 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	9,400 flight cycles or 18,900 flight hours, whichever occurs first.
Model A310–304, A310–322, and A310–324 short range airplanes.	Prior to the accumulation of 11,900 total flight cycles or 33,500 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	5,000 flight cycles or 14,000 flight hours, whichever occurs first.
Model A310–304, A310–322, and A310–324 long range airplanes.	Prior to the accumulation of 9,500 total flight cycles or 47,700 total flight hours, whichever occurs first.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	4,000 flight cycles or 20,000 flight hours, whichever occurs first.

(3) For airplanes on which Airbus Modification 11578H5436 has been done: At the applicable time specified in table 5 of this AD, perform an ultrasonic inspection for cracking in certain bolt holes where the main landing gear forward pick-up fitting is attached to the rear spar, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2046, Revision 08, dated December 1, 2006. Repeat the inspection thereafter at the applicable interval specified in table 5 of this AD. Certain compliance times specified in table 5 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 4.0 hours, or long range use, AFT exceeding 4.0 hours.

TABLE 5—COMPLIANCE TIMES FOR AIRPLANES POST-MOD 11578

Airplanes	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
Model A310–203, A310–204, and A310–222 airplanes.	Within 29,600 flight cycles or 59,200 flight hours, whichever occurs first, after Airbus Modification 11578H5436 has been done.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	9,400 flight cycles or 18,900 flight hours, whichever occurs first.
Model A310–304, A310–322, and A310–324 short range airplanes.	Within 24,200 flight cycles or 67,900 flight hours, whichever occurs first, after Airbus Modification 11578H5436 has been done.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	5,000 flight cycles or 14,000 flight hours, whichever occurs first.
Model A310–304, A310–322, and A310–324 long range airplanes.	Within 19,300 flight cycles or 96,800 flight hours, whichever occurs first, after Airbus Modification 11578H5436 has been done.	Within 750 flight cycles or 1,500 flight hours, whichever occurs first, after the effective date of this AD.	4,000 flight cycles or 20,000 flight hours, whichever occurs first.

Credit for Actions Accomplished in Accordance With Previous Service Information

(r) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2038, Revision 03, dated September 4, 1998, are acceptable for compliance with the corresponding actions specified in paragraph (l) of this AD.

(s) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2046, Revision 07, dated April 2, 1999, are acceptable for compliance with the corresponding actions specified in paragraph (q) of this AD.

Terminating Action for Paragraph (a) of AD 90–19–07

(t) Accomplishing an inspection in accordance with Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996, or Revision 03, dated September 4, 1998; or Airbus Mandatory Service Bulletin A310–57–2038, Revision 04, dated October 19, 2006; terminates the requirements of paragraph (a) of AD 90–19–07.

Note 9: Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996; and Airbus Mandatory Service Bulletin A310–57–2038, Revision 04, dated October 19, 2006; are referred to in paragraph (l) of this AD. Airbus Service Bulletin A310–57–2038, Revision 03, dated September 4, 1998, is referred to in paragraph (r) of this AD.

Terminating Action for AD 91–06–18

(u) Accomplishing an inspection in accordance with Airbus Service Bulletin A310–57–2046, Revision 4, dated October 16, 1996, as revised by Airbus Service Bulletin Change Notice 4A, dated October 16, 1996; Airbus Service Bulletin A310–57–2046, Revision 07, dated April 2, 1999; or Airbus Mandatory Service Bulletin A310–57–2046, Revision 08, dated December 1, 2006; terminates the requirements of AD 91–06–18.

Note 10: Airbus Mandatory Service Bulletin A310–57–2046, Revision 08, dated December 1, 2006, is referred to in paragraph (q) of this AD. Airbus Service Bulletin A310–57–2046, Revision 07, dated April 2, 1999, is referred to in paragraph (s) of this AD. Airbus Service Bulletin A310–57–2046, Revision 4, dated October 16, 1996, as revised by Airbus Service Bulletin Change Notice 4A, dated October 16, 1996, is referred to in paragraph (n) of AD 98–26–01.

FAA AD Differences

Note 11: This AD differs from the MCAI and/or service information as follows:

Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (j) of this AD requires that you repair the crack(s) before further flight.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport

Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 98–26–01, are approved as AMOCs for the corresponding provisions of this AD.

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

Related Information

(w) Refer to MCAI EASA Airworthiness Directive 2007–0242, dated September 4, 2007, and the Airbus service bulletins listed in table 6 of this AD for related information.

TABLE 6—RELATED SERVICE INFORMATION

Service Bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–57–2002	03	November 28, 2006.
Airbus Mandatory Service Bulletin A310–57–2006	04	May 21, 2007.
Airbus Mandatory Service Bulletin A310–57–2032	04	December 1, 2006.
Airbus Mandatory Service Bulletin A310–57–2038	04	October 19, 2006.
Airbus Mandatory Service Bulletin A310–57–2046	08	December 1, 2006.
Airbus Service Bulletin A310–57–2038	2	January 4, 1996.
Airbus Service Bulletin A310–57–2038	03	September 4, 1998
Airbus Service Bulletin A310–57–2046	4	October 16, 1996.
Airbus Service Bulletin A310–57–2046	07	April 2, 1999.
Airbus Service Bulletin A310–57–2046, Change Notice 4A	Original	October 16, 1996.

Material Incorporated by Reference

(x) You must use the service bulletins contained in table 7 of this AD to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional terminating actions specified by this AD, you must use the service information contained in table 7 of this AD to perform those actions unless the AD specifies otherwise.

TABLE 7—ALL MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date	Required/optional action
Airbus Mandatory Service Bulletin A310–57–2002	03	November 28, 2006	Required.
Airbus Mandatory Service Bulletin A310–57–2006	04	May 21, 2007	Required.
Airbus Mandatory Service Bulletin A310–57–2032	04	December 1, 2006	Required.
Airbus Mandatory Service Bulletin A310–57–2038	04	October 19, 2006	Required and optional.
Airbus Mandatory Service Bulletin A310–57–2046	08	December 1, 2006	Required and optional.
Airbus Service Bulletin A310–57–2038	2	January 4, 1996	Optional.
Airbus Service Bulletin A310–57–2038	03	September 4, 1998	Optional.
Airbus Service Bulletin A310–57–2046	4	October 16, 1996	Optional.
Airbus Service Bulletin A310–57–2046	07	April 2, 1999	Optional.
Airbus Service Bulletin A310–57–2046, Change Notice 4A.	Original	October 16, 1996	Optional.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in table 8 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 8—NEW MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–57–2002	03	November 28, 2006.
Airbus Mandatory Service Bulletin A310–57–2006	04	May 21, 2007.
Airbus Mandatory Service Bulletin A310–57–2032	04	December 1, 2006.
Airbus Mandatory Service Bulletin A310–57–2038	04	October 19, 2006.
Airbus Mandatory Service Bulletin A310–57–2046	08	December 1, 2006.
Airbus Service Bulletin A310–57–2038	03	September 4, 1998.
Airbus Service Bulletin A310–57–2046	07	April 2, 1999.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in table 9 of this AD on January 20, 1999 (63 FR 69179, December 16, 1998).

TABLE 9—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date
Airbus Service Bulletin A310–57–2038	2	January 4, 1996.
Airbus Service Bulletin A310–57–2046	4	October 16, 1996.
Airbus Service Bulletin A310–57–2046, Change Notice 4A	Original	October 16, 1996.

(3) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on April 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10684 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1274; Directorate Identifier 2010–NM–090–AD; Amendment 39–16687; AD 2011–10–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

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

ACTION: Final rule.

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

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) * * * was issued to require a set of inspection and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure.

* * * * *

The unsafe condition is reduced structural integrity of the wings. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 15, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 15, 2011.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 3, 2011 (76 FR 50). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) original issue up to revision 7 was issued to require a set of inspection and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure.

Following the Extended Design Service Goal activities as part of the Structure Task Group for the Airbus A310 program, EASA [European Aviation Safety Agency] published AD 2007–0053, which replaced DGAC France AD F–1992–106–132R7.

Since the issuance of AD 2007–0053R1, the thresholds and the intervals of Airbus Service Bulletins (SB) A310–57–2050 and A310–57–2064 have been updated.

Consequently, this new [EASA] AD takes over the requirements of paragraphs 1.15 and 1.17 of EASA AD 2007–0053R1, which has been revised accordingly * * * and requires the accomplishment of Airbus SB A310–57–2048 at revision 01.

The unsafe condition is reduced structural integrity of the wings. The required actions are as follows, depending on airplane configuration:

- Cold working of trellis boom drainage holes.
- Repetitive detailed or rotating probe inspections for cracking in the drain holes on the lower skin panel in the center wing box between frames 42 and 46 and corrective actions if necessary. Corrective actions include repairing cracking and contacting the FAA or EASA for repair and doing the repair.
- Repetitive eddy current inspections for cracking of the upper corner angle fitting and the vertical tee fitting at left and right frame 40, and corrective actions if necessary. Corrective actions include repairing, replacing the internal angle fitting, and contacting the FAA or EASA for repair and doing the repair.

You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Revise Paragraph Header

An anonymous commenter requested that the paragraph reference in the paragraph header between table 5 and paragraph (k) of the NPRM be revised from "paragraph (h)" to "paragraph (j)". The commenter believed the intent was to reference paragraph (j) of the NPRM.

We agree with the commenter's request. We have revised the paragraph header between table 5 and paragraph (k) of this AD.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not

increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 44 products of U.S. registry. We also estimate that it will take about 137 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $512,380, or $11,645 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–10–06 Airbus: Amendment 39–16687. Docket No. FAA–2010–1274; Directorate Identifier 2010–NM–090–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 15, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) * * * was issued to require a set of inspection and modification tasks which addressed JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure.

* * * * *

The unsafe condition is reduced structural integrity of the wings.

Compliance

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

Cold Working of Trellis Boom Drainage Holes

(g) For Model A310–203, –204, –222, –304, –322 and –324 airplanes, except airplanes identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Within the applicable time specified in Table 1 of this AD, cold work the trellis boom drainage holes, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007. Certain compliance times specified in Table 1 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 3.6 hours; or long range use, AFT exceeding 3.6 hours.

TABLE 1—COMPLIANCE TIMES FOR PARAGRAPH (g) OF THIS AD

Airplanes, as identified in Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007	Compliance time (whichever occurs later)	
Configuration 01 airplanes	Prior to the accumulation of 31,800 total flight cycles or 63,600 total flight hours, whichever occurs first.	Within 6 months after the effective date of this AD.

TABLE 1—COMPLIANCE TIMES FOR PARAGRAPH (g) OF THIS AD—Continued

Configuration 02 airplanes	Prior to the accumulation of 40,000 total flight cycles or 80,000 total flight hours, whichever occurs first.	Within 6 months after the effective date of this AD.
Configuration 03 short range airplanes	Prior to the accumulation of 30,950 total flight cycles or 86,750 total flight hours, whichever occurs first.	Within 6 months after the effective date of this AD.
Configuration 03 long range airplanes	Prior to the accumulation of 24,100 total flight cycles or 120,600 total flight hours, whichever occurs first.	Within 6 months after the effective date of this AD.

(1) Airplanes on which Airbus modification 06130 was done in production.

(2) Airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 was done in service.

(3) Airplanes on which rework of cracked drain holes was done in accordance with Airbus Mandatory Service Bulletin A310–57–2050.

Inspection of Trellis Boom Drainage Holes

(h) For all airplanes: Within the applicable intervals specified in Table 2 of this AD, perform a detailed or rotating probe inspection for cracking in the drain holes on the lower skin panel in the center wing box between frames 42 and 46, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2050, Revision 02, dated August 27, 2009. Repeat the inspections thereafter at intervals not to exceed the applicable times specified in Table 3 of this AD. Certain compliance times specified in Tables 2 and 3 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 3.6 hours; or long range use, AFT exceeding 3.6 hours.

TABLE 2—COMPLIANCE TIMES FOR PARAGRAPH (h) OF THIS AD

Airplanes, as identified in Airbus Mandatory Service Bulletin A310–57–2050, Revision 02, dated August 27, 2009	Compliance time (whichever occurs later)	
Configuration 01 airplanes	Prior to the accumulation of 17,800 total flight cycles or 35,600 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 02 airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Within 32,850 flight cycles or 65,700 flight hours, whichever occurs first, after accomplishing Airbus Mandatory Service Bulletin A310–57–2048.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 02 airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has not been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Within 8,600 flight cycles or 17,250 flight hours, whichever occurs first, after accomplishing the detailed inspection specified in Airbus Mandatory Service Bulletin A310–57–2048; OR Within 11,400 flight cycles or 22,800 flight hours, whichever occurs first, after accomplishing the rotating probe inspection specified in Airbus Mandatory Service Bulletin A310–57–2048.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 03 airplanes	Prior to the accumulation of 22,300 total flight cycles or 44,550 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 04 airplanes	Prior to the accumulation of 41,550 total flight cycles or 83,100 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 05 airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Prior to the accumulation of 40,000 total flight cycles or 80,000 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 05 airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has not been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Within 10,600 flight cycles or 21,150 flight hours, whichever occurs first, after accomplishing the detailed inspection specified in Airbus Mandatory Service Bulletin A310–57–2048; OR Within 13,900 flight cycles or 27,800 flight hours, whichever occurs first, after accomplishing the rotating probe inspection specified in Airbus Mandatory Service Bulletin A310–57–2048.	Within 1,000 flight cycles or 2,000 flight hours, whichever occurs first, after the effective date of this AD.

TABLE 2—COMPLIANCE TIMES FOR PARAGRAPH (h) OF THIS AD—Continued

Configuration 06 short range airplanes	Prior to the accumulation of 17,250 total flight cycles or 48,400 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,800 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 06 long range airplanes	Prior to the accumulation of 13,450 total flight cycles or 67,250 total flight hours, whichever occurs first.	Within 800 flight cycles or 4,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 07 short range airplanes	Prior to the accumulation of 32,150 total flight cycles or 90,050 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,800 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 07 long range airplanes	Prior to the accumulation of 25,050 total flight cycles or 125,150 total flight hours, whichever occurs first.	Within 800 flight cycles or 4,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 08 short range airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Prior to the accumulation of 30,950 total flight cycles or 86,750 total flight hours, whichever occurs first.	Within 1,000 flight cycles or 2,800 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 08 short range airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has not been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Within 8,200 flight cycles or 23,000 flight hours, whichever occurs first, after accomplishing the detailed inspection specified in Airbus Mandatory Service Bulletin A310–57–2048; OR Within 10,800 flight cycles or 30,300 flight hours, whichever occurs first, after accomplishing the rotating probe inspection specified in Airbus Mandatory Service Bulletin A310–57–2048.	Within 1,000 flight cycles or 2,800 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 08 long range airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Prior to the accumulation of 24,100 total flight cycles or 120,600 total flight hours, whichever occurs first.	Within 800 flight cycles or 4,000 flight hours, whichever occurs first, after the effective date of this AD.
Configuration 08 long range airplanes on which Airbus Mandatory Service Bulletin A310–57–2048 has not been done within the "recommended" compliance times specified in paragraph 1.E.(2), "Accomplishment Timescale," of Airbus Mandatory Service Bulletin A310–57–2048, Revision 01, dated May 22, 2007.	Within 6,400 flight cycles or 31,950 flight hours, whichever occurs first, after accomplishing the detailed inspection specified in Airbus Mandatory Service Bulletin A310–57–2048; OR Within 8,400 flight cycles or 42,150 flight hours, whichever occurs first, after accomplishing the rotating probe inspection specified in Airbus Mandatory Service Bulletin A310–57–2048.	Within 800 flight cycles or 4,000 flight hours, whichever occurs first, after the effective date of this AD.

TABLE 3—REPETITIVE INTERVALS FOR PARAGRAPH (h) OF THIS AD, DEPENDING ON MOST RECENT INSPECTION TYPE

Airplanes, as identified in Airbus Mandatory Service Bulletin A310–57–2050, Revision 02, dated August 27, 2009	Type of inspection done during most recent inspection	Repetitive interval (not to exceed)
Configuration 01 and 02 airplanes	Detailed inspection	8,600 flight cycles or 17,250 flight hours, whichever occurs first.
	Rotating probe inspection	11,400 flight cycles or 22,800 flight hours, whichever occurs first.
Configurations 03, 04, and 05 airplanes	Detailed inspection	10,600 flight cycles or 21,150 flight hours, whichever occurs first.
	Rotating probe inspection	13,900 flight cycles or 27,800 flight hours, whichever occurs first.
Configurations 06, 07, and 08 short range airplanes	Detailed inspection	8,200 flight cycles or 23,000 flight hours, whichever occurs first.
	Rotating probe inspection	10,800 flight cycles or 30,300 flight hours, whichever occurs first.
Configurations 06, 07, and 08 long range airplanes	Detailed inspection	6,400 flight cycles or 31,950 flight hours, whichever occurs first.

TABLE 3—REPETITIVE INTERVALS FOR PARAGRAPH (h) OF THIS AD, DEPENDING ON MOST RECENT INSPECTION TYPE—Continued

Airplanes, as identified in Airbus Mandatory Service Bulletin A310–57–2050, Revision 02, dated August 27, 2009	Type of inspection done during most recent inspection	Repetitive interval (not to exceed)
	Rotating probe inspection ..	8,400 flight cycles or 42,150 flight hours, whichever occurs first.

Corrective Actions for Paragraph (h) of This AD

(i) If any cracking is found during any inspection required by paragraph (h) of this AD, before further flight, do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2050, Revision 02, dated August 27, 2009; except where the service bulletin specifies to contact Airbus, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or European Aviation Safety Agency (EASA) (or its delegated agent).

Inspection of Fuselage Frame 40 Upper Corner Fitting

(j) For all airplanes: Within the applicable time specified in Table 4 of this AD, perform an eddy current inspection for cracking of the upper corner fitting at left and right frame 40, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2064, Revision 02, dated December 21, 2007. Repeat the inspections thereafter at intervals not to exceed the applicable times specified in Table 5 of this AD. Certain compliance times specified in Tables 4 and 5 of this AD are applicable to short range use, average flight time (AFT) equal to or less than 3.23 hours; or long range use, AFT exceeding 3.23 hours.

TABLE 4—COMPLIANCE TIMES FOR PARAGRAPH (j) OF THIS AD

Airplane configurations identified in Airbus Mandatory Service Bulletin A310–57–2064, Revision 02, dated December 21, 2007	Compliance time (whichever occurs later)	
Model A310–203, –204, –221, and –222 airplanes identified as Configuration 01.	Prior to the accumulation of 15,100 total flight cycles or 30,300 total flight hours, whichever occurs first.	Within 1,300 flight cycles or 2,700 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–203, –204, –221, and –222 airplanes identified as Configurations 02 and 03.	Prior to the accumulation of 21,400 total flight cycles or 42,800 total flight hours, whichever occurs first.	Within 1,300 flight cycles or 2,700 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, –322, –324, and –325 short range airplanes identified as Configuration 01.	Prior to the accumulation of 14,700 total flight cycles or 41,300 total flight hours, whichever occurs first.	Within 600 flight cycles or 1,800 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, –322, –324, and –325 short range airplanes identified as Configurations 02 and 03.	Prior to the accumulation of 20,700 total flight cycles or 58,300 total flight hours, whichever occurs first.	Within 600 flight cycles or 1,800 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, –322, –324, and –325 long range airplanes identified as Configuration 01.	Prior to the accumulation of 12,800 total flight cycles or 64,000 total flight hours, whichever occurs first.	Within 500 flight cycles or 2,650 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, –322, –324, and –325 long range airplanes identified as Configurations 02 and 03.	Prior to the accumulation of 18,000 total flight cycles or 90,400 total flight hours, whichever occurs first.	Within 500 flight cycles or 2,650 flight hours, whichever occurs first, after the effective date of this AD.

TABLE 5—REPETITIVE INTERVALS FOR PARAGRAPH (j) OF THIS AD

Airplanes	Repetitive interval (not to exceed)
Model A310–203, –204, –221, and –222 airplanes	8,750 flight cycles or 17,550 flight hours, whichever occurs first.
Model A310–304, –322, –324, and –325 short range airplanes	5,800 flight cycles or 16,300 flight hours, whichever occurs first.
Model A310–304, –322, –324, and –325 long range airplanes	4,800 flight cycles or 24,050 flight hours, whichever occurs first.

Corrective Actions for Paragraph (j) of This AD

(k) If, during any inspection required by paragraph (j) of this AD, any crack is found, prior to further flight, do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2064, Revision 02, dated December 21, 2007; except where the service bulletin specifies to contact Airbus, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or EASA (or its delegated agent).

Credit for Actions Accomplished in Accordance With Previous Service Information

(l) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2048, dated April 23, 1990, are considered acceptable for compliance with the corresponding action specified in paragraph (g) of this AD.

(m) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2050, dated April 23, 1990; or Airbus Mandatory Service Bulletin A310–57–2050, Revision 01, dated May 22, 2007; are considered acceptable for compliance with the corresponding actions specified in paragraphs (h) and (i) of this AD.

(n) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2064, dated August 24, 1995; or, Airbus Mandatory Service Bulletin A310–57–2064, Revision 01, dated January 5, 2001; are acceptable for compliance with the corresponding actions specified in paragraphs (j) and (k) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No Differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate, or if sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-Requests@faa.gov.* Before using any approved AMOC, notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(p) Refer to MCAI EASA Airworthiness Directive 2009–0057, dated March 13, 2009, and the service bulletins listed in Table 6 of this AD, for related information.

TABLE 6—SERVICE INFORMATION

Service Bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–57–2048	01	May 22, 2007.
Airbus Mandatory Service Bulletin A310–57–2050	02	August 27, 2009.
Airbus Mandatory Service Bulletin A310–57–2064	02	December 21, 2007.

Material Incorporated by Reference

(q) You must use the applicable service information contained in Table 7 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 7—ALL MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–57–2048	01	May 22, 2007.
Airbus Mandatory Service Bulletin A310–57–2050, excluding Appendix 01	02	August 27, 2009.
Airbus Mandatory Service Bulletin A310–57–2064, excluding Appendix 1	02	December 21, 2007.

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

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on April 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10685 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1276; Directorate Identifier 2010–NM–092–AD; Amendment 39–16689; AD 2011–10–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

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

ACTION: Final rule.

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

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) * * * has been issued in order to mandate a set of inspections/modifications which address JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure.

* * * * *

The unsafe condition is reduced structural integrity of the wings, fuselage, and stabilizers. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 15, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 15, 2011.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of January 20, 1999 (63 FR 69179, December 16, 1998).

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 3, 2011 (76 FR 42), and proposed to supersede AD 98–26–01, Amendment 39–10942 (63 FR 69179, December 16, 1998), and AD 91–13–01, Amendment 39–7032 (56 FR 26602, June 10, 1991).

The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) original issue up to revision 7 has been issued in order to mandate a set of inspections/modifications which address JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure [FAA AD 98–26–01 corresponds to DGAC AD 1992–106–132(B)R4, dated June 5, 1996].
>
> Following the Extended Design Service Goal activities part of the Structure Task Group for the A310 program, EASA AD 2007–0053 superseded DGAC France AD F–1992–106–132R7 in order to take into account the publication of Airbus Service Bulletins (SB) A310–55–2004 at Revision 5 and Airbus SB A310–53–2074 at Revision 3, whose inspection thresholds and/or intervals had been reduced.
>
> Revision 1 of this AD was issued to remove the mandatory requirements related to the wings (i.e. § 1.8, 1.9, 1.10, 1.13, and 1.18) from the Compliance section, which have been transferred to EASA AD 2007–0242.
>
> Revision 2 of this AD has been issued to remove the mandatory requirements of paragraph 1.15, 1.16 and 1.17 which have now been transferred to EASA AD 2009–0057 (§ 1.15 and 1.17) and 2009–0058 (§ 1.16) respectively.
>
> Revision 3 of this AD is issued to add a Note to the Applicability and amend the Required Action(s) and Compliance Time(s) section of this AD to clarify the allowed use of the referenced SBs by operators. In addition, a note has been added to paragraph 1.7 and the notes associated to paragraphs 1.1, 1.2, 1.3, 1.4, 1.5 and 1.12 have been clarified.

The unsafe condition is reduced structural integrity of the wings, fuselage, and stabilizers.

This NPRM proposed to continue to require certain actions specified in AD 98–26–01.

The NPRM also proposed to expand the inspection area of the high frequency eddy current rototest inspection required by paragraph (g) of AD 98–26–01. The required actions are as follows, depending on airplane configuration:

- A defectoscope or rototest inspection to detect cracks in the area of frame 47 and frame 54, install new doublers, and repair if necessary.
- Repetitive visual inspections to detect cracks on frame 46 between the left- and right-hand sides of stringers 21 and 22 on the forward and aft faces, and repair if necessary.
- Repetitive visual inspections to detect cracks at the T-section connecting frame 50A to the beam between the left- and right-hand sides of frames 50 and 51, and modification if necessary.
- Repetitive visual inspections to detect cracks in the lower milled side panel at the lap joint with the upper side panel at frame 47 and stringer 22, left- and right-hand sides, and repair if necessary.
- An eddy current inspection to detect cracks on the upper integral part adjacent to the rear attach fittings on the horizontal stabilizer, modification of the horizontal stabilizer, and repair if necessary.
- Repetitive high frequency eddy current rototest inspections for cracking of the doubler plate edge, rear spar area, and at specified fastener holes in the top skin chordwise splice along the contour of the steel doubler between ribs 3 and 4 on the left- and right-hand center and side boxes on the horizontal stabilizer, installing new fasteners if no cracking is found, and repair if necessary.
- Repetitive inspections, either an eddy current or visual inspection, to detect cracks on the left and right vertical posts, numbers 1 through 5 inclusive, in the wing center box at frame 40/41, and modification if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 44 products of U.S. registry. The actions that are required by AD 98–26–01 and are retained in this AD take about 1,087 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $81,973 per product. Based on these figures, the estimated cost of the currently required actions is $174,368 per product.

We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $11,220, or $255 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on

the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–10942 (63 FR 69179, December 16, 1998) and Amendment 39–7032 (56 FR 26602, June 10, 1991) and adding the following new AD:

2011–10–08 Airbus: Amendment 39–16689. Docket No. FAA–2010–1276; Directorate Identifier 2010–NM–092–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 15, 2011.

Affected ADs

(b) This AD supersedes AD 98–26–01, Amendment 39–10942, and AD 91–13–01, Amendment 39–7032.

Applicability

(c) This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all certified models, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Codes 53: Fuselage, 55: Stabilizers, and 57: Wings.

Reason

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

DGAC [Direction Générale de l'Aviation Civile] France AD 1992–106–132(B) * * * has been issued in order to mandate a set of inspections/modifications which address JAR/FAR [Joint Aviation Regulation/Federal Aviation Regulation] 25–571 requirements related to damage-tolerance and fatigue evaluation of structure.

* * * * *

The unsafe condition is reduced structural integrity of the wings, fuselage, and stabilizers.

Compliance

(f) 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 98–26–01

Actions for Service Bulletin A310–53–2016—No Changes

(g) For airplanes listed in Airbus Service Bulletin A310–53–2016, Revision 5, dated December 7, 1992: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999 (the effective date of AD 98–26–01), whichever occurs later, perform a defectoscope or rototest inspection to detect cracks in the area of frame 47 and frame 54, and install new doublers, in accordance with Airbus Service Bulletin A310–53–2016, Revision 5, dated December 7, 1992. Except as provided by paragraph (m) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Airbus Service Bulletin A310–53–2016, Revision 5, dated December 7, 1992.

Note 1: Airplanes on which Airbus Modification 04980 is done in production are not affected by paragraph (g) of this AD.

Actions for Service Bulletin A310–53–2054, With Latest Optional Modification

(h) For airplanes listed in Airbus Service Bulletin A310–53–2054, Revision 2, dated May 22, 1990: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later, and thereafter at intervals not to exceed 3,000 flight cycles, perform a visual inspection to detect cracks on frame 46 between the left- and right-hand sides of stringers 21 and 22 on the forward and aft faces, in accordance with Airbus Service Bulletin A310–53–2054, Revision 2, dated May 22, 1990. If any crack is found, prior to further flight, repair in accordance with Airbus Service Bulletin A310–53–2054, Revision 2, dated May 22, 1990.

Note 2: Airplanes on which Airbus modification 05254 is done in production; or on which Airbus Service Bulletin A310–53–2019, Revision 2, dated May 22, 1990, or Revision 3, dated February 28, 1991, is done in service; are not affected by paragraph (h) of this AD.

(1) Prior to the effective date of this AD: Accomplishment of the repair required by paragraph (h) of this AD; or modification of the reinforcement angle runout in accordance with Airbus Service Bulletin A310–53–2019, Revision 2, dated May 22, 1990, or Revision 3, dated February 28, 1991; terminates the repetitive inspection requirements of paragraph (h) of this AD.

(2) On or after the effective date of this AD: Accomplishment of the repair required by paragraph (h) of this AD; or modification of the reinforcement angle runout in accordance with Airbus Service Bulletin A310–53–2019, Revision 3, dated February 28, 1991; terminates the repetitive inspection requirements of paragraph (h) of this AD.

Actions for Service Bulletin A310–53–2057—No Changes

(i) For airplanes listed in Airbus Service Bulletin A310–53–2057, Revision 1, dated April 30, 1992: Perform a visual inspection to detect cracks at the T-section connecting frame 50A to the beam between the left- and right-hand sides of frames 50 and 51, in accordance with Airbus Service Bulletin A310–53–2057, Revision 1, dated April 30, 1992. Perform the inspection at the time specified in paragraph (i)(1) or (i)(2) of this AD, as applicable. If any crack is found, prior to further flight, accomplish Airbus Modifications No. 4853 and No. 5273, in accordance with Airbus Service Bulletin A310–53–2057, Revision 1, dated April 30, 1992. Accomplishment of these modifications terminates the requirements of this paragraph.

Note 3: Airplanes on which Airbus modification 4853 is done are affected by paragraph (i) of this AD, except those airplanes on which Airbus Modification 5273 has been done or on which Airbus Service Bulletin A310–53–2011 has been done in service.

(1) For the airplane having manufacturer's serial number (MSN) 191: Prior to the accumulation of 24,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later; and thereafter at intervals not to exceed 6,000 flight cycles.

(2) For airplanes other than the airplane identified in paragraph (i)(1) of this AD: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later; and thereafter at intervals not to exceed 6,000 flight cycles.

Actions for Service Bulletin A310–53–2059—No Changes

(j) For airplanes listed in Airbus Service Bulletin A310–53–2059, Revision 1, dated January 4, 1996: Perform a visual inspection to detect cracks in the lower milled side panel at the lap joint with the upper side panel at frame 47 and stringer 22, left- and right-hand sides, in accordance with Airbus Service Bulletin A310–53–2059, Revision 1, dated January 4, 1996. Perform the inspection at the time specified in paragraph (j)(1) or (j)(2) of this AD, as applicable. Except as provided by paragraph (m) of this AD, if any crack is found, prior to further flight, repair in accordance with Airbus Service Bulletin A310–53–2059, Revision 1, dated January 4, 1996. Thereafter, repeat the inspections at intervals not to exceed 9,000 flight cycles, or accomplish Airbus Modification 5997 (Airbus Service Bulletin A310–53–2058). Accomplishment of either the repair or Airbus Modification 5997 constitutes terminating action for the repetitive inspections required by this paragraph.

Note 4: Airplanes on which Airbus Modification 5997 has been done completely in production, or on which Airbus Service Bulletin A310–53–2058 has been done in service, are not affected by the actions in paragraph (j) of this AD.

(1) For Model A310–200 series airplanes, accomplish the inspection at the time specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD, as applicable.

(i) For airplanes that have accumulated less than 20,000 total flight cycles as of January 20, 1999: Prior to the accumulation of 18,000 total flight cycles, or within 2,000 flight cycles after January 20, 1999, whichever occurs later.

(ii) For airplanes that have accumulated 20,000 or more total flight cycles as of January 20, 1999: Within 1,000 flight cycles after January 20, 1999.

(2) For Model A310–300 series airplanes, accomplish the inspection at the time specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD, as applicable.

(i) For airplanes that have accumulated less than 19,700 total flight cycles as of January 20, 1999: Prior to the accumulation of 18,000 total flight cycles, or within 1,700 flight cycles after January 20, 1999, whichever occurs later.

(ii) For airplanes that have accumulated 19,700 or more total flight cycles as of January 20, 1999: Within 850 flight cycles after January 20, 1999.

Actions for Service Bulletin A310–55–2002—No Changes

(k) For airplanes listed in Airbus Service Bulletin A310–55–2002, Revision 4, dated April 28, 1989: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later, perform an eddy current inspection to detect cracks on the upper integral part adjacent to the rear attach fittings on the horizontal stabilizer, and modify the horizontal stabilizer, in accordance with Airbus Service Bulletin A310–55–2002, Revision 4, dated April 28, 1989. Except as provided by paragraph (m) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Airbus Service Bulletin A310–55–2002, Revision 4, dated April 28, 1989.

Actions for Service Bulletin A310–57–2039—No Changes

(l) For airplanes listed in Airbus Service Bulletin A310–57–2039, dated September 24, 1990: Perform either an eddy current or visual inspection to detect cracks on the left and right vertical posts, numbers 1 through 5 inclusive, in the wing center box at frame 40/41, in accordance with Airbus Service Bulletin A310–57–2039, dated September 24, 1990. Perform the inspection at the time specified in paragraph (l)(1) or (l)(2) of this AD, as applicable. Except as provided by paragraph (m) of this AD, if any crack is found, prior to further flight, accomplish the modification specified in Airbus Service Bulletin A310–57–2041, dated September 24, 1990, in accordance with Airbus Service Bulletin A310–57–2039, dated September 24, 1990.

Note 5: Airplanes on which Airbus Modification 04977 has been done in production are not affected by the actions specified in paragraph (l) of this AD.

(1) For airplanes on which Airbus Modification 7541/S7973 (reference Airbus Service Bulletin A310–57–2041) has not been accomplished: Inspect prior to the accumulation of 21,000 total flight cycles, or within 1,000 flight cycles after January 20, 1999, whichever occurs later; and thereafter at intervals not to exceed 4,200 flight cycles (for a visual inspection), or 7,500 flight cycles (for an eddy current inspection).

(2) For airplanes on which Airbus Modification 7541/S7973 (reference Airbus Service Bulletin A310–57–2041) has been accomplished: Inspect at the time specified in the graph contained in Note 1 of paragraph 1.A.(2) of Airbus Service Bulletin A310–57–2039, dated September 24, 1990, or within 1,000 flight cycles after January 20, 1999, whichever occurs later; and thereafter at intervals not to exceed 5,000 flight cycles (for a visual inspection), or 8,600 flight cycles (for an eddy current inspection).

Exception to Certain Service Bulletin Repairs

(m) If any crack is found during any inspection required by paragraph (g), (j), (k), or (l) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent), or European Aviation Safety Agency (EASA) (or its delegated agent).

New Requirements of This AD: Actions

Actions for Service Bulletin A310–55–2004

(n) For airplanes listed in Airbus Mandatory Service Bulletin A310–55–2004, Revision 05, dated October 13, 2006: At the applicable time specified in paragraph (n)(1) or (n)(2) of this AD, do a high frequency eddy current inspection for cracking of the doubler plate edge, the rear spar area, and specified fastener holes in the top skin chordwise splice along the contour of the steel doubler between ribs 3 and 4 on the left-and right-hand center and side boxes on the horizontal stabilizer, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2004, Revision 05, dated October 13, 2006. If any cracking is found, before further flight, repair in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2004, Revision 05, dated October 13, 2006; except where this service bulletin specifies to contact Airbus, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, or EASA (or its delegated agent). Thereafter, repeat the inspections at intervals not to exceed 9,700 flight cycles or 19,500 flight hours, whichever occurs first; except as required by paragraph (o) of this AD for the rear spar area.

Note 6: Airplanes on which Airbus Modification 06070 has been done in production are not affected by the actions specified in paragraph (l) of this AD.

(1) For airplanes on which Airbus Service Bulletin A310–55–2002 was accomplished prior to the accumulation of 6,000 total flight cycles on the airplane; and for airplanes having MSN 311 through 400 inclusive on which Airbus Modification 4933 was accomplished during production: Do the inspection at the later of the compliance times specified in paragraphs (l)(1)(i) and (l)(1)(ii) of this AD.

(i) Prior to the accumulation of 14,400 total flight cycles or 28,500 total flight hours, whichever occurs first.

(ii) Within 1,500 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

(2) For airplanes on which Airbus Service Bulletin A310–55–2002 was accomplished on or after the accumulation of 6,000 total flight cycles: Do the inspection at the later of the times specified in paragraph (l)(2)(i) and (l)(2)(ii) of this AD.

(i) Within 9,700 flight cycles or 19,500 flight hours after accomplishing the modification, whichever occurs first.

(ii) Within 1,500 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

(o) For airplanes on which the initial inspection required by paragraph (n) of this AD has been done and on which a repair was installed at fastener position A in accordance with Airbus Service Bulletin A310–55–2002: At the later of the times specified in paragraphs (o)(1) and (o)(2) of this AD, do a high frequency eddy current inspection for cracking of the rear spar area as specified in paragraph (n) of this AD, and repeat the high frequency eddy current inspection of the rear spar area thereafter at intervals not to exceed 4,800 flight cycles or 9,700 flight hours, whichever occurs first.

(1) Within 4,800 flight cycles or 9,700 flight hours, whichever occurs first, after doing the repair in accordance with Airbus Service Bulletin A310–55–2002.

(2) Within 400 flight cycles or 800 flight hours, whichever occurs first, after the effective date of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(p) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–55–2004, Revision 2, dated February 7, 1991; Revision 3, dated April 16, 1997; and Revision 04, dated April 17, 2001; are acceptable for compliance with the corresponding actions specified in paragraph (n) of this AD.

FAA AD Differences

Note 7: This AD differs from the MCAI and/or service information as follows: No Differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-Requests@faa.gov*. Before using any approved AMOC, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 98–26–01, amendment 39–10942, are approved as AMOCs for the corresponding provisions of this AD.

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

Related Information

(r) Refer to MCAI EASA Airworthiness Directive 2007–0053R3, dated December 17, 2009, and the service bulletins listed in Table 1 of this AD, for related information.

TABLE 1—RELATED INFORMATION

Service Bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–55–2004	05	October 13, 2006.
Airbus Service Bulletin A310–53–2016	5	December 7, 1992.
Airbus Service Bulletin A310–53–2019	3	February 28, 1991.
Airbus Service Bulletin A310–53–2054	2	May 22, 1990.
Airbus Service Bulletin A310–53–2057	1	April 30, 1992.
Airbus Service Bulletin A310–53–2059	1	January 4, 1996.
Airbus Service Bulletin A310–55–2002	4	April 28, 1989.
Airbus Service Bulletin A310–57–2039	Original	September 24, 1990.
Airbus Service Bulletin A310–57–2041	Original	September 24, 1990.

Material Incorporated by Reference

(s) You must use the applicable service bulletins contained in Table 2 of this AD, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–55–2004	05	October 13, 2006.
Airbus Service Bulletin A310–53–2016	5	December 7, 1992.
Airbus Service Bulletin A310–53–2019	3	February 28, 1991.
Airbus Service Bulletin A310–53–2054	2	May 22, 1990.
Airbus Service Bulletin A310–53–2057	1	April 30, 1992.
Airbus Service Bulletin A310–53–2059	1	January 4, 1996.
Airbus Service Bulletin A310–55–2002	4	April 28, 1989.
Airbus Service Bulletin A310–57–2039	Original	September 24, 1990.
Airbus Service Bulletin A310–57–2041	Original	September 24, 1990.

Note 8: Only pages 1 and 6 of Airbus Service Bulletin A310–53–2019, Revision 3, dated February 28, 1991, show revision level 3 and issue date February 28, 1991. All other pages of this document show the original issue date of February 8, 1985.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 3 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3—NEW MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–55–2004, excluding Appendix 01	05	October 13, 2006.
Airbus Service Bulletin A310–53–2019	3	February 28, 1991.
Airbus Service Bulletin A310–57–2041	Original	September 24, 1990.

Note 9: Only pages 1 and 6 of Airbus Service Bulletin A310–53–2019, Revision 3, dated February 28, 1991, show revision level 3 and issue date February 28, 1991. All other pages of this document show the original issue date of February 8, 1985.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 4 of this AD on January 20, 1999 (63 FR 69179, December 16, 1998).

TABLE 4—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date
Airbus Service Bulletin A310–53–2016	5	December 7, 1992.
Airbus Service Bulletin A310–53–2054	2	May 22, 1990.
Airbus Service Bulletin A310–53–2057	1	April 30, 1992.
Airbus Service Bulletin A310–53–2059	1	January 4, 1996.
Airbus Service Bulletin A310–55–2002	4	April 28, 1989.
Airbus Service Bulletin A310–57–2039	Original	September 24, 1990.

(3) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on April 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10687 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0038; Directorate Identifier 2010–NM–153–AD; Amendment 39–16684; AD 2011–10–03]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes; and Model ERJ 190–100 STD, ERJ 190–100 LR, ERJ 190–100 IGW, ERJ 190–200 STD, ERJ 190–200 LR, and ERJ 190–200 IGW Airplanes

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

ACTION: Final rule.

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

[T]he occurrence of drill marks [has been found] at the lower ring region of the rear pressure bulkhead between [the] circumferential splice joint and rear skin located between stringers 12 and 13. These marks may result in formation of fatigue cracks accelerated by corrosion reducing the structural strength of the rear pressure bulkhead, which may cause a sudden decompression of the passenger cabin.

* * * * *

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

DATES: This AD becomes effective June 15, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 15, 2011.

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

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2768; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 10, 2011 (76 FR 7511). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

[T]he occurrence of drill marks [has been found] at the lower ring region of the rear pressure bulkhead between [the] circumferential splice joint and rear skin located between stringers 12 and 13. These marks may result in formation of fatigue cracks accelerated by corrosion reducing the structural strength of the rear pressure bulkhead, which may cause a sudden decompression of the passenger cabin.

* * * * *

The required actions include doing a detailed inspection for signs of drill marks and repairing if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 241 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $20,485, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $20, for a cost of $190 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–10–03 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16684. Docket No. FAA–2011–0038; Directorate Identifier 2010–NM–153–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 15, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; certificated in any category; serial numbers 17000002, 17000004 through 17000013 inclusive, 17000015 through 17000212 inclusive, 17000216 through 17000233 inclusive, 17000236, 17000269, 17000281 through 17000291 inclusive, and 17000293; and Model ERJ 190–100 STD, ERJ 190–100 LR, ERJ 190–100 IGW, ERJ 190–200 STD, ERJ 190–200 LR, and ERJ 190–200 IGW airplanes ; certificated in any category; serial numbers 19000002, 19000004, 19000006 through 19000108 inclusive, 19000110 through 19000139 inclusive, 19000141 through 19000157 inclusive, 19000160, 19000165, 19000167 through 19000176 inclusive, 19000178 through 19000199 inclusive, 19000273 through 19000276 inclusive, 19000279 through 19000286 inclusive, 19000288 through 19000295 inclusive, 19000297 through 19000304 inclusive, and 19000309.

Subject

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

Reason

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

[T]he occurrence of drill marks [has been found] at the lower ring region of the rear pressure bulkhead between [the] circumferential splice joint and rear skin located between stringers 12 and 13. These marks may result in formation of fatigue cracks accelerated by corrosion reducing the structural strength of the rear pressure bulkhead, which may cause a sudden decompression of the passenger cabin.

* * * * *

Compliance

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

Actions

(g) Before the accumulation of 20,000 flight cycles, do a detailed inspection for signs of drill marks at the left and right lower ring region of the rear pressure bulkhead between the circumferential splice joint and rear skin between stringers 12 and 13, in accordance with EMBRAER Service Bulletin 170–53–0082 or 190–53–0042, both Revision 01, both dated April 28, 2010, as applicable. If drill marks are found, repair before further flight, in accordance with EMBRAER Service Bulletin 170–53–0082 or 190–53–0042, both Revision 01, both dated April 28, 2010, as applicable.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

Although EMBRAER Service Bulletins 170–53–0082 and 190–53–0042, both Revision 01, both dated April 28, 2010, specify doing a general visual inspection, this AD requires doing a detailed inspection.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to *Attn:* Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2768; fax 425–227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(i) Refer to MCAI Brazilian Airworthiness Directives 2010–06–01R1 and 2010–06–02R1, both dated August 25, 2010; and EMBRAER Service Bulletins 170–53–0082 and 190–53–0042, both Revision 01, both dated April 28, 2010; for related information.

Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 170–53–0082, Revision 01, dated April 28, 2010; or EMBRAER Service Bulletin 190–53–0042, Revision 01, dated April 28, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; e-mail *distrib@embraer.com.br;* Internet *http://www.flyembraer.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on April 20, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10693 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1243; Directorate Identifier 2010–CE–058–AD; Amendment 39–16626; AD 2011–06–02]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company (Cessna) Model 172 Airplanes Modified by Supplemental Type Certificate (STC) SA01303WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to the products listed above. The numbering of paragraphs (j)(3), (j)(4), and (j)(5) in the Material Incorporated by Reference section is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective May 26, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (*phone*: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard Rejniak, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Room 100; *phone:* (316) 946–4128; *fax:* (316) 946–4107; *e-mail*: *richard.rejniak@faa.gov*.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2011–06–02, amendment 39–16626 (76 FR 22298, April 21, 2011), currently requires installing a full authority digital engine control (FADEC) backup battery, replacing the supplement pilot's operating handbook and FAA approved airplane flight manual, and replacing the FADEC backup battery every 12 calendar months for Cessna Aircraft Company (Cessna) Model 172 Airplanes modified by Supplemental Type Certificate (STC) SA01303WI.

As published, the numbering of paragraphs (j)(3), (j)(4), and (j)(5) in the Material Incorporated by Reference section is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD remains May 26, 2011.

Correction of Regulatory Text

§ 39.13 [Corrected]

In the **Federal Register** of April 21, 2011, on page 22301, in the right column, paragraph (j) of AD 2011–06–02 is corrected to read as follows:

* * * * *

(1) For service information identified in this AD, contact Thielert Aircraft Engines Service GmbH, Platanenstraße 14, D–09350 Lichtenstein, Deutschland; *telephone:* +49 (37204) 696–1474; *fax:* +49 (37204) 696–1910; *Internet: http://www.thielert.com/.*

(2) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

* * * * *

Issued in Kansas City, Missouri, on May 3, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11260 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0127; Directorate Identifier 2010–CE–065–AD; Amendment 39–16681; AD 2011–09–19]

RIN 2120–AA64

Airworthiness Directives; BURKHART GROB LUFT-UND Model G 103 C Twin III SL Gliders

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

ACTION: Final rule.

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

The in-flight loss of a propeller and pulley wheel from the engine of a Grob G 103 C Twin III SL powered sailplane has been reported.

Grob Aircraft AG suspects that the possible reasons for this loss can be due to an incorrect propeller track (the play at the propeller tip) and/or to a damaged propeller nut securing plate.

Those conditions, if not corrected, could also result in loosening of parts and, consequently could result in damage to the sailplane and possible injury to persons on the ground.

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

DATES: This AD becomes effective June 15, 2011.

On June 15, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

For service information identified in this AD, contact GROB Aircraft AG, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Head of Customer Service and Support, Germany; *telephone:* +49 (0) 8268–998–139; *fax:* +49 (0) 8268–998–200; e-mail *productsupport@grob-aircraft.com; Internet: http://www.grob-aircraft.eu.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4165; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 18, 2011 (76 FR 9513). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The in-flight loss of a propeller and pulley wheel from the engine of a Grob G 103 C Twin III SL powered sailplane has been reported.

Grob Aircraft AG suspects that the possible reasons for this loss can be due to an incorrect propeller track (the play at the propeller tip) and/or to a damaged propeller nut securing plate.

Those conditions, if not corrected, could also result in loosening of parts and, consequently could result in damage to the sailplane and possible injury to persons on the ground.

For the reasons stated above, this AD requires to inspect the propeller assembly attachment, to verify that the propeller track is within the allowable tolerances and, depending on findings, to accomplish the relevant corrective actions.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 4 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $680, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $100, for a cost of $610 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–09–19 BURKHART GROB LUFT-UND: Amendment 39–16681; Docket No. FAA–2011–0127; Directorate Identifier 2010–CE–065–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 15, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BURKHART GROB LUFT-UND G 103 C Twin III SL gliders, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 61: Propellers/Propulsors.

Reason

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

The in-flight loss of a propeller and pulley wheel from the engine of a Grob G 103 C Twin III SL powered sailplane has been reported.

Grob Aircraft AG suspects that the possible reasons for this loss can be due to an incorrect propeller track (the play at the propeller tip) and/or to a damaged propeller nut securing plate.

Those conditions, if not corrected, could also result in loosening of parts and, consequently could result in damage to the sailplane and possible injury to persons on the ground.

For the reasons stated above, this AD requires to inspect the propeller assembly attachment, to verify that the propeller track is within the allowable tolerances and, depending on findings, to accomplish the relevant corrective actions.

Actions and Compliance

(f) Unless already done, within 30 days after the effective date of this AD, do the following actions:

(1) Update the glider documentation following Grob Aircraft Service Bulletin No. MSB–869–24/1, dated July 20, 2009, by inserting the following revised pages from Grob Aircraft AG:

(i) *Into the Grob Aircraft AG G 103 C Twin III SL Pilot's Operating Handbook (POH) (dated December 1991):* Pages 0.2A, 0.3, 0.4, and 4.9, Revision 6, dated July 20, 2009.

(ii) *Into the Grob Aircraft AG G 103 C Twin III SL Maintenance Manual (dated December, 1991) or FAA-approved maintenance program:* pages 0.1A, 0.2, 0.3, 4.2, and 6.6, Revision 10, dated December 15, 2006.

(2) Inspect for cracks at the bent area of the engaged tooth of the upper pulley wheel securing plate following the procedure to access the area found on page 6.12 of the Grob Aircraft AG G 103 C TWIN III SL Maintenance Manual, Date of Issue December, 1991, Revision 9, dated May 24, 2002, as specified in Grob Aircraft Service Letter SL 869–01, dated June 9, 2009.

(3) Verify that the propeller track (the play at the propeller tip) is within the allowable tolerances following the procedure on page 4.9 of the Grob Aircraft AG G 103 C TWIN III SL POH, Date of Issue December, 1991, Revision 6, dated July 20, 2009, as specified in Grob Aircraft Service Letter SL 869–01, dated June 9, 2009.

Note 1: The torque values and tolerances of the upper pulley wheel grooved nut have been standardized in the POH and maintenance manual.

(4) If the bent area of the engaged tooth of the upper pulley wheel securing plate has no crack found per the inspection of paragraph (f)(2) of this AD, but the propeller track value measured is not within the allowable tolerances per paragraph (f)(3) of this AD, before further flight, readjust the torque of the upper pulley wheel grooved nut using the updated aircraft technical documentation following the procedure on page 6.12 of the Grob Aircraft AG G 103 C TWIN III SL Maintenance Manual, Date of Issue December, 1991, Revision 9, dated May 24, 2002, as specified in Grob Aircraft Service Letter SL 869–01, dated June 9, 2009. Ensure accordingly that the propeller track is within the allowable tolerances following the procedure on page 4.9 of the Grob Aircraft AG G 103 C TWIN III SL POH, Date of Issue December, 1991, Revision 6, dated July 20, 2009, as specified in Grob Aircraft Service Letter SL 869–01, dated June 9, 2009. If the propeller track is out of the allowable tolerance, then contact GROB for further instructions.

(5) If any crack is found in the bent area of the engaged tooth of the upper pulley wheel securing plate per the inspection in paragraph (f)(2) of this AD, before further flight, do the following actions:

(i) Remove the upper pulley wheel grooved nut and then look at the securing plate to identify if other teeth are available to be bent to secure the grooved nut. Do not bend an already bent tooth. If all teeth of the securing plate are already bent, replace the securing plate with a serviceable one.

(ii) Screw back the upper pulley wheel grooved nut (and its securing plate) and tighten it, applying the torque following page 6.12 of the Grob Aircraft AG G 103 C TWIN III SL Maintenance Manual, Date of Issue December, 1991, Revision 9, dated May 24, 2002, as specified in Grob Aircraft Service Letter SL 869–01, dated June 9, 2009. Ensure accordingly that the propeller track is within the allowable tolerances following the procedure on page 4.9 of the Grob Aircraft AG G 103 C TWIN III SL POH, Date of Issue December, 1991, Revision 6, dated July 20, 2009, as specified in Grob Aircraft Service Letter SL 869–01, dated June 9, 2009. If the propeller track is out of the allowable tolerances, then contact GROB for further instructions.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of

information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to the following documents for related information:

(1) MCAI EASA AD No.: 2010–0107, dated June 11, 2010;

(2) Grob Aircraft Service Bulletin MSB 869–24/1, dated July 20, 2009;

(3) Grob Aircraft Service Letter SL–869–01, dated June 9, 2009;

(4) Grob Aircraft AG G 103 C Twin III SL Pilot's Operating Handbook (POH) (dated December 1991), pages 0.2A, 0.3, 0.4, and 4.9, Revision 6, dated July 20, 2009; and

(5) Grob Aircraft AG G 103 C Twin III SL Maintenance Manual (dated December 1991), page 6.12, Revision 9, dated May 24, 2002; and pages 0.1A, 0.2, 0.3, 4.2, and 6.6, Revision 10, dated December 15, 2006.

(i) For service information related to this AD, contact GROB Aircraft AG, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Head of Customer Service and Support, Germany; *telephone:* +49 (0) 8268–998–139; *fax:* +49 (0) 8268–998–200; e-mail *productsupport@grob-aircraft.com; Internet: http://www.grob-aircraft.eu.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Material Incorporated by Reference

(i) You must use Grob Aircraft Service Bulletin No. MSB–869–24/1, dated July 20, 2009; Grob Aircraft Service Letter SL–869–01, dated June 9, 2009; Grob Aircraft AG G 103 C Twin III SL Pilot's Operating Handbook (POH) (dated December 1991), pages 0.2A, 0.3, 0.4, and 4.9, Revision 6, dated July 20, 2009; and Grob Aircraft AG G 103 C Twin III SL Maintenance Manual (dated December 1991), page 6.12, Revision 9, dated May 24, 2002; and pages 0.1A, 0.2, 0.3, 4.2, and 6.6, Revision 10, dated December 15, 2006; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact GROB Aircraft AG, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Head of Customer Service and Support, Germany; *telephone:* +49 (0) 8268–998–139; *fax:* +49 (0) 8268–998–200; e-mail *productsupport@grob-aircraft.com; Internet: http://www.grob-aircraft.eu.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on April 22, 2011.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10388 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0037; Directorate Identifier 2010–NM–273–AD; Amendment 39–16691; AD 2011–10–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Final rule.

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

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88).

In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA [Joint Aviation Authorities] recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft * * * are required to conduct a design review against explosion risks.

During improvement of the protection of fuel pump wiring against short-circuit by accomplishment of Airbus Service Bulletin (SB) A300–24–6094, a study led by the manufacturer concluded that the harness, installed through the wing panel needed to be protected to prevent possible damage in case of chafing which could potentially lead to short-circuit [and intermittent function or loss of the inner tank fuel pump. Loss of both inner tank fuel pumps could result in inability to use the remaining fuel supply in the inner tank. A short-circuit could also result in an ignition source in a flammable leakage zone].

* * * * *

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

DATES: This AD becomes effective June 15, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 15, 2011.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 7, 2011 (76 FR 6581). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88).

In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA [Joint Aviation Authorities] recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 3,402 kg (7,500 lb) or more, which have received their certification since January 1st, 1958, are required to conduct a design review against explosion risks.

During improvement of the protection of fuel pump wiring against short-circuit by

accomplishment of Airbus Service Bulletin (SB) A300–24–6094, a study led by the manufacturer concluded that the harness, installed through the wing panel needed to be protected to prevent possible damage in case of chafing which could potentially lead to short-circuit [and intermittent function or loss of the inner tank fuel pump. Loss of both inner tank fuel pumps could result in inability to use the remaining fuel supply in the inner tank. A short-circuit could also result in an ignition source in a flammable leakage zone].

For the reasons stated above, this [EASA] AD requires the replacement of bushes in the hydraulic reservoir panel.

You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 120 products of U.S. registry. We also estimate that it will take about 13 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $266 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $164,520, or $1,371 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–10–10 Airbus: Amendment 39–16691. Docket No. FAA–2011–0037; Directorate Identifier 2010–NM–273–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 15, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category, all certified models, all serial numbers, except airplanes on which Airbus Mandatory Service Bulletin A300–24–6102 (Airbus Modification 13381) has been embodied.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

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

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88).

In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA [Joint Aviation Authorities] recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft * * * are required to conduct a design review against explosion risks.

During improvement of the protection of fuel pump wiring against short-circuit by accomplishment of Airbus Service Bulletin (SB) A300–24–6094, a study led by the manufacturer concluded that the harness, installed through the wing panel needed to be protected to prevent possible damage in case of chafing which could potentially lead to short-circuit [and intermittent function or loss of the inner tank fuel pump. Loss of both inner tank fuel pumps could result in

inability to use the remaining fuel supply in the inner tank. A short-circuit could also result in an ignition source in a flammable leakage zone].

* * * * *

Compliance

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

Actions

(g) Within 30 months after the effective date of this AD, install Teflon bushes in the hydraulic reservoir panel at the lower left-hand side in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–6102, Revision 01, dated September 24, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions done before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A300–24–6102, dated August 13, 2009, are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to *Attn:* Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0225, dated November 5, 2010; and Airbus Mandatory Service Bulletin A300–24–6102, Revision 01, dated September 24, 2010; for related information.

Material Incorporated by Reference

(k) You must use Airbus Mandatory Service Bulletin A300–24–6102, Revision 01, dated September 24, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on April 26, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10817 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0706; Directorate Identifier 2010–NM–064–AD; Amendment 39–16683; AD 2011–10–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–400, 747–400D, and 747–400F Series Airplanes Equipped With General Electric CF6–80C2 or Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires modifying certain thrust reverser control system wiring to the flap control unit (FCU). This AD was prompted by a report of automatic retraction of the leading edge flaps due to indications transmitted to the FCU from the thrust reverser control system during takeoff. We are issuing this AD to prevent automatic retraction of the leading edge flaps during takeoff, which could result in reduced climb performance and consequent collision with terrain and obstacles or forced landing of the airplane.

DATES: This AD is effective June 15, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 15, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (*phone:* 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6505; fax 425–917–6590; *e-mail: tung.tran@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the

specified products. That NPRM published in the **Federal Register** on August 5, 2010 (75 FR 47245). That NPRM proposed to require modifying certain thrust reverser control system wiring to the flap control unit (FCU).

Comments

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

Support for the NPRM

Boeing, Airline Pilots Association, International (ALPA), and Japan Airlines International (JAL) support the intent of the NPRM.

Requests To Use Latest Service Information

JAL and All Nippon Airways (ANA) requested that we update the NPRM to reference Boeing Special Attention Service Bulletin 747–78–2183, Revision 1, dated December 23, 2010. The commenters stated that Boeing has issued Boeing Service Bulletin Information Notice 747–78–2183 IN 01, dated May 6, 2010, to correct the operational test procedure. The NPRM referred to Boeing Special Attention Service Bulletin 747–78–2183, dated January 12, 2010.

We agree to reference the latest service information and have changed paragraph (h) of this AD to reference Boeing Special Attention Service Bulletin 747–78–2183, Revision 1, dated December 23, 2010. We have also changed paragraph (g) of this AD to reference Boeing Alert Service Bulletin 747–78A2184, Revision 1, dated December 23, 2010, which was also revised (the NPRM referred to Boeing Alert Service Bulletin 747–78A2184, dated January 12, 2010). Changes to these service bulletins include changes to the functional test tasks to better describe the use of pneumatic and electrical power, and to provide a better sequence of test tasks.

We have also added paragraph (i) to this AD to give credit to operators for accomplishing the actions specified in Boeing Special Attention Service Bulletin 747–78–2183 and Boeing Alert Service Bulletin 747–78A2184, both dated January 12, 2010. We have re-identified subsequent paragraphs accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 98 airplanes of U.S. registry. We estimate that it will take 1 work-hour per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts would cost $0 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $8,330, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–10–02 The Boeing Company: Amendment 39–16683; Docket No. FAA–2010–0706; Directorate Identifier 2010–NM–064–AD.

Effective Date

(a) This AD is effective June 15, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes; certificated in any category; equipped with General Electric CF6–80C2 series engines or Pratt & Whitney PW4000 series engines, as applicable.

Subject

(d) Air Transport Association (ATA) of America Code 78: Engine exhaust.

Unsafe Condition

(e) This AD was prompted by a report of automatic retraction of the leading edge flaps due to indications transmitted to the flap control unit (FCU) from the thrust reverser control system during takeoff. The Federal Aviation Administration is issuing this AD to prevent automatic retraction of the leading edge flaps during takeoff, which could result in reduced climb performance and consequent collision with terrain and obstacles or forced landing of the airplane.

Compliance

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

Modification

(g) For Model 747–400 and –400F airplanes equipped with Pratt & Whitney Model PW4000 series engines: Within 36 months

after the effective date of this AD, modify the thrust reverser control system wiring to the FCU in the P252 and P253 thrust reverser relay panels, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2184, Revision 1, dated December 23, 2010.

(h) For Model 747–400, –400D, and –400F airplanes equipped with General Electric Model CF6–80C2 series engines: Within 36 months after the effective date of this AD, modify the thrust reverser control system wiring to the FCU in the P414 and P415 power distribution panels, in accordance with Boeing Special Attention Service Bulletin 747–78–2183, Revision 1, dated December 23, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Modifying the thrust reverser control system wiring before the effective date of this AD, in accordance with Boeing Special Attention Service Bulletin 747–78–2183 or Boeing Alert Service Bulletin 747–78A2184, both dated January 12, 2010, as applicable, is acceptable for compliance with the corresponding modification required by paragraph (g) or (h) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) For more information about this AD, contact Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6505; *fax:* 425–917–6590; *e-mail: tung.tran@faa.gov.*

(l) For information about AMOCs, contact Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6505; *fax:* 425–917–6590; *e-mail: tung.tran@faa.gov.*

Material Incorporated by Reference

(m) You must use Boeing Special Attention Service Bulletin 747–78–2183, Revision 1, dated December 23, 2010; or Boeing Alert Service Bulletin 747–78A2184, Revision 1, dated December 23, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on April 20, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10692 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1273; Directorate Identifier 2010–NM–089–AD; Amendment 39–16686; AD 2011–10–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–203, –204, –222, –304, –322, and –324 Airplanes

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

ACTION: Final rule.

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

A specific area, the *lower tail plane cut-out* located in the tail cone is subject to an inspection programme [for cracking] * * *.

* * * * *

The unsafe condition is reduced structural integrity of the tail cone. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 15, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 15, 2011.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 3, 2011 (76 FR 46). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A specific area, the *lower tail plane cut-out* located in the tail cone is subject to an inspection programme specified in the Airbus Service Bulletin (SB) A310–53–2074. EASA issued AD 2007–0053 [which superseded French AD 1992–106–132 R6; French AD 1992–106–132 corresponds to FAA AD 98–26–01] to require the accomplishment of this SB at Revision 03.

Airbus has established that this SB needed to be revised in order to state correct threshold and intervals due to errors introduced at revision 03. Consequently, revision 04 of this SB has been issued, and opportunity was taken:

—To clarify the inspection area and associated threshold and intervals

—To take aeroplane utilisation into consideration, in accordance with the A310 life extension programme.

For the reasons stated above, this EASA AD takes over the requirements of paragraph 1.16 of EASA AD 2007–0053R1 [currently at R3], which has been revised accordingly, and requires accomplishment of the instructions contained in Airbus SB A310–53–2074 at Revision 04.

The unsafe condition is reduced structural integrity of the tail cone. The required actions include repetitive and one-time inspections, depending on the area, of the lower tail plane cut-out, and corrective actions if necessary. The inspections include the following:

• Detailed inspections in areas 1, 2, and 3 for cracking and corrosion of the lower horizontal stabilizer cutout longeron, the corner fitting, the skin strap, and the skin.
• Detailed inspections in areas 1, 2, and 3 for damaged sealant.
• Eddy current inspections in area 1 for cracking.
• Eddy current inspections in area 2 for cracking.
• Rotating probe inspection for cracking of specified fastener holes in Area 3.

The corrective actions, depending on the conditions found, include the following:
• Repairing corrosion.
• Contacting Airbus for repair instructions.
• Replacing damaged sealant.
• Removing cracking.
• Doing an eddy current inspection for cracking of the reworked area.
• Installing a new corner fitting.
• Doing a rotating probe inspection for cracking of fastener holes.
• Doing an eddy current inspection of the longeron and outer skin.
• Drilling or reaming fastener holes.

You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 44 products of U.S. registry. We also estimate that it will take about 36 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $134,640, or $3,060 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–10–05 Airbus: Amendment 39–16686. Docket No. FAA–2010–1273; Directorate Identifier 2010–NM–089–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 15, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model A310–203, –204, –222, –304, –322, and –324 airplanes, certificated in any category, all serial numbers, except airplanes on which Airbus modification 06146 has been done in production.

Subject

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

Reason

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

A specific area, *the lower tail plane cut-out* located in the tail cone is subject to an inspection programme [for cracking] * * *.

* * * * *

The unsafe condition is reduced structural integrity of the tail cone.

Compliance

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

Initial Inspections of the Lower Tail Plane Cut-out Area and Corrective Actions

(g) Within the applicable time specified in Table 1 of this AD, do the inspections of the lower tail plane cut-out area in the tail cone specified in paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), and (g)(6) of this AD, as applicable, in accordance with the Accomplishment Instructions of Airbus

Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008. Certain compliance times are applicable to short-range use (*i.e.,* average flight time (AFT) equal to or less than 4 flight hours), or long-range use (*i.e.,* AFT exceeding 4 flight hours). Inspection areas are specified in Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

Note 1: To establish the average flight time, take the accumulated flight time (counted from the take-off up to the landing) and divide by the number of accumulated flight cycles. This gives the average flight time per flight cycle.

TABLE 1—INITIAL COMPLIANCE TIME

Airplanes	Inspection areas	Compliance time (whichever occurs later)	
Model A310–203, A310–204, and A310–222 airplanes.	1 and 2	Prior to the accumulation of 18,000 total flight cycles or 36,000 total flight hours, whichever occurs first.	Within 1,500 flight cycles or 3,000 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–203, A310–204, and A310–222 airplanes.	3	Prior to the accumulation of 24,000 total flight cycles or 48,000 total flight hours, whichever occurs first.	Within 1,500 flight cycles or 3,000 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, A310–322, and A310–324 short range airplanes.	1 and 2	Prior to the accumulation of 12,000 total flight cycles or 33,750 total flight hours, whichever occurs first.	Within 1,200 flight cycles or 3,300 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, A310–322, and A310–324 short range airplanes.	3	Prior to the accumulation of 18,000 total flight cycles or 50,500 total flight hours, whichever occurs first.	Within 1,200 flight cycles or 3,300 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, A310–322, and A310–324 long range airplanes.	1 and 2	Prior to the accumulation of 7,500 total flight cycles or 37,500 total flight hours, whichever occurs first.	Within 750 flight cycles or 3,750 flight hours, whichever occurs first, after the effective date of this AD.
Model A310–304, A310–322, and A310–324 long range airplanes.	3	Prior to the accumulation of 11,250 total flight cycles or 56,000 total flight hours, whichever occurs first.	Within 750 flight cycles or 3,750 flight hours, whichever occurs first, after the effective date of this AD.

(1) For areas 1, 2, and 3: Do a detailed inspection for cracking and corrosion of the lower horizontal stabilizer cutout longeron, the corner fitting, the skin strap, and the skin, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(i) If any corrosion is found, before further flight, repair in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(ii) If any cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

(2) For areas 1, 2, and 3 on which cracking is not found during the inspection required by paragraph (g)(1) of this AD: Do a detailed inspection for damaged sealant; and, if any damaged sealant is found, before further flight, replace the sealant; in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(3) For area 1: Do an eddy current inspection for cracking in area 1; and, if no cracking is found, before further flight, apply sealant and corrosion compound, as applicable; in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(i) If cracking is equal to or less than 2.0 mm (0.079 inch) long and not more than 2 cracks with a minimum distance of 50.0 mm (1.969 inch) between the cracks: Before further flight, remove any cracking and do an eddy current inspection for cracking of the reworked area, in accordance with the Accomplishment Instructions of the Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008. If no cracking is found, before further flight, shot peen the reworked area, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(A) If cracking is found and the radius of the rework is less than 20.0 mm (0.787 inch), before further flight, increase the radius and do an eddy current inspection for cracking of the reworked area, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008. If no cracking is found, before further flight, shot peen the reworked area, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(1) If any cracking is found in the outer skin, before further flight, contact Airbus for repair instructions and do the repair.

(2) If any cracking is found in the corner fitting and area 3 has not been cold expanded, before further flight, install new corner fitting, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008, and do the rotating probe inspection in area 3 specified in paragraph (g)(5) of this AD.

(3) If any cracking is found in the corner fitting and area 3 has been cold expanded, before further flight, do the eddy current inspection of the longeron and outer skin specified in paragraph (g)(6) of this AD.

(B) If cracking is found and the radius of the rework is 20.0 mm (0.787 inch) or more, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the European Aviation Safety Agency (EASA) (or its delegated agent)

(ii) If cracking is greater than 2.0 mm (0.079 inch) long or there are more than 2 cracks; or if there are more than 2 cracks with less than a minimum distance of 50.0 mm (1.969 inch) between the cracks: Before further flight, remove the corner fitting, and do the applicable actions specified in paragraph (g)(3)(ii)(A) or (g)(3)(ii)(B) of this AD.

(A) If any cracking is found and area 3 has not been cold expanded, before further flight, install a new corner fitting, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008; and do the rotating probe inspection in area 3 specified in paragraph (g)(5) of this AD.

(B) If any cracking is found and area 3 has been cold expanded, before further flight, do the eddy current inspection of the longeron and outer skin specified in paragraph (g)(6) of this AD.

(4) For area 2: Do an eddy current inspection for cracking of area 2, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008. If any cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

(5) For area 3: Do a rotating probe inspection for cracking of specified fastener holes in area 3, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(i) If no cracking is found, before further flight, drill or ream fastener holes, cold expand the fastener holes and countersinks, and wet install with sealant, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008; except where this service bulletin specifies to contact Airbus if the fastener diameter does not meet specifications or if the distance

between the hole center and material edge is less than specifications, before further flight, contact Airbus for repair instructions and do the repair.

(ii) If cracking is found, before further flight, drill or ream fastener holes, and do a rotating probe inspection for cracking of the fastener holes in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(A) If no cracking is found, cold expand the fastener holes and countersinks, drill or ream fastener holes, and wet install with sealant, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008; except where this service bulletin specifies to contact Airbus if the fastener diameter does not meet specifications or if the distance between the hole center and material edge is less than the specifications, before further flight, contact Airbus for repair instructions and do the repair.

(B) If cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

(6) For airplanes on which cracking is found in the corner fitting during any inspection required by paragraph (g)(3) of this AD and area 3 is cold-expanded: Do an eddy current inspection for cracking of the longeron and outer skin, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(i) If no cracking is found, before further flight, install a new corner fitting and do a rotating probe inspection for cracking of the fastener holes, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(A) If no cracking is found, before further flight, drill or ream fastener holes, cold expand the fastener holes and countersinks, and wet install with sealant, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(B) If cracking is found and the hole diameter is less than the maximum oversize specification, before further flight, drill or ream holes and do a rotating probe inspection for cracking of the fastener holes, in accordance with Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(1) If no cracking is found, cold expand the fastener holes and countersinks, and wet install with sealant, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

(2) If cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

(C) If cracking is found and the hole diameter is equal to or greater than the maximum oversize specification, before further flight, contact Airbus for repair instructions and do the repair.

(ii) If cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

Repetitive Inspections of the Lower Tail Plane Cut-Out Area

(h) Repeat the inspections for area 1 required by paragraphs (g)(1) and (g)(3) of this AD thereafter at the applicable intervals specified in Table 2 of this AD. Certain compliance times are applicable to short-range use (AFT equal to or less than 4 flight hours), or long-range use (AFT exceeding 4 flight hours). Inspection areas are specified in Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

TABLE 2—REPETITIVE INTERVAL FOR AREAS 1 AND 2

Affected airplanes	Interval (not to exceed)
(1) Model A310–203, A310–204, and A310–222 airplanes that have accumulated less than 30,000 total flight cycles and 60,000 total flight hours, as of the effective date of this AD.	6,000 flight cycles or 12,000 flight hours, whichever occurs first, until the airplane accumulates 30,000 total flight cycles or 60,000 total flight hours; then perform the inspections within the interval specified in paragraph (h)(2) of this AD.
(2) Model A310–203, A310–204, and A310–222 airplanes that have accumulated 30,000 total flight cycles or more or 60,000 total flight hours or more, as of the effective date of this AD.	3,900 flight cycles or 7,800 flight hours, whichever occurs first.
(3) Model A310–304, A310–322 and A310–324 short range airplanes that have accumulated less than 24,000 total flight cycles and 67,500 total flight hours, as of the effective date of this AD.	4,800 flight cycles or 13,500 flight hours, whichever occurs first, until the airplane accumulates 24,000 total flight cycles or 67,500 total flight hours; then perform the inspections within the interval specified in paragraph (h)(4) of this AD.
(4) Model A310–304, A310–322 and A310–324 short range airplanes that have accumulated 24,000 total flight cycles or more or 67,500 total flight hours or more, as of the effective date of this AD.	3,100 flight cycles or 8,750 flight hours, whichever occurs first.
(5) Model A310–304, A310–322 and A310–324 long range airplanes that have accumulated less than 15,000 total flight cycles and 75,000 total flight hours, as of the effective date of this AD.	3,000 flight cycles or 15,000 flight hours, whichever occurs first, until the airplane accumulates 15,000 total flight cycles or 75,000 total flight hours; then perform the inspections within the interval specified in paragraph (h)(6) of this AD.
(6) Model A310–304, A310–322 and A310–324 long range airplanes that have accumulated 15,000 total flight cycles or more or 75,000 total flight hours or more, as of the effective date of this AD.	1,950 flight cycles or 9,750 flight hours, whichever occurs first.

(i) Repeat the inspections for area 2 required by paragraphs (g)(1) and (g)(4) of this AD thereafter at the applicable intervals specified in Table 2 of this AD. Certain compliance times are applicable to short-range use (AFT equal to or less than 4 flight hours), or long-range use (AFT exceeding 4 flight hours). Inspection areas are specified in Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Inspections accomplished before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A310–53–2074, Revision 03, dated October 13, 2006, are considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: The MCAI and service information do not specify a corrective action if cracking is found and the radius of the rework is 20.0 mm (0.787 inch) or more. Paragraph (g)(3)(i)(B) of this AD requires repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or EASA (or its delegated agent).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly

to the International Branch, send it to *Attn*: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(l) Refer to MCAI EASA Airworthiness Directive 2009–0058, dated March 13, 2009; and Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008; for related information.

Material Incorporated by Reference

(m) You must use Airbus Mandatory Service Bulletin A310–53–2074, Revision 04, dated October 24, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on April 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10688 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0330]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Lower Hack Bridge across the Hackensack River, mile 3.4, at Jersey City, New Jersey. The deviation is necessary to repair structural steel members on the lift span. This deviation allows the bridge to remain in the closed position to facilitate the above repairs.

DATES: This deviation is effective from 10 p.m. on May 26, 2011 through 5 a.m. on May 27, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0330 and are available online at *http://www.regulations.gov,* inserting USCG–2011–0330 in the "Keyword" and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, *joe.m.arca@uscg.mil,* telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Lower Hack Bridge, across the Hackensack River at mile 3.4, has a vertical clearance in the closed position of 40 feet at mean high water and 45 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(b).

The waterway accommodates both commercial and recreational vessels of various sizes. Recreational navigation passes under the bridge without requiring any drawbridge openings.

The owner of the bridge, New Jersey Transit, requested a temporary deviation to facilitate necessary structural steel repairs at the bridge.

Under this temporary deviation the Lower Hack Bridge, across the Hackensack River at mile 3.4, may remain in the closed position from 10 p.m. on May 26, 2011 through 5 a.m. on May 27, 2011. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 2, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–11545 Filed 5–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0291]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the SR170 Centerville Turnpike Bridge across the Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, mile 15.2, at Chesapeake, VA. The deviation is necessary to facilitate urgent mechanical structural repairs to the swing span. Under this deviation, the drawbridge will be allowed to operate on a limited schedule for the extent of the effective period, specifically affecting four specific dates during the effective time-period: May 14, 2011; May 15, 2011; June 4, 2011; and June 5, 2011.

DATES: This deviation is effective from 8 a.m. on May 14, 2011 to 8 p.m. on June 5, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket USCG–2011–0291 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0291 in the "Keyword" box, and

then clicking "Search". This material is also available for inspection or copying the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District; telephone (757) 398–6222, e-mail *Waverly.W.Gregory@uscg.mil*. If you have questions on reviewing the docket, call Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The City of Chesapeake, who owns and operates this swing-type bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.997(i), to facilitate urgent mechanical and structural repairs to the swing span mechanism.

The deviation will not affect the current scheduled openings for weekdays, as laid out in 33 CFR 117.997(i). The deviation will only affect the scheduled openings on the following weekend dates: Saturday May 14, 2011; Sunday May 15, 2011; Saturday June 4, 2011; and Sunday June 5, 2011.

Under this temporary deviation, on the four specific dates listed above, the drawbridge will operate on a 4-hour opening schedule. This schedule is meant to facilitate urgent mechanical and structural repairs. Accordingly, on Saturday May 14, 2011, the drawbridge will open on signal at: 8 a.m., 12 p.m., 4 p.m., and 8 p.m. On Sunday May 15, 2011, the drawbridge will open on signal at: midnight, 4 a.m., 8 a.m., 12 p.m., 4 p.m., and 8 p.m. On Saturday June 4, 2011, the drawbridge will open on signal at: 8 a.m., 12 p.m., 4 p.m., and 8 p.m. And, on Sunday June 5, 2011, the drawbridge will open on signal at: midnight, 4 a.m., 8 a.m., 12 p.m., 4 p.m., and 8 p.m.

If all of the mechanical and structural work is completed on May 14–15, 2011, then the deviation will not be enforced for June 4–5, 2011. A notice will be released for mariners should the deviation be cancelled for June 4–5, 2011.

Other than the four specific dates listed in this section, the drawbridge will operate in accordance with the operating regulations set out in 33 CFR 117.997(i).

The SR170 Centerville Turnpike Bridge has a vertical clearance in the closed position to vessels of four feet above mean high water. Vessels may not transit under the bridge while it is in the closed position.

The Atlantic Intracoastal Waterway caters to a variety of vessels from tug and barge traffic to recreational vessels traveling from Florida to Maine. The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users. Additionally, the Coast Guard will inform unexpected users of the waterway through our local and broadcast Notices to Mariners of the limited operating schedules for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation. The Atlantic Ocean is the alternate route for vessels and the bridge will be able to open in the event of an emergency.

In accordance with 33 CFR 117.35(e), the draw must return to its original operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 28, 2011.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2011–11546 Filed 5–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0164]

RIN 1625–AA00

Safety Zone; Coughlin Wedding Fireworks, Lake St. Clair, Harrison Township, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake St. Clair, Harrison Township, MI. This safety zone is intended to restrict vessels from a portion of Lake St. Clair during the Coughlin Wedding Fireworks.

DATES: This rule is effective from 10 p.m. through 10:20 p.m. on July 2, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0164 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0164 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Katie Stanko, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, e-mail *Katie.R.Stanko@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime fireworks displays.

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**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because it would inhibit the Coast Guard from ensuring the safety of vessels and the public during the fireworks display.

Background and Purpose

On July 2, 2011, a private party is holding a land based wedding that will include fireworks launched from a point on Lake St. Clair. This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with that fireworks display. Such hazards include obstructions to the waterway that may cause marine casualties, explosive danger of fireworks, debris falling into the water

that may cause death, serious bodily harm or property damage. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property in the vicinity of this event and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Coughlin Wedding Fireworks Display. The fireworks display will occur between 10 p.m. and 10:20 p.m., July 2, 2011.

The safety zone will encompass all waters on Lake St. Clair within a 300 foot radius of the fireworks barge launch site located off the shore of Harrison Township, MI at position 42°34′52″ N, 082°47′12″ W from 10 p.m. until 10:20 p.m. on July 2, 2011. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the launch platform will be relatively small and exist for only a minimal time. Thus, restrictions on vessel movement within any particular area of Lake St. Clair are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in this portion of Lake St. Clair between 10 p.m. through 10:20 p.m. on July 2, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities because vessels can easily transit around the zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

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 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause 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 Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction because it involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be 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. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 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.T09–0164 to read as follows:

§ 165. T09–0164 Safety zone; Coughlin Wedding Fireworks, Lake St. Clair, Harrison Township, MI.

(a) *Location.* The safety zone will encompass all U. S. navigable waters on Lake St. Clair within a 300-foot radius of the fireworks barge launch site located off the shore of Harrison Township, MI at position 42°34′52″ N, 082°47′12″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 10 p.m. through 10:20 p.m. on July 2, 2011.

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

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: April 26, 2011.

E.J. Marohn,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2011–11484 Filed 5–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0216]

RIN 1625–AA00

Safety Zone; Catawba Island Club Fireworks, Catawba Island Club, Port Clinton, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Captain of the Port Detroit Zone on Lake Erie, Port Clinton, Ohio. This zone is intended to restrict vessels from portions of Lake Erie for the Catawba Island Club Memorial Day Fireworks. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks display.

DATES: This rule is effective from 9:15 p.m. through 9:45 p.m. on May 29, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0216 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0216 in the "keyword" box, and then clicking "search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BM1 Tracy Girard, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6036, e-mail *tracy.m.girard@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a comment period to run would be impractical and contrary to the public interest in that it would prevent the Captain of the Port Detroit from performing the function of keeping the boating public safe from the hazards associated with a maritime fireworks display.

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**. Waiting for a 30 day effective period to run is impracticable and contrary to the public interest in that it would prevent the Captain of the Port Detroit from protecting persons and vessels involved in and observing this event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. 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. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Catawba Island Club Memorial Day Fireworks Display. The fireworks display will occur between 9:15 p.m. and 9:45 p.m., May 29, 2011.

The safety zone will encompass all U.S. navigable waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41°34′18.10″ N, 082°51′18.70″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Detroit or designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or designated on-scene representative. The Captain of the Port, Sector Detroit or designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the bridge project will be relatively small and exist for a relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Lake Erie, Catawba Island, Port Clinton, OH between 9:15 p.m. through 9:45 p.m. on May 29, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect for thirty minutes. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

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 adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 023–01, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction because it involves the establishment of a temporary safety zone. This rule involves the establishment of a safety zone and is therefore categorically excluded under paragraph 34(g) of the Instruction. An environmental analysis checklist and a 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. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 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.T09–0216 as follows:

§ 165.T09–0216 Safety Zone; Catawba Island Club Memorial Day Fireworks, Catawba Island; Port Clinton, OH.

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of Lake Erie, Catawba Island, Port Clinton, OH within a 250-yard radius of the fireworks launch site located at position 41°34′18.10″ N, 082°51′18.70″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and enforcement period.* This regulation is effective and will be enforced from 9:15 p.m. through 9:45 p.m. on May 29, 2011. The Captain of the Port, Sector Detroit, or his on-scene representative may suspend enforcement of the safety zone at any time.

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

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Detroit to act on his behalf. The on-scene representative of the Captain of the Port, Sector Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Detroit or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Detroit or his on-scene representative to obtain permission to do so.

Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Detroit or his on-scene representative.

Dated: April 26, 2011.

E.J. Marohn,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2011–11487 Filed 5–10–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0755; FRL–8872–7]

Saflufenacil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises or removes certain established tolerances and establishes new tolerances for residues of saflufenacil in or on multiple commodities which are identified and discussed later in this document. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 11, 2011. Objections and requests for hearings must be received on or before July 11, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0755. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0755 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 11, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0755, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 23, 2010 (75 FR 57942) (FRL–8845–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 0F7744 and PP 0F7766) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petitions requested that 40 CFR 180.649 be amended by establishing tolerances for residues of the herbicide saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2 *H*)-pyrimidinyl]-4-fluoro- *N*-[[methyl(1-methylethyl)amino]sulfonyl]benzamide, and its metabolites *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2 *H*)-pyrimidinyl)-4-fluorobenzoyl]-*N*-′isopropylsulfamide and *N*-[4-chloro-2-fluoro-5-({[(isopropylamino) sulfonyl]amino}carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil, in or on oilseeds, cottonseed subgroup 20C, gin byproducts at 3.5 parts per million (ppm); oilseeds, cottonseed subgroup 20C, undelinted seed at 0.2 ppm; oilseeds, sunflower subgroup 20B, seed at 1.0 ppm; pea, vines at 8.0 ppm; soybean, aspirated grain fractions at 4.52 ppm; soybean, hulls at 0.42 ppm; soybean, seed at 0.1 ppm; vegetable, legume, subgroup 6C, beans, dry at 0.5 ppm; and vegetable, legume, subgroup 6C, peas, dry at 0.1 ppm (PP 0F7744); and in or on oilseeds, rapeseed subgroup 20A, seed at 0.8 ppm (PP 0F7766). That notice referenced

summaries of the petitions prepared by BASF Corporation, the registrant, which are available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed commodity terms and tolerance levels for several commodities and determined that established tolerances for certain livestock commodities should be increased. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for saflufenacil including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with saflufenacil follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Saflufenacil has low acute toxicity via the oral, dermal, and inhalation routes of exposure. It is slightly irritating to the eye but is neither a dermal irritant nor sensitizer.

Short-term, subchronic, and chronic toxicity studies in rats, mice, and dogs identified the hematopoietic system as the target organ of saflufenacil. Protoporphyrinogen oxidase inhibition in the mammalian species may result in disruption of heme synthesis which in turn causes anemia. In these studies, decreased hematological parameters [red blood cells (RBC), hematocrit (Ht), mean corpuscular volume (MCV), mean corpuscular hemoglobin (MCH), and mean corpuscular hemoglobin concentration (MCHC)] were seen at about the same dose level across species, except in the case of the dog, where the effects were seen at a slightly higher dose. These effects occurred around the same dose level from the short- through long-term exposures without increasing in severity. Effects were also seen in the liver (increased weight, centrilobular fatty change, and lymphoid infiltrate) in mice, the spleen (increased spleen weight and extramedullary hematopoiesis) in rats, and in both these organs (increased iron storage in the liver and extramedullary hematopoiesis in the spleen) in dogs. No dermal toxicity was seen at the limit dose in a 28-day dermal toxicity study in rats.

Carcinogenicity studies in rats and mice showed no evidence of increased incidence of tumors at the tested doses. Saflufenacil is weakly clastogenic in the *in vitro* chromosomal aberration assay in V79 cells in the presence of S9 activation; however, the response was not evident in the absence of S9 activation. It is neither mutagenic in bacterial cells nor clastogenic in rodents *in vivo.* Saflufenacil is classified as "not likely to be carcinogenic to humans."

Increased fetal and offspring susceptibility to saflufenacil were observed in the developmental toxicity studies in the rat and rabbit and in the 2-generation reproduction study in the rat. Developmental effects such as decreased fetal body weights and increased skeletal variations occurred at doses that were not maternally toxic in the developmental study in rats, indicating increased quantitative susceptibility. In rabbits, developmental effects such as increased liver porphyrins were observed at doses that were not maternally toxic, indicating increased quantitative susceptibility. In the 2-generation reproduction study in rats, offspring effects such as increased number of stillborn pups, decreased viability and lactation indices, decreased pre-weaning body weight and/or body-weight gain, and changes in hematological parameters were observed at a dose resulting in less severe maternal toxicity (decreased food intake, body weight/weight gain and changes in hematological parameters and organ weights indicative of anemia), indicating increased qualitative susceptibility.

There was no evidence of neurotoxicity or neuropathology in the toxicity database for saflufenacil. In the acute neurotoxicity study, a decrease in motor activity was observed on the first day of dosing at the limit dose in males only. The finding was not accompanied by any other neuropathological changes and was considered a reflection of a mild and transient general systemic toxicity and not a substance-specific neurotoxic effect. In the subchronic neurotoxicity study, systemic toxicity (anemia), but no evidence of neurotoxicity, was seen in males and females.

There is no evidence of immunotoxity in the saflufenacil database. The increase in spleen weight seen only in rats in the 90-day oral toxicity study is attributable to an increased clearance of defective RBCs (*i.e.,* defective hemoglobin synthesis) and is thus an indication of toxicity to the hematopoietic system rather than to the immune system. In a recently submitted 28-day immunotoxicity study, saflufenacil failed to induce toxicity specific to the immune system at the highest dose tested (*i.e.,* 52 milligrams/kilogram/bodyweight/day (mg/kg bw/day)), indicating that saflufenacil does not directly target the immune system at the dose levels being used for risk assessment.

Specific information on the studies received and the nature of the adverse effects caused by saflufenacil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document "Saflufenacil. Human-Health Risk Assessment for Proposed Uses in/on Vegetable, Legume, Subgroup 6C, pea and bean (except soybean); Soybean; Rapeseed Subgroup 20A; Sunflower Subgroup 20B; and Cottonseed Subgroup 20C" at page 31 in docket ID number EPA–HQ–OPP–2010–0755.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human

exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for saflufenacil used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SAFLUFENACIL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 500 mg/kg/day. UF_A = 10x ..... UF_H = 10x FQPA SF = 1x	Acute RfD = 5.0 mg/kg/day. aPAD = 5.0 mg/kg/day	Acute Neurotoxicity Study in the Rat. LOAEL = 2,000 mg/kg/day based on decreased motor activity representing mild and transient systemic toxicity in males. A LOAEL was not established for females.
Chronic dietary (All populations)	NOAEL= 4.6 mg/kg/day. UF_A = 10x ..... UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.046 mg/kg/day. cPAD = 0.046 mg/kg/day.	Chronic/Carcinogenicity in the Mouse. LOAEL = 13.8 mg/kg/day based on decreased red blood cells, hemoglobin, and Ht and porphyria observed in the satellite group.
Cancer (Oral, dermal, inhalation)	Classification: Not likely carcinogenic to humans based on the lack of tumors in the mouse and rat carcinogenicity studies and lack of mutagenicity.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population-adjusted dose (a = acute, c = chronic). RfD = reference dose. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to saflufenacil, EPA considered exposure under the petitioned-for tolerances as well as all existing saflufenacil tolerances in 40 CFR 180.649. EPA assessed dietary exposures from saflufenacil in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for saflufenacil. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). The unrefined assessment assumed 100% crop treated (CT), Dietrary Exposure Evaluation Model (DEEM™ 7.81) default concentration factors, and tolerance-level residues for all commodities, except cottonseed; sunflower subgroup 20B; soybean, seed; vegetable, legume, subgroup 6C, pea and bean (except soybean); and rapeseed subgroup 20A, for which the tolerance levels were multiplied by a correction factor to account for a metabolite of concern which is not included in the tolerance expression.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. Chronic dietary exposure was assessed using the same food residue assumptions as in the acute dietary exposure assessment discussed in Unit III.C.1.i.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that saflufenacil does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for saflufenacil. Tolerance level residues (or, for some commodities, tolerance-level residues adjusted to account for an additional metabolite of concern) and 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for saflufenacil in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of saflufenacil. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model/Ground Water (PRZM/GW), the estimated drinking water concentrations (EDWCs) of saflufenacil for acute exposures are estimated to be 37.3 parts per billion (ppb) for surface water and 180 ppb for ground water. EDWCs for chronic exposures for non-cancer assessments are estimated to be 23.8 ppb for surface water and 173 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 180 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of

value 173 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Saflufenacil is not registered for any specific use patterns that would result in residential exposure.

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

EPA has not found saflufenacil to share a common mechanism of toxicity with any other substances, and saflufenacil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that saflufenacil does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicity database for saflufenacil includes rat and rabbit developmental toxicity studies, a two-generation reproduction toxicity study in rats, acute and subchronic neurotoxicity studies in rats, and a 28-day immunotoxicity study in rats. As discussed in Unit III.A., there was evidence of quantitative susceptibility of fetuses to saflufenacil exposure in the developmental toxicity studies in rats and rabbits and evidence of qualitative susceptibility of offspring in the rat reproduction study.

An analysis was performed to determine the degree of concern for the effects observed in the developmental and reproduction toxicity studies when considered in the context of all available toxicity data, and to identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of saflufenacil. The degree of concern is low and there are no residual uncertainties for the increased susceptibility since:

i. Clear NOAELs/LOAELs were established for the developmental effects seen in rats and rabbits as well as for the offspring effects seen in the 2-generation reproduction study;

ii. Dose-response relationships for the effects of concern are well characterized;

iii. None of the effects in the developmental or reproduction studies were attributable to a single exposure and, therefore, are not of concern for acute risk assessment; and

iv. The dose used to evaluate chronic dietary risks is lower than the NOAELs for fetal/offspring effects in the developmental and reproduction studies and is, therefore, protective of the developmental and offspring effects observed in these studies.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for saflufenacil is complete.

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

iii. Although there is evidence of increased quantitative and qualitative susceptibility of offspring in the developmental and reproduction studies for saflufenacil, the degree of concern is low and the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of saflufenacil.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground- and surface water modeling used to assess exposure to saflufenacil in drinking water. These assessments will not underestimate the exposure and risks posed by saflufenacil.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to saflufenacil will occupy less than 1% of the aPAD for all population subgroups, including infants and children.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to saflufenacil from food and water will utilize 30% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. There are no residential uses for saflufenacil.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure take into account short- or intermediate-term residential exposure plus chronic exposure from food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, saflufenacil is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Short- and intermediate-term risks are assessed based on short- or intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- and intermediate-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk

assessment for evaluating short- and intermediate-term risk for saflufenacil.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, saflufenacil is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectroscopy/mass spectroscopy (LC–MS/MS) methods D0603/02 (plants) and L0073/01 (livestock)) is available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for saflufenacil.

C. Revisions to Petitioned-For Tolerances

EPA has revised the proposed commodity terms as follows to agree with the Agency's Food and Feed Commodity Vocabulary: "oilseeds, cottonseed subgroup 20C, gin byproducts" was changed to "cotton, gin byproducts;" "oilseeds, cottonseed subgroup 20C, undelinted seed" was changed to "cottonseed subgroup 20C;" "oilseeds, sunflower subgroup 20B, seed" was changed to "sunflower subgroup 20B;" "soybean, aspirated grain fractions" was changed to "grain, aspirated fractions;" "pea, vines" was changed to "pea, hay;" and "oilseeds, rapeseed subgroup 20A, seed" was changed to "rapeseed subgroup 20A."

EPA has also revised most of the proposed tolerance levels. Based on analysis of the field trial data using the Agency's tolerance/MRL calculator in accordance with the Agency's "Guidance for Setting Pesticide Tolerances Based on Field Trial Data," proposed tolerances were revised for cotton, gin byproducts from 3.5 ppm to 0.45 ppm; for pea, hay from 8.0 ppm to 17 ppm; and for rapeseed subgroup 20A from 0.8 ppm to 0.45 ppm. Proposed tolerances for grain, aspirated fractions and soybean, seed were increased from 4.52 ppm to 10 ppm and 0.42 ppm to 0.50 ppm, respectively, based on processing factors (150x for aspirated grain fractions and 6x for soybean hulls) derived from a soybean processing study in conjunction with the highest average field trial (HAFT) residue of 0.07 ppm from soybean residue studies. In addition, EPA determined that separate tolerances were not needed for dry peas and beans, proposed at 0.1 ppm and 0.5 ppm, respectively. A single tolerance of 0.30 ppm on "pea and bean, dried shelled, except soybean, subgroup 6C" was determined to be appropriate based on analysis of the dry bean field trial data using the Agency's tolerance/MRL calculator. Since residues were significantly lower in dried peas, they were not used in calculating the subgroup 6C tolerance. Finally, based on calculated livestock dietary burdens in light of the new tolerances and data from a cattle feeding study, EPA has determined that established tolerances for liver and meat byproducts, except liver, of cattle, goats, horses, and sheep should be increased from 0.80 ppm to 2.5 ppm and 0.02 ppm to 0.05 ppm, respectively.

In conjunction with establishing these tolerances, the existing tolerance for "vegetable, foliage of legume, group 7" is being revised to read "vegetable, foliage of legume, group 7 (except pea, hay)"; the existing tolerance for "vegetable, legume, group 6" at 0.03 ppm is being replaced with tolerances on "vegetable, legume, edible podded, subgroup 6A" and "pea and bean, succulent shelled, subgroup 6B" at the same level (0.03 ppm); and the existing tolerances for "sunflower, seed" and "cotton, undelinted seed," which are superseded by tolerances on cottonseed subgroup 20C and sunflower subgroup 20B, are being deleted.

V. Conclusion

Therefore, tolerances are established or revised for residues of saflufenacil, including its metabolites and degradates, in or on the commodities as codified in the regulatory text in § 180.649(a)(1) and (a)(2).

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255,

August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 3, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.649 is amended as follows:

■ a. Revise the table in paragraph (a)(1).

■ b. In the table in paragraph (a)(2), revise the entries for cattle, liver; cattle, meat byproducts, except liver; goat, liver; goat, meat byproducts, except liver; horse, liver; horse, meat byproducts, except liver; sheep, liver; and sheep, meat byproducts, except liver.

The revised texts read as follows:

§ 180.649 Saflufenacil; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
Almond, hulls	0.10
Cotton, gin byproducts	0.45
Cottonseed subgroup 20C	0.20
Fruit, citrus, group 10	0.03
Fruit, pome, group 11	0.03
Fruit, stone, group 12	0.03
Grain, aspirated fractions	10
Grain, cereal, forage, fodder and straw group 16	0.10
Grain, cereal, group 15	0.03
Grape	0.03
Nut, tree, group 14	0.03
Pea and bean, dried shelled, except soybean, subgroup 6C	0.30
Pea and bean, succulent shelled, subgroup 6B	0.03
Pea, hay	17
Pistachio	0.03
Rapeseed subgroup 20A	0.45
Sunflower subgroup 20B	1.0
Soybean, hulls	0.50
Soybean, seed	0.10
Vegetable, foliage of legume, group 7 (except pea, hay)	0.10
Vegetable, legume, edible podded, subgroup 6A	0.03

(2) * * *

Commodity	Parts per million
* * * * *	
Cattle, liver	2.5
* * * * *	
Cattle, meat byproducts, except liver	0.05
* * * * *	
Goat, liver	2.5
* * * * *	
Goat, meat byproducts, except liver	0.05
* * * * *	
Horse, liver	2.5
* * * * *	
Horse, meat byproducts, except liver	0.05
* * * * *	
Sheep, liver	2.5
* * * * *	
Sheep, meat byproducts, except liver	0.05
* * * * *	

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[FR Doc. 2011–11553 Filed 5–10–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–1009; FRL–8873–2]

Propiconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of propiconazole in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project #4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). In addition, this action establishes a time-limited tolerance for residues of propiconazole in or on avocado, in response to the approval of a quarantine exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use to control the disease, laurel wilt (caused by *Raffaelea lauricola*) in the state of Florida. This regulation establishes a maximum permissible level of residues of propiconazole in this food commodity. The time-limited tolerance expires and is revoked on December 31, 2013.

DATES: This regulation is effective May 11, 2011. Objections and requests for hearings must be received on or before July 11, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–1009. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.),

2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *ertman.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–1009 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 11, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–1009, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 19, 2010 (75 FR 13277) (FRL–8813–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7659) by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.434 be amended by establishing tolerances for residues of the fungicide propiconazole, (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H–1,2,4-triazole) and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on onion, bulb, subgroup 3–07A at 0.2 parts per million (ppm); onion, green, subgroup 3–07B at 9.0 ppm; caneberry subgroup 13–07A at 1.0 ppm; bushberry subgroup 13–07B at 1.0 ppm; and low growing berry subgroup 13–07G, except cranberry at 1.3 ppm. The petition also proposed to amend the tolerances in 40 CFR 180.434 by increasing the tolerances in or on peppermint, tops and spearmint, tops from 3.5 ppm to 10 ppm; and by removing the tolerances for berry group 13 at 1.0 ppm; onion, bulb at 0.2 ppm; onion, green at 9.0 ppm and strawberry at 1.3 ppm. That notice referenced a summary of the petition prepared by Syngenta, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

EPA is also establishing a time-limited tolerance for residues of propiconazole in or on avocado at 10 ppm. This tolerance expires and is revoked on December 31, 2013. The Agency is establishing this time-limited tolerance in response to a quarantine exemption request under FIFRA section 18 on behalf of the Florida Department of Agriculture and Consumer Services for emergency use of propiconazole to control the disease, laurel wilt, in avocado.

According to the applicant, an emergency situation exists due to the introduction of laurel wilt, a disease affecting avocado trees caused by the pathogenic fungus *Raffaelea lauricola.* This fungus is vectored by the redbay ambrosia beetle, a newly introduced species, native to Asia, which has moved rapidly toward the avocado production area since its initial discovery in Georgia in 2002. Avocado tree death from laurel wilt has been documented and research has demonstrated that the redbay ambrosia beetle attacks healthy avocado trees from all 22 cultivars tested so far. Control of the vector, the redbay ambrosia beetle, is problematic since inoculation of a tree requires only 1 beetle, the beetle is capable of flight to escape insecticide treatments, and the two currently registered insecticides will not provide the necessary year-round control due to limits in residual activity and number of applications allowed. Once a tree is infected with the disease, there is no cure and the tree will die. For these reasons, the applicant states that the potential impact of this disease on avocado growing and production could be devastating. The applicant states that the avocado producing areas are under severe threat from laurel wilt, and control through a suitable fungicide, such as the requested material, is essential to protecting

continued production of avocado in Florida as well as protecting other susceptible tree species in the U.S. EPA has authorized under FIFRA section 18 the use of propiconazole on avocado in Florida. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of the emergency exemption request, EPA assessed the potential risks presented by the residues of propiconazole in avocado, as discussed below. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA and EPA decided that the necessary time-limited tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address the urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this time-limited tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although, this time-limited tolerance expires and is revoked on December 31, 2013, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amount specified in the tolerance remaining in or on avocado after that date will not be unlawful provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this time-limited tolerance at the time of application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data, or other relevant information on this pesticide indicates that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any decision about whether propiconazole meets EPA's registration requirements for use on avocado or whether a permanent tolerance for this use would be appropriate. Under this circumstance, EPA does not believe that the time-limited tolerance serves as a basis for registration of propiconazole by a State for special local needs under FIFRA section 24(c). Nor does the time-limited tolerance serve as the basis for any State other than Florida to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for propiconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with propiconazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Propiconazole has low to moderate toxicity in experimental animals by the oral, dermal and inhalation routes. It is moderately irritating to the eyes, and minimally irritating to the skin. It is a dermal sensitizer. Propiconazole is readily absorbed by the rat skin with 40% absorption within 10 hours of dermal application.

The primary target organ for propiconazole toxicity in animals is the liver. Increased liver weights were seen in mice after subchronic or chronic oral exposures to propiconazole at doses greater than 50 milligrams/kilograms/day (mg/kg/day). Liver lesions such as vacuolation of hepatocytes, ballooned liver cells, foci of enlarged hepatocytes, hypertrophy and necrosis are characteristic of propiconazole toxicity in rats and mice. Mice appear to be more susceptible to its toxicity than rats. Decreased body weight gain in experimental animals was seen in subchronic, chronic, developmental and reproductive studies. Dogs appeared to be more sensitive to the localized toxicity of propiconazole as manifested by stomach irritation at 6 mg/kg/day and above.

In rabbits, developmental toxicity occurred at a higher dose than the maternal toxic dose, while in rats, developmental toxicity occurred at lower doses than maternal toxic doses. Increased incidences of rudimentary ribs occurred in rat and rabbit fetuses. Increased cleft palate malformations were noted in two studies in rats. In one published study in rats developmental effects (incomplete ossification of the skull, caudal vertebrae and digits, extra rib (14th rib) and missing sternebrae, malformations of the lung and kidneys) were reported at doses that were not maternally toxic.

In the 2-generation reproduction study in rats, offspring toxicity occurred at a higher dose than the parental toxic dose suggesting lower susceptibility of the offspring to the toxic doses of propiconazole in this study.

Propiconazole was negative for mutagenicity in the *in vitro* BALB/C 3T3 cell transformation assay, bacterial reverse mutation assay, Chinese hamster bone marrow chromosomal aberration assay, unscheduled DNA synthesis studies in human fibroblasts and primary rat hepatocytes, mitotic gene conversion assay and the dominant lethal assay in mice. Hepatocellular proliferation studies in mice suggest that propiconazole induces cell proliferation followed by treatment-related hypertrophy in a manner similar to the known hypertrophic agent phenobarbital.

Propiconazole was carcinogenic to male mice. Propiconazole was not carcinogenic to rats nor to female mice. The Agency classified propiconazole as Group C possible human carcinogen and recommended that for the purpose of risk characterization the reference dose (RfD) approach be used for quantification of human risk. Propiconazole is not genotoxic and this fact, together with special mechanistic studies, indicate that propiconazole is a threshold carcinogen. Propiconazole produced liver tumors in male mice only at a high dose that was toxic to the liver. At doses below the RfD liver

toxicity is not expected, and therefore tumors are also not expected.

Specific information on the studies received and the nature of the adverse effects caused by propiconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2009–1009 on pages 34–40 in the document titled "Revised Propiconazole Human Health Risk Assessment for a Section 3 Registration on Mint, Bulb Vegetables, Caneberry Subgroup 13–07A, Bushberry Subgroup 13–07B, and Low Growing Berry Subgroup 13–07G"

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for propiconazole used for human risk assessment is shown in the following Table:

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PROPICONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age) ..	NOAEL = 30 milligrams/kilograms/day (mg/kg/day). UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD =0.3 mg/kg/day. aPAD = 0.3 mg/kg/day	DNT Study—Rat. LOAEL = 90 mg/kg/day based on increased incidence of rudimentary ribs, un-ossified sternebrae, as well as increased incidence of shortened and absent renal papillae and increased cleft palate.
Acute dietary (General population including infants and children).	NOAEL = 30 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.3 mg/kg/day. aPAD = 0.3 mg/kg/day	Acute neurotoxicity study Rat. LOAEL = 100 mg/kg/day based on clinical signs of toxicity (piloerection in one male, diarrhea in one female, tip toe gait in 3 females).
Chronic dietary (All populations)	NOAEL= 10 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.1 mg/kg/day. cPAD = 0.1 mg/kg/day	24-month oncogenicity study on CD–1 mice. LOAEL = 50 mg/kg/day based on non-neoplastic liver effects (increased liver weight in males and increase in liver lesions: masses/raised areas/swellings/nodular areas mainly).
Incidental Oral Exposure (Short-Term) and Dermal short-term (1 to 30 days).	Oral study ..... NOAEL = 30 mg/kg/day dermal absorption rate = 40% exposures. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100 ...	Acute Neurotoxicity Study—Rats. LOAEL = 100 mg/kg/day based on clinical signs of toxicity (piloerection in one male, diarrhea in one female, tip toe gait in 3 females).
Incidental Oral Exposure (Intermediate-Term) and Dermal intermediate-term (1 to 6 months).	Oral study ..... NOAEL= 10 mg/kg/day dermal absorption rate = 40% for dermal exposures. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100 ...	24 Month Oncogenicity Study—Mice. LOAEL = 50 mg/kg/day based on non-neoplastic liver effects (increased liver weight in males and increase in liver lesions: masses/raised areas/swellings/nodular areas mainly).
Inhalation short-term (1 to 30 days)	Inhalation (or oral) study. NOAEL= 30 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100 ...	Acute Neurotoxicity Study—Rats. LOAEL = 100 mg/kg/day based on clinical signs of toxicity (piloerection in one male, diarrhea in one female, tip toe gait in 3 females).

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PROPICONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Cancer (Oral, dermal, inhalation)	Classification: Group C, possible human carcinogen, RfD approach for risk characterization.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to propiconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing propiconazole tolerances in 40 CFR 180.434. EPA assessed dietary exposures from propiconazole in food as follows:

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

Such effects were identified for propiconazole. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance levels and 100 percent crop treated (PCT) for all existing and proposed uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance levels and 100 PCT for all existing and proposed uses.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to propiconazole. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for propiconazole. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for propiconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of propiconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of propiconazole for acute exposures are estimated to be 55.78 parts per billion (ppb) for surface water and 0.64 ppb for ground water, for chronic exposures for non-cancer assessments are estimated to be 21.61 ppb for surface water and 0.64 ppb for ground water and for chronic exposures for cancer assessments are estimated to be 13.24 ppb for surface water and 0.64 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 55.8 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 21.6 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Propiconazole is currently registered for the following uses that could result in residential exposures: Turf, ornamentals and in paint. EPA assessed residential exposure using the following assumptions: Short-term risk to toddlers was assessed for incidental oral and dermal exposure. The highest incidental oral and dermal exposure scenarios are expected from residential use on turf. Short-term risk to adults was assessed for dermal and inhalation residential handler exposure as well as dermal exposure for residential post-application. Adult handlers have some inhalation exposure however, based on the low vapor pressure of propiconazole, negligible post application inhalation exposure is anticipated to occur. The highest post application exposure from residential use on turf was used to assess risk to short term aggregate exposures.

The only residential use scenario that will result in potential intermediate-term exposure to propiconazole is dermal and incidental oral post application exposure to children from wood treatment (antimicrobial use).

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

Propiconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same,

or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Propiconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including propiconazole, U.S. EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.,* use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (*i.e.,* high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X Food Quality Protection Act (FQPA) safety factor (SF) for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket Identification (ID) Number EPA–HQ–OPP–2005–0497 and an update to assess the addition of the commodities included in this action may be found in docket ID number EPA–HQ–OPP–2009–1009 in the documents titled "Common Triazole Metabolites: Updated Dietary (Food + Water) Exposure and Risk Assessment to Address The Section 3 Request for Propiconazole on Mint, Bulb Vegetables Subgroups 3–07A and 3–07B, Caneberry Subgroup 13–07A, Bushberry Subgroup 13–07B, and Low growing Berry Subgroup 13–07G" and "Common Triazole Metabolites: Updated Dietary (Food + Water) Exposure and Risk Assessment to Address The Section 18 Request for Propiconazole on Avocado in Florida."

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is low concern for prenatal and/or postnatal toxicity resulting from exposure to propiconazole. In the developmental toxicity study in rats, fetal effects observed in this study at a dose lower than that evoking maternal toxicity are considered to be quantitative evidence of increased susceptibility of fetuses to *in utero* exposure to propiconazole. In the developmental toxicity study in rabbits, neither quantitative nor qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to propiconazole was observed in this study. In the 2-generation reproduction study in rats, neither quantitative nor qualitative evidence of increased susceptibility of neonates (as compared to adults) to prenatal and/or postnatal exposure to propiconazole was observed in this study. There is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with propiconazole. In the rat acute neurotoxicity study, there was evidence of mild neurobehavioral effects at 300 mg/kg, but no evidence of neuropathology from propiconazole administration. Since there was quantitative evidence of increased susceptibility of the young following exposure to propiconazole in the developmental rat study, the Agency performed a Degree of Concern Analysis and concluded that the degree of concern for the effects observed in this study was low and no residual uncertainties were identified, for the reasons explained in this Unit.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for propiconazole is complete except for the lack of immunotoxicity and subchronic neutotoxicity studies. In the absence of specific immunotoxicity studies, EPA has evaluated the available propiconazole toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. There was no evidence of adverse effects on the organs of the immune system in any propiconazole study. In addition, propiconazole does not belong to a class of chemicals (*e.g.,* the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Based on the considerations in this Unit, EPA does not believe that conducting a special Harmonized Guideline 870.7800 immunotoxicity study will result in a POD less than the NOAEL of 10.0 mg/kg/day used in calculating the cPAD for propiconazole, and therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity.

In the absence of the subchronic neurotoxicity study, EPA has evaluated the available propiconazole toxicity data to determine whether an additional database uncertainty factor is needed to account for potential neurotoxicity after repeated exposures. With the exception of the developmental studies in the rat, there were no indications in any of the repeated dose studies that propiconazole is neurotoxic. In the developmental studies in the rat, there were some clinical signs of neurotoxicity at 300 mg/kg/day but not at lower doses. Based on the considerations in this Unit, EPA does not believe that conducting a Harmonized Guideline 870.6200b subchronic neurotoxicity study will result in a POD less than the NOAEL of 10 mg/kg/day used in calculating the cPAD for propiconazole, and therefore, an additional database uncertainty factor is not needed to account for potential neurotoxicity from repeated exposures. There is no indication in the developmental and reproduction studies, or in the acute neurotoxicity

study that a developmental neurotoxicity study should be required.

ii. There is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with propiconazole. In the rat acute neurotoxicity study, there was evidence of mild neurobehavioral effects at 300 mg/kg, but no evidence of neuropathology from propiconazole administration.

iii. Although an apparent increased quantitative susceptibility was observed in fetuses and offspring based on minimal toxicity at high doses of administration, clear NOAELs and LOAELs have been identified for all effects of concern, and a clear dose-response has been well defined. Since this increased susceptibility is occurring at high doses and a clear dose response has been well defined for all effects of concern, residual uncertainties or concerns for prenatal and/or postnatal toxicity are minimal.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to propiconazole in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by propiconazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to propiconazole will occupy 17% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to propiconazole from food and water will utilize 18% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of propiconazole is not expected.

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

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

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 160 for toddlers (children 1 to 2 years old), between 120 and 4,400 for adults from handler activities, and 330 for adults from post-application activities. Because EPA's level of concern for propiconazole is a MOE of 100 or below, these MOEs are not of concern.

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

Propiconazole is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to propiconazole.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in an aggregate MOE of 120 for toddlers (children 1 to 2 years old). Because EPA's level of concern for propiconazole is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency considers the chronic aggregate risk assessment, making use of the cPAD, to be protective of any aggregate cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (HPLC/UV Method AG–671A) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for propiconazole for any of the subject crops in this document.

C. Response to Comments

A comment was received from a private citizen objecting to establishment of tolerances stating that residues should be zero. The Agency has received similar comments from this commenter on numerous previous occasions. Refer to **Federal Register** 70 FR 37686, June 30, 2005; 70 FR 1354, January 7, 2005; 69 FR 63096, October 29, 2004 for the Agency's response to these objections.

V. Conclusion

Therefore, tolerances are established for residues of propiconazole, (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazole) and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound as set forth in the regulatory text. In addition this regulation establishes a time-limited tolerance for residues of propiconazole in or on avocado at 10 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 2, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Amend § 180.434 as follows:

■ i. In the table to paragraph (a), remove the entries for "berry group 13," "onion, bulb," "onion, green," and "strawberry"; revise the entries for "peppermint, tops" and "spearmint, tops", and add alphabetically entries for "bushberry, subgroup 13–07B," "caneberry, subgroup 13–07A," "low growing berry subgroup 13–07G, except cranberry," "onion, bulb subgroup 3–07A," and "onion, green, subgroup 3–07B."

■ ii. In the table to paragraph (b) add alphabetically and entry for "avocado."

The added and revised text reads as follows:

§ 180.434 Propiconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Bushberry, subgroup 13–07B ...	1.0
Caneberry, subgroup 13–07A ..	1.0
* * * * *	
Low growing berry subgroup 13–07G, except cranberry	1.3
* * * * *	
Onion, bulb subgroup 3–07A ...	0.2
Onion, green, subgroup 3–07B	9.0
* * * * *	
Peppermint, tops	10.0
* * * * *	
Spearmint, tops	10.0
* * * * *	

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
Avocado	10	12/31/13
* * * * *		

* * * * *

[FR Doc. 2011–11564 Filed 5–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0938; FRL–8872–6]

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation increases the established tolerance for residues of glyphosate in or on corn, field, forage. Monsanto Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 11, 2011. Objections and requests for hearings must be received on or before July 11, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–

OPP–2010–0938. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0938 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 11, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0938, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 4, 2011 (76 FR 6465) (FRL–8858–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7741) by Monsanto Company, 1300 I St., NW., Suite 450 East, Washington, DC 20052. The petition requested that 40 CFR 180.364 be amended by establishing a tolerance for residues of the herbicide glyphosate, *N*-(phosphonomethyl) glycine, in or on corn, field, forage at 13 parts per million (ppm). That notice referenced a summary of the petition prepared by Monsanto Company, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for glyphosate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with glyphosate follows.

In the **Federal Register** of April 8, 2011 (76 FR 19701) (FRL–8866–8), EPA issued a final rule establishing a tolerance for residues of glyphosate in or on sweet corn and reducing the established tolerance for residues of glyphosate and *N*-acetyl-glyphosate in or on poultry meat. When the Agency conducted the risk assessment in

support of the April 8, 2011 tolerance action, it considered secondary residues of glyphosate in livestock commodities from consumption of glyphosate-treated feed items, including corn forage. The Agency has determined that increasing the tolerance on corn forage from 6 ppm to 13 ppm will not increase residues of glyphosate in livestock commodities above those assumed in the previous risk assessment. The livestock dietary burdens for glyphosate were calculated assuming the roughage portion of the diet for beef and dairy cattle consisted of nongrass animal feed and grass forage, which have much higher tolerances (400 and 300 ppm, respectively) than corn forage. Therefore, increasing the tolerance for corn forage from 6 to 13 ppm will not affect the estimated livestock dietary burden or expected residues of glyphosate in livestock commodities and will not change the estimated aggregate risks resulting from use of glyphosate, as discussed in the April 8, 2011 (76 FR 19701; FRL–8866–8) **Federal Register**. Refer to the **Federal Register** document, available at *http://www.regulations.gov,* for a detailed discussion of the aggregate risk assessment and determination of safety.

Therefore, based on the risk assessment discussed in the final rule published in the **Federal Register** of April 8, 2011 (76 FR 19701; FRL–8866–8) EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to glyphosate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography (HPLC) equipped with a fluorescence detector method; LOQ = 0.05 ppm) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established an MRL for residues of glyphosate in or on maize at 5 ppm. The MRL for maize would cover residues of glyphosate on corn (maize) forage. This MRL is different than the tolerance being established for glyphosate on field corn forage in the United States due to differences in Codex and U.S. residue definitions. The U.S. tolerance of 13 ppm for corn, field, forage is necessarily higher than the Codex MRL to account for residues of both glyphosate and its metabolite N-acetyl glyphosate. N-acetyl glyphosate is found in genetically modified (GMO) glyphosate-resistant commodities, including corn, grown in the U.S. Therefore, it is included in the U.S. tolerance but not the Codex expression, accounting for the difference in the established MRLs.

C. Response to Comments

EPA received comments from two individuals expressing concerns about pesticides generally and objecting to the presence of any pesticide residues in food. The Agency understands the commenters' concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) contemplates that tolerances greater than zero may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. The submitted comments appear to be directed at the underlying statute and not EPA's implementation of it; the commenters made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-For Tolerances

Monsanto Company proposed a tolerance for residues of glyphosate on corn, field, forage at 13 ppm. The current tolerance is expressed in terms of glyphosate, including its metabolites and degradates; and compliance with the tolerance level is determined by measuring glyphosate and its N-acetyl-glyphosate metabolite. EPA is increasing the tolerance level from 6 ppm to 13 ppm, as proposed, but is retaining the current tolerance expression to clarify the chemical moieties that are covered by the tolerance and specify how compliance with the tolerance is to be measured.

V. Conclusion

Therefore, the previously established tolerance for residues of glyphosate, including its metabolites and degradates, in or on corn, field, forage is amended as set forth in the regulatory text.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal

governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 2, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.364 is amended by revising the following entry in the table in paragraph (a)(2) to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

* * * * *

(2) * * *

Commodity	Parts per million
* * * * *	
Corn, field, forage	13
* * * * *	

* * * * *

[FR Doc. 2011–11205 Filed 5–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA–HQ–OPPT–2009–0187; FRL–8874–2]

RIN 2070–AJ43

TSCA Inventory Update Reporting Modifications; Submission Period Suspension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Reporting (IUR) regulations by suspending the next IUR submission period. The IUR requires manufacturers (including importers) of certain chemical substances included on the TSCA Chemical Substance Inventory (TSCA Inventory) to report current data on the manufacturing, processing, and use of the chemical substances. In the **Federal Register** of August 13, 2010, EPA published proposed modifications to the IUR regulations. EPA is suspending the next submission period to allow additional time to finalize the proposed modifications to the IUR regulations, and to avoid finalizing changes to the reporting requirements in the midst of the 2011 submission period. EPA expects to finalize, in the near future, changes to the IUR reporting requirements which will supersede this action.

DATES: This final rule is effective May 11, 2011.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2009–0187. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Chenise Farquharson, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7768; e-mail address: *farquharson.chenise@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including manufacture as a byproduct) or import chemical substances listed on the TSCA Inventory. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers and importers (NAICS codes 325 and 324110; *e.g.,* chemical manufacturing and processing and petroleum refineries).
- Chemical users and processors who may manufacture a byproduct chemical substance (NAICS codes 22, 322, 331, and 3344; *e.g.,* utilities, paper manufacturing, primary metal

manufacturing, and semiconductor and other electronic component manufacturing).

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

II. Background

A. What action is the agency taking?

EPA is amending 40 CFR 710.53 to suspend the next submission period within which manufacturers and importers must report IUR data to EPA. The IUR final rule, published in the **Federal Register** issue of December 19, 2005 (70 FR 75059) (FRL–7743–9), established June 1, 2011 to September 30, 2011, as the second of a series of recurring submission periods for the IUR.

In the **Federal Register** issue of August 13, 2010 (75 FR 49656) (FRL–8833–5), EPA published proposed modifications to the IUR regulations. This action suspends the second IUR submission period, which is the next IUR submission period. Thus, the submission of IUR data for the next submission period will be neither required nor accepted until the suspension has been lifted or superseded by subsequent EPA action. This action to suspend the next submission period is needed due to the length of time which has been necessary to complete work on the proposed modifications and to avoid finalizing changes to the reporting requirements in the midst of the 2011 submission period. This is a one-time suspension of the next submission period only, and it does not alter the timing of subsequent submission periods (*e.g.,* the submission period from June 1, 2016 to September 30, 2016).

This action also addresses, in part, concerns raised by the regulated community (in their comments on the August 13, 2010 proposed rule) about the span of time between the issuance of a final rule modifying the IUR and the close of the next submission period. EPA received numerous comments requesting that the span be sufficient to accommodate the commenters' adjustments to their internal information collection procedures. At the same time, EPA acknowledges the comments it received on behalf of numerous environmental and public health advocates, emphasizing the criticality of the information to be collected under a modified IUR, for purposes of informing future risk-based decisionmaking. While EPA cannot fully respond to comments about the appropriate timing for implementing IUR modifications until those modifications have been finalized, EPA believes that a suspension of the next submission period is necessary at this time given the pending proposed changes. When EPA completes its work to modify the IUR, the Agency expects, in a final rule, to establish the next applicable submission period and supersede the suspension that this action puts in place.

B. What is the agency's authority for taking this action?

The IUR rule is issued pursuant to the authority of section 8(a) of TSCA, 15 U.S.C. 2607(a).

Consistent with section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, EPA is finalizing this action based on public notice and opportunity to comment afforded with respect to the August 13, 2010 proposed rule. See the August 13, 2010 proposed rule (soliciting comment on the transition to new IUR requirements). Alternatively, under section 553(b)(3)(B) of the APA, the Agency may issue a final rule without providing for notice and comment if it demonstrates that it has good cause to do so by finding that notice and comment are impracticable, unnecessary, or contrary to the public interest. For this final rule suspending the next submission period, the Agency finds that the opportunity for notice and comment already afforded on the August 13, 2010 proposed rule met the APA requirement for notice and comment. However, even if it had not, notice and comments on this specific suspension would be impracticable.

The Agency believes that it would be impracticable to afford further opportunity for public comment respecting the suspension of the next submission period, because doing so would defeat the two chief purposes of the action:

1. To address, before the current submission period begins to run, the concerns of regulated industry respecting the span of time that will be available between the expected finalization of the proposed modifications of the IUR and the close of the currently applicable submission period.

2. To accommodate the promulgation of a final rule which EPA expects will modify the IUR reporting requirements in the near future, without having such finalization occur in the midst of an active submission period. The next applicable reporting period would run from June 1, 2011 to September 30, 2011 if not suspended.

If EPA were to delay this action pending further opportunity for public comment, the action to suspend the next submission period would itself be postponed, and likely could not be finalized until the latter part of the submission period, by which point it would be too late to avoid the confusion and duplication of effort that EPA anticipates would likely occur if this submission period were to open prior to the completion of work on the proposed modifications of the submission requirements.

Similarly, under section 553(d) of the APA, 5 U.S.C. 553(d), the Agency may make a rule immediately effective "which grants or recognizes an exemption or relieves a restriction," or otherwise "for good cause found and published with the rule." For the following reasons, EPA has determined that this action "relieves a restriction," that there is also "good cause" to make this amendment effective upon publication in the **Federal Register**, and that this action will be effective immediately upon publication in the **Federal Register**.

Without immediate amendment, 40 CFR 710.53 would provide that the next submission period for the IUR would run from June 1, 2011 to September 30, 2011. The immediately effective upon publication in the **Federal Register** amendment to 40 CFR 710.53 suspends the upcoming submission period. The Agency has determined that an immediate suspension of the next submission period is warranted because it gives affected parties additional time to adjust their behavior in response to other portions of the proposed rule that EPA expects will soon be finalized and because it averts potential confusion and duplication of effort, which could occur if other portions of the proposed rule, substantively affecting the submission requirements of the IUR, become effective in the midst of the IUR submission period itself.

C. What is the status of the proposed IUR modifications rule?

EPA proposed to amend the TSCA section 8(a) IUR rule in the **Federal Register** issue of August 13, 2010. The IUR enables EPA to collect and publish information on the manufacturing, processing, and use of commercial

chemical substances on the TSCA Inventory. This includes current information on chemical production volumes, manufacturing sites, and how the chemical substances are used. This information helps the Agency determine whether people or the environment are potentially exposed to reported chemical substances. In the August 13, 2010 document EPA proposed to amend the IUR rule to require submission of information that will better address Agency and public information needs, improve the usability and reliability of the reported data, and ensure that data are available in a timely manner. EPA also proposed to require electronic reporting of IUR information and to modify IUR reporting requirements, including certain circumstances that trigger reporting, the specific data to be reported, the reporting standard for processing and use information, and CBI reporting procedures. The public comment period for the August 13, 2010 proposed rule closed on October 12, 2010. EPA is completing work on the August 13, 2010 proposed rule and expects to promulgate, in the near future, a final rule addressing IUR modifications.

III. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is classified as a final rule because it makes an amendment to the Code of Federal Regulations (CFR). The amendment to the CFR is necessary to allow for a one-time postponement to the 2011 reporting IUR period. This action does not impose any new requirements or amend substantive requirements. This action is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, November 4, 1993).

B. Paperwork Reduction Act

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Because this action does not impose any new requirements or amend substantive requirements, EPA certifies this action will not have a significant economic impact on a substantial number of small entities and there will be no adverse impact on small entities resulting from this action under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*)

D. Unfunded Mandates Reform Act

This action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132

The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This action does not alter the relationships or distribution of power and responsibilities established by Congress.

F. Executive Order 13175

The Agency has determined that this rule does not have any "Tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 22951, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This final rule will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

This action does not require OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

H. Executive Order 13211

Because this final rule is exempt from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

I. National Technology Transfer Advancement Act

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

J. Executive Order 12898

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

IV. Congressional Review Act

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

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Inventory update reporting, IUR, Reporting and recordkeeping requirements, TSCA.

Dated: May 2, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for part 710 continues to read as follows:

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

■ 2. Add the following sentence to the end of § 710.53 to read as follows:

§ 710.53 When to report.

* * * Notwithstanding the foregoing, and without any alteration of the status or timing of any subsequent submission period, the second submission period (which would otherwise be from June 1, 2011 to September 30, 2011) is suspended.

[FR Doc. 2011–11562 Filed 5–10–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 209

Defense Federal Acquisition Regulation Supplement; Technical Amendment

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to add a mailing address

DATES: *Effective Date:* May 11, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–8384; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS by adding the full mailing address of the General Services Administration (GSA) Debarment and Suspension Official to the DFARS at 209.405(a). Under 10 U.S.C. 2393(b), when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is debarred or suspended from procurement programs, it must provide written notice of the determination to the GSA Suspension and Debarment Official.

List of Subjects in 48 CFR Part 209

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 209 is amended as follows:

PART 209—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for 48 CFR part 209 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. In section 209.405 revise paragraph (a) introductory text to read as follows:

§ 209.405 Effect of listing.

(a) Under 10 U.S.C. 2393(b), when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is debarred or suspended from procurement programs, it must provide written notice of the determination to the General Services Administration (GSA), GSA Suspension and Debarment Official, Office of Acquisition Policy, 1275 First Street, NE., Washington, DC 20417. Examples of compelling reasons are—

* * * * *

[FR Doc. 2011–10264 Filed 5–10–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to direct contracting officers to additional guidance on supporting contingency operations and in-theater security cooperation efforts.

DATES: *Effective Date:* May 11, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–8384; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS by adding language at 225.7404 to direct contracting officers to additional guidance available on contract administration considerations when supporting contingency operations. The rule also adds language and a new subpart at 225.78 directing contracting officers to guidance on theater security cooperation efforts conducted in support of the geographic combatant commander, which may include support such as military exercises/training, base operations, and weapons procurement.

List of Subjects in 48 CFR Part 225

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add section 225.7404 to read as follows:

§ 225.7404 Contract administration in support of contingency operations.

For additional guidance on contract administration considerations when supporting contingency operations, see PGI 225.7404.

■ 3. Add subpart 225.78 to read as follows:

Subpart 225.78—Acquisitions in Support of Geographic Combatant Command's Theater Security Cooperation Efforts

Sec.
225.7801 Policy.

Subpart 225.78—Acquisitions in Support of Geographic Combatant Command's Theater Security Cooperation Efforts

§ 225.7801 Policy.

For guidance on procurement support of the geographic combatant command's theater security cooperation efforts, see PGI 225.78.

[FR Doc. 2011–10085 Filed 5–10–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement; Rules of the Armed Services Board of Contract Appeals

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to update the Rules of the Armed Services Board of Contract Appeals (ASBCA). The final rule implements statutory

increases in the thresholds relating to the submission and processing of contract appeals and updates statutory references and other administrative information.

DATES: *Effective Date:* May 11, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Stanton, Executive Director, ASBCA, 703–681–8503, Internet address: *catherine.stanton@asbca.mil;* or David Houpe, Chief Counsel, ASBCA, 703–681–8510, Internet address: *david.houpe@asbca.mil.*

SUPPLEMENTARY INFORMATION:

I. Background

This final rule is being issued on behalf of Mr. Paul Williams, Chairman, Armed Services Board of Contract Appeals. It amends DFARS Appendix A, Armed Services Board of Contract Appeals, Part 2—Rules, to update thresholds related to requirements for contractor claims and to update information as follows:

○ The *Preface,* section I, has been amended to implement section 3 of Public Law 111–350, 124 Stat. 3677 (2011), which, *inter alia,* revised and renumbered 41 U.S.C. 601–613 to 41 U.S.C. 7101–7109.

○ The *Preface,* section II(a), has been amended to update the Board's address and telephone number.

○ In *Rule 1,* subsections (b) and (c) implement section 2351(b) of Public Law 103–355, 108 Stat. 3322 (1994). Section 2351(b) amended 41 U.S.C. 605(c) to increase, from $50,000 to $100,000, the threshold relating to certification, decision, and notification requirements for contractor claims.

○ *Rule 12.1,* subsection (a), and *Rule 12.3,* subsection (b), implement section 2351(d) of Public Law 103–355, 108 Stat. 3322 (1994). Section 2351(d) amended 41 U.S.C. 608(a) to increase, from $10,000 to $50,000, the threshold for applicability of small claims procedures for disposition of appeals.

○ *Rule 12.1,* subsection (a) implements section 857 of Public Law 109–364, 120 Stat. 2349 (2006). Section 857 amended 41 U.S.C. 608(a) to insert after $50,000 or less" the following language: "Or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), $150,000 or less."

○ *Rule 12.1,* subsection (b), implements section 2351(c) of Public Law 103–355, 108 Stat. 3322 (1994). Section 2351(c) amended 41 U.S.C. 607(f) to increase, from $50,000 to $100,000, the threshold for applicability of accelerated procedures for disposition of appeals.

○ *Rule 28,* subsection (b), implements section 4322(b)(7) of Public Law 104–106, 110 Stat. 677 (1996). Section 4322(b)(7) amended 41 U.S.C. 612 to update statutory references relating to payment of claims. *Rule 28,* subsection (b), also contains changes for consistency with the judgment fund certification process specified in the Treasury Financial Manual, Financial Management Service, Department of the U.S. Treasury.

○ Minor changes have been made throughout the Rules to ensure uniformity and to correct typographical errors.

A proposed rule was published in the **Federal Register** at 76 FR 7782 on February 11, 2011. No comments were received in response to the proposed rule.

II. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule implements current statutory provisions relating to the submission and processing of contract appeals, primarily adjusting current dollar limits affecting the processing of contract appeals to keep pace with inflation. Therefore, the adjustment of thresholds just maintains the status quo. Accordingly, DoD has not performed a final regulatory flexibility analysis. DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule implements current statutory provisions relating to the submission and processing of contract appeals, primarily adjusting current dollar limits affecting the processing of contract appeals to keep pace with inflation. Therefore, the adjustment of thresholds just maintains the status quo.

IV. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR, Appendix A, Part 2

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR chapter 2 is amended as follows:

Chapter 2—Defense Acquisition Regulations System, Department of Defense

■ 1. The authority citation for 48 CFR chapter 2 continues to read as follows:

Authority: 41 U.S.C. 1707 and 48 CFR chapter 1.

■ 2. Appendix A to Chapter 2 is amended by revising Part 2—Rules to read as follows:

Appendix A to Chapter 2—Armed Services Board of Contract Appeals

* * * * *

Part 2—Rules
Approved 15 July 1963
Revised 1 May 1969
Revised 1 September 1973
Revised 30 June 1980
Revised 11 May 2011

RULES OF THE ARMED SERVICES BOARD OF CONTRACT APPEALS

PREFACE

I. Jurisdiction for Considering Appeals

The Armed Services Board of Contract Appeals (referred to herein as the Board) has jurisdiction to decide any appeal from a decision of a contracting officer, pursuant to the Contract Disputes Act, 41 U.S.C. §§ 7101–7109, or its Charter, relative to a contract made by (i) the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force or the National Aeronautics and Space Administration or (ii) any other department or agency, as permitted by law.

II. Location and Organization of the Board

(a) The Board's address is Skyline Six, Room 703, 5109 Leesburg Pike, Falls Church, VA 22041–3208, telephone 703–681–8500 (receptionist), 703–681–8502 (Recorder).

(b) The Board consists of a Chairman, two or more Vice Chairmen, and other members, all of whom are attorneys at law duly licensed by a State, commonwealth, territory,

or the District of Columbia. Board members are designated Administrative Judges.

(c) There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearings may be held by a designated member (Administrative Judge), or by a duly authorized examiner. Except for appeals processed under the expedited or accelerated procedure, the decision of a majority of a division constitutes the decision of the Board, unless the Chairman refers the appeal to the Board's Senior Deciding Group (consisting of the Chairman, Vice Chairmen and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty or significant precedential importance, or which have occasioned serious dispute within the normal division decision process. For decisions of appeals processed under the expedited or accelerated procedure, see Rules 12.2(c) and 12.3(b).

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RULES

PRELIMINARY PROCEDURES

Rule 1. Appeals, How Taken

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $100,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not provided one within the period required, the contractor may file a notice of appeal as provided in subparagraph (a) of this Rule, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a properly certified claim over $100,000 to the contracting officer or has requested a decision by the contracting officer which presently involves no monetary amount pursuant to the Disputes clause, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in subparagraph (a) of this Rule, citing the failure of the contracting officer to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) of this Rule, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under (b) or (c) of this Rule, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

Rule 2. Notice of Appeal, Contents of

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

Rule 3. Docketing of Appeals

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these Rules, and to the contracting officer.

Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File

(a) *Duties of Contracting Officer*—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time specified in paragraph (a) of this Rule, the contracting officer shall furnish the appellant a copy of each document the contracting officer transmits to the Board, except those in subparagraph (a)(2) of this Rule. As to the latter, a list furnished the appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the Appellant*—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which the appellant considers relevant to the appeal, and furnish two copies of such documents to the Government trial attorney.

(c) *Organization of Appeal File*—Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents*—Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document for which such a waiver has been granted, the party shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the filing party.

(e) *Status of Documents in Appeal File*—Documents contained in the appeal file are

considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) Notwithstanding the foregoing, the filing of the Rule 4(a) and (b) documents may be dispensed with by the Board either upon request of the appellant in its notice of appeal or thereafter upon stipulation of the parties.

Rule 5. Motions

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular appeal, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

Rule 6. Pleadings

(a) *Appellant*—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of its claims. The appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government unless a copy has been provided directly by the appellant. Should the complaint not be received within 30 days, the appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government*—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise, and direct statements of the Government's defenses to each claim asserted by the appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon the appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(c) A party who intends to raise an issue concerning the law of a foreign country shall give notice in its pleadings or other reasonable written notice. The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 11, 13, or 20. The determination of foreign law shall be treated as a ruling on a question of law.

Rule 7. Amendments of Pleadings or Record

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided however, that the objecting party may be granted a continuance, if necessary, to enable it to meet such evidence.

Rule 8. Hearing Election

After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

Rule 9. Prehearing Briefs

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

Rule 10. Prehearing or Presubmission Conference

(a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pre-trial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

Rule 12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures (These procedures are available solely at the election of the appellant.)

12.1 Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

(a) In appeals where the amount in dispute is $50,000 or less, or in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), $150,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal where the amount in dispute is $50,000 or less.

(b) In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or

the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election, once made, may not be withdrawn except with permission of the Board and for good cause.

12.2 The SMALL CLAIMS (EXPEDITED) Procedure

(a) In appeals proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that Rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of the appellant's notice of election, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal; and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these Rules, as necessary, to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in appeals processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and will contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as are deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) A decision against the Government or the appellant shall have no value as precedent, and in the absence of fraud, shall be final and conclusive and may not be appealed or set aside.

12.3 The ACCELERATED Procedure

(a) In appeals proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these Rules, including Rule 4, as necessary, to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in appeals processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of a Vice Chairman, or by a majority among these two and the Chairman in case of disagreement. Alternatively, in an appeal where the amount in dispute is $50,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as are deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

12.4 Motions for Reconsideration in Rule 12 Appeals

Motions for reconsideration of appeals decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

Rule 13. Settling the Record

(a) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated to be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 14. Discovery—Depositions

(a) *General Policy and Protective Orders*—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time, and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted*—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions*—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence*—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses*—Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas*—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

Rule 15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service; (b) a request for the admission of specified facts and/or of the authenticity of any documents, to be answered or objected to within 45 days after service; the factual statements and/or the authenticity of the documents to be deemed admitted upon failure of a party to

respond to the request; and (c) a request for the production, inspection, and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

Rule 16. Service of Papers Other Than Subpoenas

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers, and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

HEARINGS

Rule 17. Where and When Held

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

Rule 18. Notice of Hearings

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

Rule 19. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

Rule 20. Hearings: Nature, Examination of Witnesses

(a) *Nature of Hearings*—Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding Administrative Judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses*—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his or her statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

Rule 21. Subpoenas

(a) *General*—Upon written request of either party filed with the Recorder, or on his or her own initiative, the Administrative Judge to whom an appeal is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(1) Testimony at a deposition—the deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the Board;

(2) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books and papers—in addition to (1) or (2), the production by the witness at the deposition or hearing of books and papers (including electronically stored information and other tangible things) designated in the subpoena.

(b) *Voluntary Cooperation*—Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoena*—

(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion, the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify*—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy of the request has been served upon the opposing party.

(e) *Form: Issuance*—

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in his or her discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service*—

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena*—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

Rule 22. Copies of Papers

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

Rule 23. Post-Hearing Briefs

Post-hearing briefs may be submitted upon such terms as may be directed by the presiding Administrative Judge or examiner at the conclusion of the hearing.

Rule 24. Transcript of Proceedings

Testimony and argument at hearings shall be reported verbatim, unless the Board

otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be established by contract between the Board and the reporter, provided that ordinary copy of transcript shall be supplied to the appellant at an amount no greater than the cost of duplication.

Rule 25. Withdrawal of Exhibits

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

Rule 26. The Appellant

An individual appellant may appear before the Board in person; a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any State, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

Rule 27. The Government

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given the appellant or the appellant's attorney in the form specified by the Board from time to time.

DECISIONS

Rule 28. Decisions

(a) Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The Rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(b) Any monetary award to a contractor by the Board shall be promptly paid in accordance with the procedures provided by 31 U.S.C. 1304, as amended. To assure prompt payment the Recorder will forward the required forms to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute the waiver forms which so state. The Government agency will forward the waiver and other forms with a copy of the decision to the Department of the Treasury for certification of payment.

MOTION FOR RECONSIDERATION

Rule 29. Motion for Reconsideration

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

SUSPENSIONS, DISMISSALS, DEFAULTS, REMANDS

Rule 30. Suspensions; Dismissal Without Prejudice

The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed to be with prejudice.

Rule 31. Dismissal or Default for Failure To Prosecute or Defend

Whenever a record discloses the failure of either party to file documents required by these Rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good cause is not shown, the Board may take appropriate action.

Rule 32. Remand From Court

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these Rules.

TIME, COMPUTATION, AND EXTENSIONS

Rule 33. Time, Computation, and Extensions

(a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a Federal legal public holiday, in which event the period shall run to the end of the next business day.

EX PARTE COMMUNICATIONS

Rule 34. Ex Parte Communications

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

SANCTIONS

Rule 35. Sanctions

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

EFFECTIVE DATE AND APPLICABILITY

Rule 36. Effective Date

These Rules shall apply

(a) Mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and

(b) At the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

PAUL WILLIAMS MAY 11, 2011
CHAIRMAN
ARMED SERVICES BOARD OF CONTRACT APPEALS

[FR Doc. 2011–9910 Filed 5–10–11; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 76, No. 91
Wednesday, May 11, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0033; Directorate Identifier 2011–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Dowty Propellers Type R212/4–30–4/22 and R251/4–30–4/49 Propeller Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> Reports have been received from a small number of HS.748 operators of finding cracks in the propeller hub port buttress threads of R212 and R251 propellers. The affected hubs had accumulated in excess of 6,000 flight hours. This condition, if not detected and corrected, could lead to propeller blade separation, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.

We are proposing this AD to prevent propeller hub failure due to cracks in the hub, which could result in damage to the airplane.

DATES: We must receive comments on this proposed AD by June 27, 2011.

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

- *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.

Contact Dowty Propellers, 114 Powers Court, Sterling, VA 20166, telephone (703) 421–4434; fax (703) 450–0087, for the service information identified in this proposed AD.

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 (phone (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.

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *michael.schwetz@faa.gov;* telephone (781) 238–7761; fax (781) 238–7170.

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–2011–0033; Directorate Identifier 2011–NE–01–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0012, dated January 20, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Reports have been received from a small number of HS.748 operators of finding cracks in the propeller hub port buttress threads of R212 and R251 propellers. The affected hubs had accumulated in excess of 6,000 flight hours. This condition, if not detected and corrected, could lead to propeller blade separation, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.

The cracks originating from the root of the buttress threads in the blade ports, are caused by high-cycle fatigue. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dowty Propellers has issued Alert Service Bulletin (ASB) No. 61–1043, Revision 6, dated January 5, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the United Kingdom, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop in other products of the same type design. This proposed AD would require initial and repetitive

inspections of the buttress threads in the propeller hub ports for cracks.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 2 propellers installed on one airplane of U.S. registry. We also estimate that it would take about 1 work-hour per propeller to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $20,000 per propeller. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $40,170.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dowty Propellers (formerly Dowty Aerospace; Dowty Rotol Limited; and Dowty Rotol): Docket No. FAA–2011–0033; Directorate Identifier 2011–NE–01–AD.

Comments Due Date

(a) We must receive comments by June 27, 2011.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Dowty Propellers type R212/4–30–4/22 propeller assemblies with hub and driving center assembly part number (P/N) 601022105, 601022211, 601022294, 601021426, 601021858, or 601021859 installed, and type R251/4–30–4/49 propeller assemblies with hub and driving center assembly P/N 660207202 or P/N 660207203 installed.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following:

(1) Within 500 flight hours after the effective date of this AD, and thereafter at intervals not exceeding 500 flight hours, inspect the buttress threads in the propeller hub and driving center assembly, for cracks.

(2) Use paragraphs 2.A.(1) through 2.A.(4)(a) of Accomplishment Instructions of Dowty Propellers Alert Service Bulletin No. 61–1043, Revision 6, dated January 5, 2011, and NDT Technique NDT 175U (Appendix A of Dowty Propellers Alert Service Bulletin No. 61–1043, Revision 6, dated January 5, 2011), to do the inspection.

(3) If a crack is found, remove the propeller assembly from service before further flight.

(4) After the effective date of this AD, do not install this propeller on any airplane unless the propeller hub and driving center has passed the inspections required by this AD.

FAA AD Differences

(f) This AD differs from the service information as follows:

(1) Although the service bulletin tells you to return the affected parts to the manufacturer, this AD does not require that action.

(2) Although the service bulletin tells you to submit information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD 2011–0012, dated January 20, 2011, and Dowty Propellers Alert Service Bulletin No. 61–1043, Revision 6, dated January 5, 2011, for related information. Contact Dowty Propellers, 114 Powers Court, Sterling, VA 20166, telephone (703) 421–4434; fax (703) 450–0087, for a copy of this service information.

(i) Contact Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *michael.schwetz@faa.gov;* telephone (781) 238–7761; fax (781) 238–7170, for more information about this AD.

Issued in Burlington, Massachusetts, on April 28, 2011.

Peter A. White,

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

[FR Doc. 2011–11480 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0187; Directorate Identifier 2011–NE–07–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–10E2A1; CF34–10E5, CF34–10E5A1; CF34–10E6; CF34–10E6A1; CF34–10E7; and CF34–10E7–B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above with certain part number (P/N) fan rotor spinners

installed. This proposed AD would require removing from service certain fan rotor blade retainers, and removing from service the fan rotor spinner support that was installed with those fan rotor blade retainers. This proposed AD was prompted by a fan rotor spinner support found cracked at the attachment lugs. We are proposing this AD to prevent high-cycle fatigue cracking of the fan rotor spinner support attachment lugs, leading to separation of the fan rotor spinner assembly, uncontained failure of the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by June 27, 2011.

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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact GE-Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215, telephone 513–552–3272; e-mail: *geae.aoc@ge.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7756; fax: 781–238–7199; e-mail: *john.frost@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0187; Directorate Identifier 2011–NE–07–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

Investigation of a General Electric Company (GE) CF34–10E turbofan engine experiencing high fan frame vibrations led to removal of the fan rotor spinner. Eight of the twelve attachment lugs on the fan rotor spinner support were found cracked. The cause of the vibration was determined to be a non-synchronous vibration induced by a spinner redesign that removed an interference between the fan blade retainers and the spinner. This condition, if not corrected, could result in high-cycle fatigue cracking of the fan rotor spinner support attachment lugs, leading to separation of the fan rotor spinner assembly, uncontained failure of the engine, and damage to the airplane.

Relevant Service Information

We reviewed GE Service Bulletin (SB) No. CF34–10E–S/B 72–0186, dated January 31, 2011. The SB describes procedures for replacement of the fan rotor blade retainers with redesigned retainers that reintroduce the interference between the fan blade retainers and the spinner. The SB also describes procedures for replacement of the fan rotor spinner support, with a new support of the same P/N.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require removing from service fan rotor blade retainers, P/N 2050M56P02, and removing from service the fan rotor spinner support that was installed with those fan rotor blade retainers.

Costs of Compliance

We estimate that this proposed AD would affect 164 engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per engine to perform the actions required by this proposed AD, and that the average labor rate is $85 per work-hour. If all removed parts get replaced, required parts would cost about $10,458 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,742,992.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2011–0187; Directorate Identifier 2011–NE–07–AD.

Comments Due Date

(a) We must receive comments by June 27, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–10E2A1; CF34–10E5, CF34–10E5A1; CF34–10E6; CF34–10E6A1; CF34–10E7; and CF34–10E7–B turbofan engines, with a fan rotor spinner part number (P/N) 2050M34G03; 2050M34G04; 2050M34G05; 2050M34G06; 2437M60G01; or 2437M60G02, installed.

Unsafe Condition

(d) This AD was prompted by a fan rotor spinner support found cracked at the attachment lugs. We are issuing this AD to prevent high-cycle fatigue cracking of the fan rotor spinner support attachment lugs, leading to separation of the fan rotor spinner assembly, uncontained failure of the engine, and damage to the airplane.

Compliance

(e) Comply with this AD within 1,800 hours-in-service after the effective date of this AD, unless already done.

Removal of Fan Rotor Blade Retainers

(f) Remove from service the 24 fan rotor blade retainers, P/N 2050M56P02.

Removal of Fan Rotor Spinner Support

(g) Remove from service the fan rotor spinner support that operated with the fan rotor blade retainers removed in paragraph (f) of this AD.

Installation Prohibition

(h) After the effective date of this AD, do not install any fan rotor blade retainer, P/N 2050M56P02, into any engine. Do not attempt to repair, make serviceable, or re-install, this part.

(i) After the effective date of this AD, do not install any fan rotor spinner support removed in paragraph (g) of this AD, into any engine. Do not attempt to repair, make serviceable, or re-install, this part.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) For more information about this AD, contact John Frost, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7756; *fax:* 781–238–7199; *e-mail: john.frost@faa.gov.*

(l) Refer to GE Service Bulletin No. CF34–10E–S/B 72–0186, dated January 31, 2011, for related information. Contact GE-Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215, telephone 513–552–3272; *e-mail: geae.aoc@ge.com,* for a copy of this service information. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on April 28, 2011.

Peter A. White,

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

[FR Doc. 2011–11481 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0211]

RIN 1625–AA08

Special Local Regulation; Partnership in Education, Dragon Boat Race; Maumee River, Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a permanent Special Local Regulation on the Maumee River, Toledo, Ohio. This regulation is intended to restrict vessels from portions of the Maumee River during the Dragon Boat Races which take place during the third or fourth weekend in July each year. This special local regulated area is necessary to protect race participants from other vessel traffic.

DATES: Comments and related material must be received by the Coast Guard on or before June 10, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0211 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail BM1 Tracy Girard, Response Department, MSU Toledo, Coast Guard; telephone (419) 418–6036, e-mail *Tracy.M.Girard@uscg.mil.* 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.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0211), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when the comment is successfully

transmitted; a comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu, select "Proposed Rule" and insert "USCG–2011–0211" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments 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 and may change the rule based on your comments.

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,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0211" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting 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**.

Basis and Purpose

This special local regulated area is necessary to protect race participants from other vessel traffic. The Captain of the Port Detroit has determined dragon boat races in close proximity to watercraft and in the shipping channel pose a significant risk to public safety and property. Establishing a Special Local Regulation around the location of the race's course will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

This proposed rule is intended to ensure safety of the public and vessels during the Dragon Boat Races. This proposed rule will become effective 30 days after the final rule is published in the **Federal Register**. However, the Special Local Regulation will only be enforced annually on the third or fourth Saturday in July from 6 a.m. until 6 p.m. Vessels seeking to transit through the area of the race should contact the Captain of the Port or his or her on-scene representative. The on-scene representative may be present on any Coast Guard, state or local law enforcement, or sponsor provided vessel assigned to patrol the event. The on-scene representatives may permit vessels to transit the area when no race activity is occurring. Vessel traffic may proceed down the West side of the river at a no wake speed during racing. The races will stop for oncoming freighter or commercial traffic.

This Special Local Regulation will encompass all navigable waters of the United States on the Maumee River, Toledo, OH, bound by a line extending from a point on land just south of the Cherry Street bridge at position 41°39′04.00″ N; 083°31′35.78″ W straight across the river along the Cherry Street bridge to position 41°39′11.44″ N; 083°31′44.36″ W and a line extending from a point of land just north of the bow of the SS Boyer museum ship at position 41°38′37.26″ N; 083°31′ 53.86″ W straight across the river to the shore adjacent to the Owens Corning building at position 41°38′38.943″ N; 083°32′3.980″ W.

The Captain of the Port will notify the affected segments of the public of the enforcement of this Special Local Regulation by all appropriate means. Means of notification may include publication of Notice of Enforcement (NOE) in the **Federal Register**, Broadcast Notice to Mariners, and Local Notice to Mariners.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The Special Local Regulation will be relatively small and exist for a relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the area when permitted by the Captain of the Port.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule

would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the portion of the Maumee River discussed above between 6 a.m. and 6 p.m. on Saturdays in July.

This Special Local Regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for approximately twelve hours during the one day each year that it is enforced. In addition, on-scene representatives will allow vessels to transit along the Western side of the river at a slow speed. The race committee will stop the races to allow commercial traffic to transit.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM1 Tracy Girard, Response Department, MSU Toledo, Coast Guard; telephone (419) 418–6036, e-mail *Tracy.m.girard@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a Special Local Regulation and is therefore categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction. During the permitting process for this Dragon Boat Race event an environmental analysis is conducted, and thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) are required for this rulemaking action. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.902 to read as follows:

§ 100.902 Partnership in Education Dragon Boat Festival, Toledo, OH.

(a) *Regulated area.* The regulated area includes all U.S. navigable waters of the Maumee river, Toledo, OH, within an area bound on the north by a line extending from a point on land just south of the Cherry Street bridge at position 41°39′04.00″ N; 083°31′35.78″ W straight across the river along the Cherry Street bridge to position 41°39′11.44″ N; 083°31′44.36″ W and bound on the south by a line extending from a point of land just north of the bow of the SS Boyer museum ship at position 41°38′37.26″ N; 083°31′53.86″ W straight across the river to the shore adjacent to the Owens Corning building at position 41°38′38.943″ N; 083°32′3.980″ W. (DATUM: NAD 83).

(b) *Special local regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Enforcement period.* These Special Local Regulations will be enforced annually on the third or fourth Saturday of July from 6 a.m. until 6 p.m.

Dated: April 26, 2011.

E.J. Marohn,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2011–11543 Filed 5–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[USCG–2010–0833]

Port Access Route Study: In the Bering Strait; Extension of Comment Period

AGENCY: Coast Guard, DHS.

ACTION: Notice of extension of public comment period.

SUMMARY: On November 8, 2010, USCG published a Notice of Study and request for comments for the Port Access Route Study: In the Bering Strait. In this action, USCG is providing notice that the public comment period is extended until September 6, 2011. This action will provide the public with additional time and opportunity to provide the Coast Guard with information regarding the Port Access Route Study: In the Bering Strait.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before September 6, 2011, or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0833 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call or e-mail Lieutenant Faith Reynolds, Project Officer, Seventeenth Coast Guard District, telephone 907–463–2270; e-mail *Faith.A.Reynolds@uscg.mil;* or George Detweiler, Office of Waterways Management, Coast Guard, telephone 202–372–1566, e-mail *George.H.Detweiler@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee K. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: On November 8, 2010, USCG published a Notice of Study and request for comments for the Port Access Route Study: In the Bering Strait (75 FR 68568). The comment period in that document closed May 9, 2011. In this action, USCG is providing notice that the public comment period is extended until September 6, 2011.

Public Participation and Request for Comments

We encourage you to participate in this study 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.

Submitting comments: If you submit comments, please include the docket number for this notice (USCG–2010–0833), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Notices" and insert "USCG–2010–0833" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit your comments by mail or hand 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.

Viewing comments and documents: To view comments and documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0833" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m.,

Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of 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 a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

This notice is issued under authority of 33 U.S.C. 1223(c) and 5 U.S.C. 552.

Christopher C. Colvin,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2011–11544 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[USCG–2011–0351]

Port Access Route Study: The Atlantic Coast From Maine to Florida

AGENCY: Coast Guard, DHS.

ACTION: Notice of study; request for comments.

SUMMARY: In order to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places along the eastern seaboard of the United States, the Coast Guard is conducting a Port Access Route Study (PARS) to evaluate the continued applicability of, and the need for modifications to, current vessel routing measures. The data gathered during this Atlantic Coast PARS may result in establishment of one or more new vessel routing measures, modification of existing routing measures, or disestablishment of existing routing measures off the Atlantic Coast between Maine and Florida. The goal of the Atlantic Coast PARS is to enhance navigational safety by examining existing shipping routes and waterway uses, and, to the extent practicable, reconciling the paramount right of navigation within designated port access routes with other reasonable waterway uses such as the leasing of outer continental shelf blocks for the construction and operation of offshore renewable energy facilities. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments and related material must reach the Docket Management Facility on or before August 9, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0351 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study contact George Detweiler, Office of Navigation Systems, Coast Guard, telephone 202–372–1566, e-mail *George.H.Detweiler@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee K. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this study 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.

A. Submitting comments: If you submit comments, please include the docket number for this rulemaking (USCG–2011–0351), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Notice" and insert "USCG–2011–0351" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand 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.

B. Viewing the comments and documents: To view the comments and documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0351" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act: Anyone can search the electronic form of 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 a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Definitions

The following definitions (except as noted by an asterisk) are from the International Maritime Organization's (IMO's) publication "Ships' Routeing," Tenth Edition, 2010, and should help you review this notice:

Area to be avoided (ATBA) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all vessels, or certain classes of vessels.

Deep-water route means a route within defined limits, which has been accurately surveyed for clearance of sea

bottom and submerged obstacles as indicated on nautical charts.

Exclusive economic zone (EEZ)* means the zone established by Presidential Proclamation 5030, dated March 10, 1983.

Fairway or shipping safety fairway (33 CFR 166)* means a lane or corridor in which no artificial island or fixed structure, whether temporary or permanent, will be permitted. Temporary underwater obstacles may be permitted under certain conditions described for specific areas in Title 33 CFR 166, Subpart B. Aids to navigation approved by the U.S. Coast Guard may be established in a fairway.

Inshore traffic zone means a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

*Obstruction** (33 CFR 64.06) means anything that restricts, endangers, or interferes with navigation.

Precautionary area means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of vessels in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specially examined to ensure so far as possible that it is free of dangers and along which vessels are advised to navigate.

*Regulated Navigation Area (RNA)** means a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR 165.

Roundabout means a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

Separation Zone or separation line means a zone or line separating the traffic lanes in which vessels are proceeding in opposite or nearly opposite directions; or separating a traffic lane from the adjacent sea area; or separating traffic lanes designated for particular classes of vessels proceeding in the same direction.

*Structure** (33 CFR 64.06) means any fixed or floating obstruction, intentionally placed in the water, which may interfere with or restrict marine navigation.

Traffic lane means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones may constitute a boundary.

Traffic Separation Scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measure aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

III. Background and Purpose

A. Requirement for port access route studies: Under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223(c)), the Commandant of the Coast Guard shall designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from United States ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a port access route study (PARS), *i.e.* a study of potential traffic density and the need for safe access routes for vessels, before establishing or adjusting fairways or TSSs. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses such as construction and operation of renewable energy facilities and other uses of the Atlantic Ocean in the study area.

B. Previous port access route studies: A number of port-specific studies have been conducted for the major ports along the Atlantic seaboard of the United States. However, there has never been a PARS conducted for the entire Atlantic coast designed to analyze all vessel traffic proceeding to and from all the ports and transiting through the United States Exclusive Economic Zone (EEZ).

C. Necessity for a new port access route study: Given the current desire to identify alternative energy sites on the Atlantic Coastal Continental Shelf, the leasing of Outer Continental Shelf (OCS) blocks by the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), and the nascent Coastal and Marine Spatial Planning (CMSP) effort, the Coast Guard has determined that a PARS for the entire Atlantic Coast (Maine to Florida) needs to be conducted. This PARS will not focus on the many port areas from the sea buoy into the ports. Rather, it will focus on the coastwise shipping routes and near coastal users of the Western Atlantic Ocean between the coastal ports, and the approaches to coastal ports within the EEZ. This Atlantic Coast PARS will identify all current and new users of the Western Atlantic near coastal zone, and help the Coast Guard determine what impact, if any, the siting, construction and operation of proposed alternative energy facilities may have on existing near coastal users of the Western Atlantic Ocean.

In November 2010, the Secretary of the Department of the Interior (DOI) announced Wind Energy Areas (WEAs) off the coasts of Massachusetts, New Jersey, Delaware, Maryland, Rhode Island and Virginia, and the intention to identify other areas off New York, Maine, North Carolina, South Carolina, and Georgia in 2011. These WEAs are offshore locations that appear most suitable for wind energy development. All of the identified WEAs are located at or near the entrances to major ports as the wind energy in these areas is suitable for possible commercial exploitation, the depth of water is adequate for wind farm construction, and there is landside electrical energy infrastructure to connect the wind farms.

The locations of some of the identified WEAs are at the seaward terminus of existing navigational TSSs. Other WEAs are located in or very near the traditional routes used by vessels in foreign trade and on Atlantic coastwise transits. The impact to safe and efficient navigation appears to be significant; although not yet characterized.

To ensure safety of navigation, the Coast Guard needs to fully characterize the impacts of rerouting traffic, funneling traffic, and placement of structures (*e.g.,* wind turbines) that may obstruct navigation. Some of the impacts may include increased vessel traffic density, more restricted offshore vessel routing (seaward of pilotage

areas), fixed navigation obstructions, underwater cable hazards, and economic impacts. Analyzing the various impacts will require a thorough understanding of the interrelationships of shipping, other commercial and recreational uses, and port operations.

IV. This PARS: Timeline, Study Area, and Process

The Coast Guard's Atlantic Area Command will conduct this PARS. The study will begin upon publication of this notice and should take approximately 12 months to complete.

The study area will encompass the entire EEZ of the Atlantic Coast from Maine to Florida and will encompass coastwise routes and the approaches to all Atlantic coastal ports.

As part of this study, we will analyze vessel traffic density, fishing vessel information, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and the efficiency of vessel traffic. The recommendations may lead to future rulemakings or appropriate international agreements.

Possible Scope of the Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will help us identify any problems and appropriate solutions. The study may recommend that we—

- Maintain the current vessel routing measures;
- Modify the existing traffic separation schemes;
- Create one or more precautionary areas;
- Create one or more inshore traffic zones;
- Establish area(s) to be avoided;
- Create deep-draft routes;
- Establish Regulated Navigation Areas (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water; and
- Identify any other appropriate ships' routing measures.
- Use this study for future decisions on routing measures or other maritime traffic considerations.
- Use this study to inform other agencies concerning the impacts of their future endeavors.

Questions

To help us conduct the port access route study, we request information that will help answer the following questions, although comments on other issues addressed in this notice are also welcome. In responding to a question, please explain your reasons for each answer and follow the instructions under "Public Participation and Request for Comments" above.

1. What navigational hazards do vessels operating in the study area face? Please describe.
2. Are there strains on the current vessel routing systems, such as increasing traffic density associated with future growth, *e.g.,* impact of the Panama Canal expansion project? Please describe.
3. Are modifications to existing vessel routing measures needed to address hazards and improve traffic efficiency in the study area? If so, please describe.
4. What costs and benefits are associated with the measures listed as potential study recommendations? What measures do you think are most cost-effective?
5. What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?
6. Where do you transit? Where are your transit routes? What criteria are used in determining your transit routes?

This notice is issued under authority of 33 U.S.C. 1223(c) and 5 U.S.C. 552.

Dated: May 3, 2011.

Robert C. Parker,

Vice Admiral, U.S. Coast Guard, Commander, Atlantic Area.

[FR Doc. 2011–11483 Filed 5–10–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0255–201050; FRL–9303–8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Kentucky; Ohio; Huntington-Ashland Nonattainment Area; Determinations of Attainment of the 1997 Annual Fine Particulate Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two determinations regarding the tri-state Huntington-Ashland, West Virginia-Kentucky-Ohio fine particulate matter ($PM_{2.5}$) nonattainment Area (hereafter referred to as "the Huntington-Ashland Area" or "Area"). First, EPA is proposing to determine that the Area has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). This proposed determination of attainment is based upon complete, quality-assured and certified ambient air monitoring data for the 2007–2009 period showing that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS, and data available to date for 2010 in EPA's Air Quality System (AQS) database that show the area continues to attain. If EPA finalizes this proposed determination of attainment, the requirements for the Area to submit attainment demonstrations and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended for so long as the Area continues to attain the annual $PM_{2.5}$ NAAQS. Second, EPA is also proposing to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

DATES: Comments must be received on or before June 10, 2011.

ADDRESSES: Submit your comments regarding the tri-state Huntington-Ashland Area, identified by Docket ID No. EPA–R04–OAR–2010–0255, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9040.
4. *Mail:* EPA–R04–OAR–2010–0255, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements

should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0255. 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 *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: In Region 3, Ellen Wentworth, Office of Air Program Planning, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2023. The telephone number is (215) 814–2034. Ms. Wentworth can also be reached via electronic mail at *wentworth.ellen@epa.gov.* In Region 4, Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Mr. Huey's telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.* Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov.* In Region 5, John Summerhays, Air Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. Mr. Summerhays' telephone number is (312) 886–6067. Mr. Summerhays can also be reached via electronic mail at *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What actions is EPA taking?
II. What is the background for these actions?
III. Has the Huntington-Ashland area attained the 1997 annual $PM_{2.5}$ standard?
A. Criteria
B. Huntington-Ashland Area Air Quality
C. How did EPA address air quality in Lawrence County?
D. Has the Huntington-Ashland area met the 1997 annual $PM_{2.5}$ air quality standard?
IV. What is the effect of these actions?
V. Statutory and Executive Order Reviews

I. What actions is EPA taking?

In accordance with Section 179(c)(1) of the Clean Air Act (CAA), 42 U.S.C. 7509(c)(1), and 40 CFR 51.1004(c), EPA is proposing to determine that the Huntington-Ashland Area (which consists of portions in West Virginia, Kentucky, and Ohio) has attained the 1997 annual $PM_{2.5}$ NAAQS. The proposal is based upon quality-assured and certified ambient air monitoring data for the 2007–2009 monitoring period that show that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS, and data available to date for 2010 that show the Area continues to attain. EPA is also proposing to determine, in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664), that the Huntington-Ashland Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

II. What is the background for these actions?

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations (hereafter referred to as "the annual $PM_{2.5}$ NAAQS" or "the annual standard"). At that time, EPA also established a 24-hour standard of 65 μg/m^3 (the "1997 24-hour standard"). *See* 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Huntington-Ashland Area was designated nonattainment for the 1997 $PM_{2.5}$ NAAQS during this designations process. *See* 40 CFR 81.349 (West Virginia), 40 CFR 81.318 (Kentucky), and 40 CFR 81.336 (Ohio). The Huntington-Ashland Area is composed of Cabell and Wayne Counties in their entireties and a portion of Mason County (Graham Tax District) in West Virginia; Boyd County in its entirety and a portion of Lawrence County in Kentucky; and a portion of Adams, a portion of Gallia, Lawrence, and Scioto Counties in Ohio.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 μg/m^3 based on a 3-year average of the 98th percentile of 24-hour concentrations (the "2006 24-hour standard"). On November 13, 2009, EPA designated the Huntington-Ashland Area as attainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Huntington-Ashland Area was designated as nonattainment for the annual standard but attainment for the 1997 24-hour standard. Thus, today's action does not address attainment of either the 1997 or the 2006 24-hour standard.

In response to legal challenges of the annual standard promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this standard to EPA for further consideration. *See American*

Farm Bureau Federation and National Pork Producers Council, et al. v. *EPA,* 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ Implementation Rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and Tribal plans to implement the 1997 $PM_{2.5}$ standard. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the standard, as discussed below.

III. Has the Huntington-Ashland area attained the 1997 annual $PM_{2.5}$ standard?

A. Criteria

Today's proposed rulemaking assesses whether (1) the Huntington-Ashland Area has attained the 1997 annual $PM_{2.5}$ NAAQS, based on the most recent three years of quality-assured data, and (2) whether the Area attained that NAAQS by its applicable attainment date of April 5, 2010.

Under EPA regulations at 40 CFR 50.7, the 1997 annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the subject area.

B. Huntington-Ashland Area Air Quality

EPA has determined that the $PM_{2.5}$ monitoring network for the Huntington-Ashland Area is adequate based on the following reasons. First, the number of monitors in the Area meets the minimum regulatory requirements given in 40 CFR 58 Appendix D. Second, the monitoring is in accordance with state monitoring plans that have been reviewed and approved by the respective EPA regional offices.

Table 1 shows the design values (*i.e.,* the 3-year average of annual mean $PM_{2.5}$ concentrations) for the 1997 annual $PM_{2.5}$ NAAQS for the Huntington-Ashland Area monitors for the years 2007–2009. All data considered have been quality-assured, certified, and recorded in AQS. The highest 3-year average annual concentration for 2007–2009 on this table was recorded in Cabell County, West Virginia at the Huntington site—54–011–0006, recording a 3-year average annual concentration of 14.3 μg/m³.

EPA's review of these data indicates that the Huntington-Ashland Area has met the 1997 annual $PM_{2.5}$ NAAQS. Table 1 and the related discussion below and in the technical support document (TSD) show that, based on EPA's analysis of data for 2007–2009, the Area attained the 1997 annual $PM_{2.5}$ standard by its attainment date of April 5, 2010. In addition, Table 2 and the related discussion below and in the TSD show that the Area continues to attain the standard based on data available to date for 2010. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

TABLE 1—2007–2009 ANNUAL AVERAGE CONCENTRATIONS IN THE HUNTINGTON-ASHLAND AREA

Site name	County	Site No.	Annual average concentration (μg/m³)
Huntington	Cabell	54–011–0006	[1] 14.3
Ashland Primary (FIVCO)	Boyd	21–019–0017	12.4
Lawrence County Hospital (LCH)	Lawrence	39–087–0010	[2] 13.3
Ironton Department of Transportation (DOT) [3]	Lawrence	39–087–0012	12.2

C. How did EPA address the air quality in Lawrence County?

Monitoring Network

The LCH site was demolished on February 12, 2008, and a new site in the Lawrence County, Ohio portion of the Huntington-Ashland Area, known as the Ironton DOT site, began operation on the same day. As a consequence of the shutdown of the LCH site, the site was not able to meet the data completeness requirements for 2007–2009 because it was not operating for the entire 2007–2009 monitoring period. A year during which monitoring data is collected meets EPA data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. *See* 40 CFR part 50, Appendix N, section 4.1(b). The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data (40 CFR part 50, Appendix N, section 4.1(c)). The Ironton DOT site was a new site in 2008 and thus did not collect data for 2007 and part of the first quarter of 2008; however, the data are complete for the remainder of 2008 and 2009. Because this was a new monitor during the 2007–2009 period, these data are considered supplemental to the data provided from the other monitors in the Area.

To evaluate air quality at the LCH site, EPA applied statistical analysis using data from other sites in the Area. The approach, summarized in this section and further described in the TSD, is appropriate for this Area but may or may not be suitable for other areas with less than complete data. EPA will evaluate the appropriateness of this analytical approach on a case-by-case basis for determinations regarding each area with less than complete data.

The first step in the analysis was to assess the correlation of concentrations at the LCH site with concentrations at other sites in the Area. The monitor in the Area that had the highest correlation with the LCH site was the Ashland Primary site; therefore, subsequent analyses used data from this site. The second step was to develop a regression equation expressing the relationship between concentrations at the LCH and the Ashland Primary sites. This regression equation was used to estimate values at the LCH site on days during quarters with incomplete data when the LCH site did not measure concentrations because the site was no longer operating. A 2007–2009 design value for the LCH site was then calculated using these estimated values. Under this method, the 2007–2009

[1] West Virginia has a collocated monitor in place at the same site for quality assurance purposes. The primary monitor, and not the collocated monitor, is used to determine compliance with the $PM_{2.5}$ NAAQS. Since the collocated monitor takes fewer readings than the primary monitor, its average annual values may be unrepresentatively high. *See* 40 CFR part 50, Appendix N, 3(d)(1).

[2] The Lawrence County Hospital Site was shut down in February 2008. The Ironton DOT site began operation on the same day the Lawrence County Hospital Site ceased monitoring.

[3] The Ironton DOT site did not begin operation until February 2008.

design value for the LCH site was estimated to be 13.3 μg/m³.

This estimated design value was then analyzed using a statistical method that involved the use of regression residuals, referred to as the bootstrap method. In this analysis, EPA repeated the regression analysis 1,000 times with different values within the probability distribution of LCH concentrations that could be associated with given concentrations at the Ashland Primary site. From this analysis, as described in detail in the TSD, EPA determined that the upper end of the range of potential 2007–2009 design values obtained did not exceed the NAAQS. No exceedances of the NAAQS resulted from application of the statistical analysis. Therefore, EPA concluded that for 2007–2009, the annual average concentrations of all of the monitors in the Huntington-Ashland Area are below the NAAQS.

Although the LCH monitor does not have complete data for the 2007–2009 monitoring period, the historical certified data recorded at the monitor provide additional support for EPA's proposed determination that the Huntington-Ashland Area has attained the 1997 annual $PM_{2.5}$ NAAQS. The annual average design values for the two years preceding the demolition of the site (2006 and 2007) were below the NAAQS and the monitor met data completeness requirements. EPA is also approving the use of these data for consideration in this determination because it finds that West Virginia and Kentucky have exercised diligence in monitoring in the Huntington-Ashland Area.

Determinations of attainment are based on three years of complete, quality-assured data. Nevertheless, any such assessment should consider additional quality-assured data, to the extent that quality-assured data exist. In accordance with Appendix N and standard EPA practice, this review of data is based on the three most recent years of complete data, generally 2007–2009. Quality-assured data are now available for 2010, which EPA used to compute preliminary design values. The Huntington site has a preliminary 2008–2010 design value of 13.1 μg/m³, the Ashland site has a preliminary 2008–2010 design value of 11.4 μg/m³, and the Ironton DOT site has a preliminary 2008–2010 design value of 12.2 μg/m³. On the basis of this review, EPA is proposing to determine that the Huntington-Ashland Area has attained the 1997 annual $PM_{2.5}$ NAAQS, and is soliciting public comments on its proposed determination.

TABLE 2—2008–2010 ANNUAL AVERAGE CONCENTRATIONS IN THE HUNTINGTON-ASHLAND AREA

Site name	County	Site No.	Annual average concentration (μg/m³)
Huntington	Cabell	54–011–0006	13.1
Ashland Primary (FIVCO)	Boyd	21–019–0017	11.4
Ironton DOT [4]	Lawrence	39–087–0012	12.2

D. Has the Huntington-Ashland area met the 1997 annual $PM_{2.5}$ air quality standard?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded the data in the EPA AQS database, for the Huntington-Ashland Area from 2007 through the present time.

On the basis of that review, EPA proposes to determine that this Area has attained and continues to attain the 1997 annual $PM_{2.5}$ NAAQS based on the quality-assured data for the 2007–2009, which demonstrates attainment by April 5, 2010, and 2008–2010 monitoring periods. In addition, based on EPA's review of the data for 2007–2009, and in accordance with section 179(c)(1) of the CAA and EPA's regulations, EPA proposes to determine that the Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

[4] The Ironton DOT site began operation in February 2008 and thus did collect 75 percent for the first quarter of 2008. However, this was a new site and monitoring data did meet 75 percent completeness for the remainder of the quarter and for the subsequent quarters. As such, EPA does not consider the first quarter data to be incomplete.

IV. What is the effect of these actions?

If EPA's proposed determination of attainment, based on the most recent three years of quality-assured data, is made final, the requirements for the Huntington-Ashland Area to submit attainment demonstrations and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS would be suspended for so long as the Huntington-Ashland Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c). Notably, as described below, any such determination would not be equivalent to the redesignation of the Huntington-Ashland Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

If this proposed determination of attainment is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the 1997 annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Huntington-Ashland Area, and the Area would thereafter have to address the applicable requirements. *See* 40 CFR 51.1004(c).

Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Huntington-Ashland Area would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Huntington-Ashland Area.

In addition, if EPA's separate and independent proposed determination that the Area has attained the 1997 annual $PM_{2.5}$ standard by its applicable attainment date (April 5, 2010) is finalized, EPA will have met its requirement pursuant to section 179(c)(1) of the CAA to make a determination based on the Area's air quality data as of the attainment date whether the Area attained the standard by that date.

These two actions described above are proposed determinations regarding the Huntington-Ashland Area's attainment only with respect to the 1997 annual

$PM_{2.5}$ NAAQS. Today's actions do not address the 24-hour $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

These actions propose to make determinations of attainment based on air quality, and would, if finalized, result in the suspension of certain Federal requirements, and it would not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, these proposed 1997 annual $PM_{2.5}$ NAAQS determinations for the Huntington-Ashland Area do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 13, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

Dated: April 26, 2011.

Susan Hedman,

Regional Administrator, Region 5.

Dated: April 6, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–11355 Filed 5–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2011–0109; FRL–8871–3]

RIN 2070–AB27

Proposed Revocation of the Significant New Use Rule on a Certain Chemical Substance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance identified generically as substituted ethoxyethylamine phosphonate, which was the subject of premanufacture notice (PMN) P–95–1950. EPA issued a "non-5(e)" SNUR (*i.e.* SNUR on a substance that is not subject to a TSCA section 5(e) consent order), designating certain activities as significant new uses based on the concern criteria. EPA has received and reviewed new information and test data for the chemical substance and proposes to revoke the SNUR.

DATES: Comments must be received on or before June 10, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0109, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2011–0109. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2011–0109. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to

excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Virginia Lee, Chemical Control Division (7405 M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–4142; e-mail address: *lee.virginia@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substance contained in this proposed rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of the subject chemical substance (NAICS codes 325 and 324110), *e.g.,* chemical manufacturers and petroleum refineries. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities because of import certification and export notification requirements under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. Importers of the chemical, the subject of this action, would no longer be required to certify compliance with the SNUR requirements if the revocation becomes effective. In addition, if this proposed SNUR revocation becomes effective, persons who export or intend to export the chemical that is the subject of this action would no longer be subject to the TSCA section 12(b) (15 U.S.C. 2611(b)) export notification requirements at 40 CFR part 707, that are currently triggered by the SNUR.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

In the **Federal Register** of January 22, 1998 (63 FR 3393) (FRL–5720–3), EPA promulgated a SNUR at 40 CFR 721.6078 for the chemical substance identified generically as *substituted ethoxyethylamine phosphonate* (PMN P–95–1950). This SNUR designated certain activities as significant new uses based on the environmental effect criteria identified in § 721.170(b)(4)(ii) for analogous polyanionic monomers. EPA has received and reviewed aquatic toxicity test data for the chemical substance and based on its review of these data, EPA now proposes to revoke the SNUR pursuant to § 721.185. In this unit, EPA provides a brief description of this chemical substance, including the PMN number, generic chemical name, the **Federal Register** publication date and reference, the docket number, the basis for revoking the SNUR under § 721.185, and the CFR citation of the SNUR.

PMN Number P–95–1950

Chemical name: Substituted ethoxyethylamine phosphonate (generic).

CAS number: Not available.

Federal Register *publication date and reference:* January 22, 1998 (63 FR 3393).

Docket number: OPPTS–50628.

Basis for revocation of SNUR: EPA issued a SNUR for this substance based on the environmental effect criteria at § 721.170(b)(4)(ii) for analogous polyanionic monomers. Subsequently, the PMN submitter petitioned EPA to revoke the SNUR based on the results of submitted aquatic toxicity testing in fish, daphnids, and algae. The aquatic toxicity testing demonstrated that the substance has inherently low toxicity, mitigating EPA's concern for toxicity to aquatic organisms. Therefore, EPA rescinds its finding that releases to water resulting in stream concentrations that exceed 30 parts per billion (ppb) may cause significant adverse environmental effects. Based on available information, the substance no longer meets the concern criteria at § 721.170(b)(4)(ii). Therefore, EPA proposes that the SNUR for this

chemical substance be revoked pursuant to § 721.185(a)(4).

CFR citation: 40 CFR 721.6078.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under § 721.5.

Upon conclusion of the review for P–95–1950, based on the concern criteria in § 721.170(b)(4)(ii) discussed in Unit II.A., EPA determined that there was a concern for potential environmental effects of the substance at a concentration as low as 30 ppb of the PMN substance in surface waters and promulgated a non-5(e) SNUR for this chemical substance.

Under § 721.185, EPA may at any time revoke a SNUR for a chemical substance which has been added to subpart E of 40 CFR part 721 if EPA makes one of the determinations set forth in § 721.185(a)(1) through (a)(6). Revocation may occur on EPA's initiative or in response to a written request. Under § 721.185(b)(3), if EPA concludes that a SNUR should be revoked, the Agency will propose the changes in the **Federal Register**, briefly describe the grounds for the action, and provide interested parties an opportunity to comment.

EPA has determined that the criteria set forth in § 721.185(a)(4) have been satisfied for the chemical substance; therefore, EPA is proposing to revoke the SNUR for this chemical substance. The significant new use notification and the recordkeeping requirements at 40 CFR 721.6078 would terminate if and when this proposed revocation becomes effective. In addition, export notification under TSCA section 12(b) and 40 CFR part 707, subpart D triggered by the SNUR would no longer be required.

III. Statutory and Executive Order Reviews

This proposed rule would revoke or eliminate an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this proposed SNUR revocation would not have any adverse impacts, economic or otherwise.

The Office of Management and Budget (OMB) has exempted these types of regulatory actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This proposed rule does not contain any information collections subject to approval under the *Paperwork Reduction Act (PRA),* (44 U.S.C. 3501 *et seq.*). Since this proposed rule eliminates a reporting requirement, the Agency certifies pursuant to section 605(b) of the *Regulatory Flexibility Act (RFA)* (5 U.S.C. 601 *et seq.*), that this SNUR revocation would not have a significant economic impact on a substantial number of small entities.

For the same reasons, this action does not require any action under Title II of the *Unfunded Mandates Reform Act of 1995* (UMRA) (Pub. L. 104–4). This proposed rule has neither Federalism implications, because it would not have substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), nor Tribal implications, because it would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined under Executive Order 12866, and it does not address environmental health or safety risks disproportionately affecting children. It is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use. Because this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action. This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 29, 2011.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.6078 [Removed]

2. Remove § 721.6078.

[FR Doc. 2011–11208 Filed 5–10–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 11–69, ET Docket No. 09–234; FCC 11–63]

Private Land Mobile Radio Service Regulations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to modify our rules to permit the implementation of Terrestrial Trunked Radio (TETRA) technology in the United States. We also seek comment on our proposed technical rules that would enable digital technologies like TETRA to operate without causing interference to existing systems, and on how the deployment of TETRA technology may affect public safety interoperability. Comments on these proposed rule changes will aid the Commission in determining whether or not it is in the public interest to make TETRA technology available to private wireless users, especially those that must comply with the upcoming narrowbanding requirements.

DATES: Submit comments on or before June 27, 2011 and reply comments are due on or before August 9, 2011.

ADDRESSES: You may submit comments, identified by WT Docket No. 11–69 and ET Docket No. 09–234; FCC 11–63, by any of the following methods:

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

• *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

• *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tim Maguire, Mobility Division, Wireless Telecommunications Bureau, (202) 418–2155.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking and Order* ("NPRM") in WT Docket No. 11–69 and ET Docket No. 09–234, FCC 11–63, adopted April 18, 2011, and released April 26, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

I. Procedural Matters

A. Ex Parte Rules-Permit-But-Disclose Proceeding

1. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules.

B. Comment Dates

2. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/or* the Federal eRulemaking Portal: *http://www.regulations.gov.*

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People With Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

C. Paperwork Reduction Act

3. This *NPRM* does not contain any proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

II. Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed and set forth in Appendix B. We request written public comments on this IRFA which must be filed in accordance with the same filing deadlines as the comments on the rest of the *NPRM.* The Commission shall send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, a copy of this *NPRM* and IRFA (or summaries thereof) will also be published in the **Federal Register.**

5. The proposed rules in the *NPRM* are intended to permit the implementation in the United States of land mobile radio equipment utilizing Terrestrial Trunked Radio (TETRA) technology. TETRA is a spectrally efficient digital technology that we believe can provide valuable benefits to land mobile radio users.

A. Legal Basis

6. Authority for issuance of this item is contained in Sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

B. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. Pursuant to 5 U.S.C. 603(b)(3), the RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." *Id.* In addition, according to 5 U.S.C. 601(3), the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA at 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA, and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes

such definition(s) in the **Federal Register**." Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes proposed in this *NPRM.*

8. *Private Land Mobile Radio Licensees.* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. *See* 13 CFR 121.201, NAICS code 517210. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs. *See generally* 13 CFR 121.201.

9. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

10. *RF Equipment Manufacturers.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." *See* U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; *http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342*. The SBA small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing is all such firms having 750 or fewer employees. *See* 13 CFR 121.201, NAICS code 334220. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. *See* U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (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 were 929. Of this total, 1,010 had employment of fewer than 500, and an additional 13 had employment of 500 to 999. An additional 18 establishments had employment of 1,000 or more. Thus, under this size standard, the majority of firms can be considered small.

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

11. There are no projected reporting, recordkeeping or other compliance requirements.

D. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

12. 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: (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.[1]

13. We hereby invite interested parties to address any or all of these regulatory alternatives and to suggest additional alternatives to minimize any significant economic impact on small entities. Any significant alternative presented in the comments will be considered.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

14. None.

III. Ordering Clauses

15. Pursuant to sections 1, 4(i), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(f), 303(g), and 303(r), this *Notice of Proposed Rule Making is adopted.*

16. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

17. Pursuant to sections 4(i), 302, and 303(e), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, and 303(e), and § 1.925 of the Commission's rules, 47 CFR 1.925, the Request for Waiver filed by the TETRA Association on November 20, 2009, *is granted in part* and *denied in part* to the extent set forth above. This action is effective upon release of this *Order.*

List of Subjects in 47 CFR Part 90

Communications equipment, Private land mobile, Radio.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.209 is amended in the table in paragraph (b)(5) by adding footnote 6 to read as follows:

[1] 5 U.S.C. 603(c)(1)–(4).

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(5) * * *

STANDARD CHANNEL SPACING/BANDWIDTH

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
* * * * *	*	*
406–512 [2]	[1] 6.25	[1 3 6] 20/11.25/6
806–809/851–854	12.5	[6] 20
809–824/854–869	25	[6] 20
* * * * *	*	*
929–930	25	[6] 20
* * * * *	*	*

[1] For stations authorized on or after August 18, 1995.

[2] Bandwidths for radiolocation stations in the 420–450 MHz band and for stations operating in bands subject to this footnote will be reviewed and authorized on a case-by-case basis.

[3] Operations using equipment designed to operate with a 25 kHz channel bandwidth will be authorized a 20 kHz bandwidth. Operations using equipment designed to operate with a 12.5 kHz channel bandwidth will be authorized a 11.25 kHz bandwidth. Operations using equipment designed to operate with a 6.25 kHz channel bandwidth will be authorized a 6 kHz bandwidth. All stations must operate on channels with a bandwidth of 12.5 kHz or less beginning January 1, 2013, unless the operations meet the efficiency standard of § 90.203(j)(3).

* * * * *

[6] Operations using equipment designed to operate with a 25 kHz channel bandwidth may be authorized up to a 22 kHz bandwidth if the equipment meets the Adjacent Channel Power limits of § 90.221.

* * * * *

3. Section 90.210 is amended by adding footnote 5 to the table to read as follows:

§ 90.210 Emission masks.

* * * * *

APPLICABLE EMISSION MASKS

Frequency band (MHz)	Mask for equipment with audio low pass filter	Mask for equipment without audio low pass filter
* * * * *	*	*
421–512 [2, 5]	B, D, or E	C, D, or E.
* * * * *	*	*
809–824/854–869 [3, 5]	B	G.
* * * * *	*	*

* * * * *

[2] Equipment designed to operate with a 25 kHz channel bandwidth must meet the requirements of Emission Mask B or C, as applicable. Equipment designed to operate with a 12.5 kHz channel bandwidth must meet the requirements of Emission Mask D, and equipment designed to operate with a 6.25 kHz channel bandwidth must meet the requirements of Emission Mask E.

[3] Equipment used in this licensed to EA or non-EA systems shall comply with the emission mask provisions of § 90.691.

* * * * *

[5] Equipment in the 450–470 MHz and 817–824/862–869 MHz bands may alternatively meet the Adjacent Channel Power Limits of § 90.221.

* * * * *

4. Section 90.221 is added to subpart I to read as follows:

§ 90.221 Adjacent channel power limits.

(a) For the frequency bands indicated in 90.209, operations using equipment designed to operate with a 25 kHz channel bandwidth may be authorized up to a 22 kHz bandwidth if the equipment meets the adjacent channel power (ACP) limits below. The table specifies a value for the ACP as a function of the displacement from the channel center frequency and a measurement bandwidth of 25 kHz.

(b)(1) Maximum adjacent power levels for frequencies below 700 MHz:

Frequency offset	Maximum ACP (dBc) for devices 1 watt and less	Maximum ACP (dBc) for devices above 1 watt
25 kHz	−55 dBc	−60 dBc.
50 kHz	−70 dBc	−70 dBc.
75 kHz	−70 dBc	−70 dBc.

(2) In any case, no requirement in excess of −36 dBm shall apply.

(c)(1) Maximum adjacent power levels for frequencies above 700 MHz:

Frequency offset	Maximum ACP (dBc) for devices less than 15 watts	Maximum ACP (dBc) for devices 15 watts and above
25 kHz	−55 dBc	−55 dBc.
50 kHz	−65 dBc	−65 dBc.
75 kHz	−65 dBc	−70 dBc.

(2) In any case, no requirement in excess of −36 dBm shall apply.

(d) On any frequency removed from the assigned frequency by more than 75

kHz, the attenuation of any emission must be at least 43 + 10 log (P) dB.

[FR Doc. 2011–11136 Filed 5–10–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172 and 177

[Docket Number PHMSA–2007–28119 (HM–247)]

RIN 2137–AE37

Hazardous Materials: Cargo Tank Motor Vehicle Loading and Unloading Operations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On March 11, 2011, PHMSA published a notice of proposed rulemaking (NPRM) seeking public comment on a proposal to amend the HMR requirements for cargo tank loading or unloading operations. PHMSA is notifying the public of our intent to extend the comment period by 30 days for a notice of proposed rulemaking published on March 11, 2011.

DATES: The comment period for the NPRM closing on May 10, 2011, is extended until June 9, 2011. To the extent possible, PHMSA will consider late-filed comments during the next stage of the rulemaking process.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2007–28119) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, 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.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov,* or DOT's Docket Operations Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Kurt Eichenlaub or Dirk Der Kinderen, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: *Privacy Act:* Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov.*

I. Background

On March 11, 2011, PHMSA published an NPRM (HM–247; 76 FR 13313) seeking public comment on a proposal to amend the HMR requirements for cargo tank loading or unloading operations. Specifically, the NPRM amendments included requirements to:

- Assess the risks of loading and unloading operations and develop written operating procedures based on the risk assessment;
- Train hazmat employees in the relevant aspects of the operational procedures;
- Qualify annually hazmat employees who perform loading and unloading operations;
- Develop and implement a periodic maintenance schedule for equipment and conduct periodic operational tests of equipment; and
- Ensure that the equipment meets the performance standards.

In the NPRM, we invited comment on a number of provisions as well as comment on the methodology used to develop the regulatory evaluation supporting the NPRM. See the March 11, 2011 NPRM for a complete discussion of the proposals and requests for comment and information.

II. Comment Period Extension

Given the abundance of requests for comment and data contained in this NPRM as well as our consideration of a number of other proposed rulemakings concurrently impacting interested parties affected by the cargo tank motor vehicle proposals in this notice, we are providing affected entities as well as the general public an additional 30 days to allow for thorough review, analysis, and response to the NPRM. Thus, the comment period for the HM–247 NPRM is extended from May 10, 2011 until June 9, 2011.

Issued in Washington, DC, on May 5, 2011 under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2011–11494 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 76, No. 91

Wednesday, May 11, 2011

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 5, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (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 burden 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR Part 3565, "Guaranteed Rural Rental Housing Program" and Its' Supporting Handbook.

OMB Control Number: 0575–0174.

Summary of Collection: On March 26, 1996, the Housing Opportunity Program Extension Act of 1996 was signed. One of the provisions of the Act was the authorization of the section 538 Guaranteed Rural Rental Housing Program (GRRHP), adding the program to the Housing Act of 1949. The purpose of the GRRHP is to increase the supply of affordable rural rental housing through the use of loan guarantees that encourage partnerships between the Rural Housing Service (RHS), private lenders and public agencies. RUS will approve qualified lenders to participate and monitor lender performance to ensure program requirements are met. RHS will collect information from lenders on the eligibility cost, benefits, feasibility, and financial performance of the proposed project.

Need and Use of the Information: RHS will collect information from lenders to manage, plan, evaluate, and account for Government resources and from time to time, propose demonstration programs that use loan guarantees or interest credit. The GRRHP regulation and handbook will provide lenders and agency staff with guidance on the origination, and servicing of GRRHP loans and the approval of qualified lenders. RHS will use the information to evaluate a lender's request and make determination that the interests of the government are protected. Failure to collect information could have an adverse impact on the agency ability to monitor lenders and assess program effectiveness and effectively guarantee loans.

Description of Respondents: Business or other for-profit; Not-for-profit Institutions.

Number of Respondents: 150.

Frequency of Responses: Reporting: Quarterly; Monthly; Annually.

Total Burden Hours: 1,492.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–11491 Filed 5–10–11; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0130]

Syngenta Biotechnology, Inc.; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment of Determination of Nonregulated Status for Lepidopteran-Resistant Cotton

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Syngenta Biotechnology, Inc., seeking a determination of nonregulated status for cotton designated as event COT67B, which has been genetically engineered to express a protein to protect cotton plants from lepidopteran insect damage. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are soliciting comments on whether this genetically engineered cotton is likely to pose a plant pest risk. We are making available for public comment the Syngenta petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before July 11, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007-0130* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment

to Docket No. APHIS–2007–0130, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0130.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Availability of Documents: The petition, draft environmental assessment, and plant pest risk assessment are available on the Regulations.gov Web site (see link above) or on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/07_10801p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/07_10801p _dea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/07_10801p _dpra.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Rick Coker, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5720, e-mail: *richard.s.coker@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 07–108–01p) from Syngenta Biotechnology, Inc. (Syngenta), seeking a determination of nonregulated status for cotton (*Gossypium* spp.) designated as COT67B, which has been genetically engineered to express a Cry1Ab protein to protect cotton plants from lepidopteran insect damage, stating that cotton event COT67B is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, COT67B cotton produces a full-length Cry1Ab protein originally derived from *Bacillus thuringiensis* subsp. *kurstaki* HD–1 which has activity against several important lepidopteran pest species of cotton. These include, but are not limited to, *Helicoverpa zea* (cotton bollworm), *Heliothis virescens* (tobacco budworm), *Pectinophora gossypiella* (pink bollworm), and *Trichoplusia ni* (cabbage looper). Cotton event COT67B is currently regulated under 7 CFR part 340. Interstate movements and field tests of cotton event COT67B have been conducted under notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These data are used by APHIS to determine if the new variety poses a plant pest risk. Syngenta has petitioned APHIS to make a determination that cotton event COT67B should not be regulated under 7 CFR part 340.

In section 403 of the Plant Protection Act, "plant pest" is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment to determine if cotton event COT67B is unlikely to pose a plant pest risk.

APHIS has also prepared a draft environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Syngenta, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, i.e., APHIS would not change the regulatory status of cotton event COT67B and it would continue to be a regulated article, or (2) approve the petition based on a determination of the nonregulated status of cotton event COT67B in whole.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for cotton event COT67B. The draft EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the plant pest risk assessment and the draft EA prepared to examine any potential environmental impacts of the proposed determination of the nonregulated status of the subject cotton line. The petition, draft EA, and plant pest risk assessment are available for public review, and copies of the petition, draft EA, and plant pest risk assessment are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and plant pest risk assessment will be available for public review as indicated under **ADDRESSES** above. After reviewing and evaluating the comments on the petition, the draft EA, plant pest risk assessment, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of cotton event

COT67B and the availability of APHIS' written environmental decision and regulatory determination.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC this 4th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–11519 Filed 5–10–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0023]

Monsanto Co.; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment for Determination of Nonregulated Status for Corn Genetically Engineered for Drought Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for corn designated as MON 87460, which has been genetically engineered for drought tolerance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are soliciting comments on whether this genetically engineered corn is likely to pose a plant pest risk. We are making available for public comment the Monsanto petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before July 11, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0023* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS-2011–0023, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0023.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Availability of Documents: The petition, draft environmental assessment, and plant pest risk assessment are on available on the Regulations.gov Web site (see link above) or on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/09_05501p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/09_05501p _dea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/09_05501p _dpra.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 734–0942, e-mail: *evan.a.chestnut@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 09–055–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status for corn (*Zea mays* L.) designated as event MON 87460, which has been genetically engineered for drought tolerance, stating that this corn is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, an introduced gene called cold shock protein B, derived from the bacterium *Bacillus subtilis,* appears to help maintain plant cellular functions and is expected to reduce yield loss under water-limited conditions compared to conventional corn. Corn event MON 87460 is currently regulated under 7 CFR part 340. Interstate movements and field tests of corn event MON 87460 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These data are used by APHIS to determine if the new variety poses a plant pest risk. Monsanto has petitioned APHIS to make a determination that corn event MON 87460 should not be regulated under 7 CFR part 340.

In section 403 of the Plant Protection Act, "plant pest" is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment to determine if corn event MON 87460 is unlikely to pose a plant pest risk.

APHIS has also prepared a draft environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Monsanto, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering

the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of corn event MON 87460 and it would continue to be a regulated article, or (2) approve the petition based on a determination of the nonregulated status of corn event MON 87460 in whole.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for corn event MON 87460. The draft EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the plant pest risk assessment and the draft EA prepared to examine any potential environmental impacts of the proposed determination for the deregulation of the subject corn line. The petition, draft EA, and plant pest risk assessment are available for public review, and copies of the petition, draft EA, and plant pest risk assessment are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and plant pest risk assessment will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, plant pest risk assessment, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of corn event MON 87460 and the availability of APHIS' written environmental decision and regulatory determination.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 4th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–11485 Filed 5–10–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pike & San Isabel Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Pike & San Isabel Resource Advisory Committee will meet in Pueblo, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to vote on and recommend projects for funding.

DATES: The meeting will be held on August 10, 2011, and will begin at 9 a.m.

ADDRESSES: The meeting will be held at the Supervisor's Office of the Pike & San Isabel National Forests, Cimarron and Comanche National Grasslands (PSICC) at 2840 Kachina Dr., Pueblo, Colorado. Written comments should be sent to Barbara Timock, PSICC, 2840 Kachina Dr., Pueblo, CO 81008. Comments may also be sent via e-mail to *btimock@fs.fed.us,* or via facsimile to 719–553–1416.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at PSICC, 2840 Kachina Dr., Pueblo, CO 81008. Visitors are encouraged to call ahead to 719–553–1415 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Barbara Timock, RAC coordinator, USDA, Pike & San Isabel National Forests, 2840 Kachina Dr., Pueblo, CO 81008; (719) 553–1415; E-mail *btimock@fs.fed.us.*

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

SUPPLEMENTARY INFORMATION: The August 10 meeting is open to the public. The following business will be conducted: (1) Review, discuss and vote on proposed projects, (2) Recommend projects to the Designated Federal Official, (3) Receive public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 5, 2011 will have the opportunity to address the Committee at those sessions.

Dated: April 26, 2011.

John F. Peterson,

Designated Federal Official.

[FR Doc. 2011–11524 Filed 5–10–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination of Sales at Less-Than-Fair-Value and Notice of Amended Final Determination of Sales at Less-Than-Fair-Value and Amended Antidumping Duty Order Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 21, 2011, in litigation arising out of the Department of Commerce's ("Department") final determination in the less-than-fair-value ("LTFV") investigation of certain steel threaded rod ("steel threaded rod") from the People's Republic of China ("PRC"),[1] the United States Court of International Trade ("CIT") sustained the Department's results of redetermination. Pursuant to the CIT's remand order in *Jiaxing Brother Fastener Co., Ltd.* v. *United States,* Consol. Court No. 09–00205, Slip Op. 10–128 (November 16, 2010) ("*Jiaxing Brother*"), the Department found that the financial statements of the Indian company, Rajratan Global Wire Ltd. ("Rajratan"), are an appropriate source of data for calculating the surrogate financial ratios. *See Jiaxing Brother Fastener Co., Ltd.* v. *United States,* Consol. Court No. 09–00205, Slip Op. 11–44 (April 21,

[1] *See Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 8907 (February 27, 2009) ("*Final Determination*") and *Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009) ("Antidumping Duty Order").

2011) ("*Jiaxing Brother II*"). Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) ("*Diamond Sawblades*"), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Determination* and is amending its *Final Determination* and *Antidumping Duty Order.*

DATES: *Effective Date:* May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Toni Dach, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1655.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2009, the Department published the *Final Determination* of the investigation of steel threaded rod from the PRC. *See Final Determination.* In calculating surrogate financial ratios, pursuant to section 773(c) of the Tariff Act of 1930, as amended (the "Act"), the Department used financial statements for three Indian companies found by the Department to be producers of merchandise comparable to steel threaded rod. The Department determined not to use Rajratan's financial statement as part of that calculation upon concluding that Rajratan produced wire rod, a material input in the production of subject merchandise, which the Department found not to be comparable to finished steel products such as steel threaded rod. *See Final Determination* and accompanying Issues and Decision Memorandum at Comment 1.

After the Department published the *Antidumping Duty Order,* the RMB/IFI Group and its producer, Jiaxing Brother Fastener Co., Ltd. (collectively, "the RMB/IFI Group"), filed a timely action with the CIT challenging the Department's selection of financial statements in calculating surrogate financial ratios.

On November 16, 2010, the CIT issued its decision sustaining the Department's *Final Determination* except for the determination to reject the financial statement of Rajratan as part of its calculation of surrogate financial ratios. The CIT found that record evidence did not support the Department's conclusion that Rajratan manufactured wire rod, which is used as an input in the production of steel threaded rod. *See Jiaxing Brother* at 27–28. The CIT thus remanded the issue to the Department with instructions to reconsider the appropriateness of using Rajratan's financial statement in the calculation of surrogate financial ratios by analyzing the comparability of Rajratan's merchandise to the subject merchandise. *Id.* at 30.

On December 16, 2010, the Department issued its final results of redetermination pursuant to *Jiaxing Brother.* Pursuant to the CIT's remand order in *Jiaxing Brother,* we reexamined the Rajratan financial statements and found that Rajratan purchases wire rod, in addition to other raw materials, and produces downstream products from that wire rod input, namely p.c. wire and tyre bead wire. Thus, we determined on remand that Rajratan further manufactures wire rod into finished (or semi-finished) steel products in a manner similar to steel threaded rod and found that Rajratan is a producer of steel products comparable to the subject merchandise. As a consequence, because Rajratan is a producer of comparable steel products, we find that its production experience, and therefore financial experience, is comparable to that of steel threaded rod producers, and included its financial ratios in the average calculation of surrogate financial ratios.

The CIT sustained the Department's remand redetermination on April 21, 2011. *See Jiaxing Brother II.*

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's April 21, 2011, judgment sustaining the Department's remand redetermination that Rajratan is a producer of steel products comparable to the subject merchandise constitutes a final decision of that court that is not in harmony with the Department's *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will suspend liquidation of the subject merchandise effective May 2, 2011, pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision or pending establishment of a new cash deposit rate in a completed administrative review of the *Antidumping Duty Order.*

Amended Final Determination and Order

Because there is now a final court decision with respect to the inclusion of Rajratan in the average calculation of surrogate financial ratios, RMB/IFI Group's revised cash deposit rate is 47.37%. In accordance with sections 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection to collect cash deposits at the rate indicated.

This notice is issued and published in accordance with sections 516A(c)(1), 735(d), 736(a), and 777(i)(1) of the Act.

Dated: May 4, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–11571 Filed 5–10–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; the NIST Summer Institute for Middle School Science Teachers (NIST Summer Institute) and the NIST Research Experience for Teachers (NIST RET) Application Requirements

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or July 11, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Barbara Lambis, 301–975–4447, *barbara.lambis@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NIST Summer Institute and the NIST RET are competitive financial assistance (cooperative agreement) programs designed to support middle school science teachers to participate in hands-on workshops, lectures, tours, visits, or in scientific research with scientists and engineers in NIST laboratories in Gaithersburg, Maryland. The workshops provide teachers with instructional information and ideas to use in their teaching, and emphasize the measurement science done at NIST. The Program provides a world-class opportunity for those teaching our nation's next generation of scientists to learn more about the subjects they teach and the research in those subjects at NIST, and to offer a platform from which teachers can inspire their students to pursue careers in science, technology, engineering, and mathematics (STEM).

To receive funding, nominated teachers must submit applications through their U.S. public school districts or U.S. accredited private educational institutions for potential selection to participate in the NIST Summer Institute or the NIST RET. This request is for the information collection requirements associated with applying for funding. The information is used to perform the requisite reviews of the applications to determine if an award should be granted.

II. Method of Collection

Applications may be submitted electronically via *http://www.grants.gov.*

III. Data

OMB Control Number: 0693–0059.
Form Number: NIST–1103.
Type of Review: Regular submission.
Affected Public: Middle school (Grades 6–8) science teachers in a U.S. public school district or U.S. accredited private educational institution.
Estimated Number of Respondents: 100.
Estimated Time per Response: 1 hour.
Estimated Total Annual Burden Hours: 100.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–11482 Filed 5–10–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA425

Endangered Species; File No. 15661

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Commonwealth of the Northern Mariana Islands (CNMI) Division of Fish and Wildlife, (Ignacion dela Cruz, Responsible Party), has applied in due form for a permit to take green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 10, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15661 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division

- By e-mail to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the e-mail),
- by facsimile to (301) 713–0376, or
- at the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Colette Cairns, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The CNMI Division of Fish and Wildlife proposes to conduct research on sea turtles to characterize population structure, size class composition, foraging ecology, and migration patterns for green and hawksbill sea turtles in the Northern Mariana Islands with an eye toward identifying potential conservation or critical habitat areas for immature and adult green and hawksbill turtles. The project would consist of counts and hand captures of sea turtles during vessel surveys. Up to 300 green and 50 hawksbill sea turtles would be captured, measured, weighed, flipper tagged, passive integrated transponder tagged, temporarily marked, tissue sampled, photographed, and released annually. A subset of the turtles would be satellite tagged before release and then tracked from the vessel. A small number of sea turtle carcasses, tissues or parts would also be opportunistically salvaged each year. The permit would be valid for five years.

Dated: May 5, 2011.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–11567 Filed 5–10–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Gray's Reef National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seat on the Gray's Reef National Marine Sanctuary Advisory Council: Georgia conservation. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by June 30, 2011.

ADDRESSES: Application kits may be obtained from Becky Shortland, Council Coordinator (*becky.shortland@noaa.gov,* 10 Ocean Science Circle, Savannah, GA 31411; 912–598–2381). Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Becky Shortland, Council Coordinator (*becky.shortland@noaa.gov,* 10 Ocean Science Circle, Savannah, GA 31411; 912–598–2381.

SUPPLEMENTARY INFORMATION: The sanctuary advisory council was established in August 1999 to provide advice and recommendations on management and protection of the sanctuary. The advisory council, through its members, also serves as liaison to the community regarding sanctuary issues and represents community interests, concerns, and management needs to the sanctuary and NOAA.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 29, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–11304 Filed 5–10–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA426

Marine Mammals; Photography Permit Application No. 16360

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Oceanic Nature Film Productions (Responsible Party: Dietrich Paulmann), P.O. Box 301 722, Albany 0752, Auckland, New Zealand has applied in due form for a permit to conduct commercial/educational photography of cetaceans off Hawaii.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 10, 2011.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: File No. 16360.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Laura Morse, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild.

The applicant requests a four-month photography permit to film cetaceans in the waters off Kona, Hawaii. Using one or two sailing catamarans as a base, filmmakers would conduct surface and underwater photography. Additionally, a passive acoustic array would be towed to obtain marine mammal vocalizations. The applicant has identified 12 species of cetaceans that would be approached for filming. The permit would not authorize approaches of species listed as threatened or endangered. Up to 50 animals from each species may be harassed as a result of filming. Footage would be used in a feature film intended to educate the public about marine mammal conservation issues, as well as the importance of the Pacific islands to the oceans. Filming would occur over a four-month period in summer and fall 2011.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 5, 2011.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–11566 Filed 5–10–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA216

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Missile Launch Operations at Kodiak Launch Complex, Alaska

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the Alaska Aerospace Corporation (AAC) to take two species of seals and sea lions incidental to space vehicle and missile launch operations at the Kodiak Launch Complex (KLC) in Kodiak, Alaska.

DATES: Effective from April 30, 2011, through April 29, 2012.

ADDRESSES: The LOA and supporting documentation are available for review by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may also be viewed, by appointment, during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, 301–713–2289, ext 123.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill marine mammals.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the identified species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth in the regulations. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Regulations governing the taking of Steller sea lions (*Eumetopias jubatus*), by harassment, and harbor seals (*Phoca vitulina*), adults by harassment and pups by injury or mortality, incidental to space vehicle and missile launch operations at the KLC, were issued on March 22, 2011 (76 FR 16311, March 23, 2011), and remain in effect until March 21, 2016. For detailed information on this action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during space vehicle and missile launch operations at the KLC.

This LOA is effective from April 30, 2011, through April 29, 2012, and authorizes the incidental take of the two marine mammal species listed above that may result from the launching of up to 12 space launch vehicles, long-range ballistic target missiles, and other smaller missile systems at the KLC. Steller sea lion and harbor seal haulouts exist on Ugak Island, which lies approximately 3.4 miles to the southeast of the launch site. The KLC primarily supports launches of small to medium space launch vehicles—which by definition are those used to boost satellites to orbit—ranging in size from the small space-launch Castor 120 motor (used in the Athena, Minotaur IV, Minotaur V, and Taurus I systems) to the under-development medium-lift Taurus II. The KLC is also configured to support launch of the Minuteman I-derived Minotaur I Space Launch System, and to support launch of long-range ballistic systems such as the Polaris derived A–3 STARS, the Minuteman-derived Minotaur II and III, and the C–4.

The activities under these regulations are a major source of noise on Kodiak Island, as the operation of launch vehicle engines produce substantial sound pressures. Generally, four types of noise occur during a launch: (1) Combustion noise; (2) jet noise from interaction of combustion exhaust gases with the atmosphere; (3) combustion noise proper; and (4) sonic booms. Sonic booms are not a concern for pinnipeds on Ugak Island, as sonic booms created by ascending rockets launched from the KLC reach the Earth's surface over deep ocean, well past the edge of the outer continental shelf (FAA 1996). The noise generated by operations at the KLC may result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from space vehicle and missile launch operations may cause the animals to move towards or enter the water. If launches occur during the harbor seal pupping season, it is possible that harbor seal pups could be injured or killed as a result of the adults flushing in response to the rocket noise, or the mother/pup bond could be permanently broken.

However, NMFS does not expect harbor seal pup injury and mortality to occur to a great degree due to the pups' precociousness and the mothers' overt attention. Furthermore, take of any pinnipeds will be minimized through implementation of the following mitigation measures: (1) Security overflights immediately associated with the launch will not approach occupied pinniped haulouts on Ugak Island by closer than 0.25 mile (0.4 km), and will maintain a vertical distance of 1,000 ft (305 m) from the haulouts when within 0.5 miles (0.8 km), unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with law; (2) the AAC will avoid launches during the harbor seal pupping season (May 15 to June 30), unless constrained by factors including, but not limited to, human safety and national security; and (3) if launch monitoring detects pinniped injury or death, or if long-term trend counts from quarterly aerial surveys indicate that the distribution, size, or productivity of the potentially affected pinniped populations has been affected due to the specified activity, the launch procedures and the monitoring methods will be reviewed, in cooperation with NMFS.

The AAC will also use audio-recording equipment and a remote live-streaming video system to monitor a harbor seal haulouts before, after, and during the first five launches. After the first five launches with harbor seal

presence, the AAC and NMFS will reassess the efficiency of the video system before potentially relocating or re-aiming it to another haulout. Reports will be submitted to NMFS at the time of request for a renewal of the LOA, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires. This LOA will be renewed annually based on review of the annual monitoring report.

Dated: April 29, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–11453 Filed 5–10–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Committee on Measures of Student Success

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Committee on Measures of Student Success (Committee). The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

DATES: June 2–3, 2011.

Time: June 2, 2011: 1 p.m. to 5 p.m.; June 3, 2011: 9 a.m. to 1 p.m.

ADDRESSES: The Committee will meet in Washington, DC at 1990 K Street, NW., Washington, DC 20006, 8th Floor Conference Center.

FOR FURTHER INFORMATION CONTACT: Archie Cubarrubia, Designated Federal Official, Committee on Measures of Student Success, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006. E-mail: *Archie.Cubarrubia@ed.gov.* Telephone: (202) 502–7601.

SUPPLEMENTARY INFORMATION: The Committee is established to advise the Secretary of Education in assisting two-year degree-granting institutions of higher education in meeting the completion or graduation rate disclosure requirements outlined in section 485 of the Higher Education Act of 1965, as amended. Specifically, the Committee shall develop recommendations regarding the accurate calculation and reporting of completion or graduation rates of entering certificate/degree-seeking, full-time, undergraduate students by two-year degree granting institutions of higher education. The Committee may also recommend additional or alternative measures of student success that are comparable alternatives to the completion or graduation rates of entering degree-seeking full-time undergraduate students and that consider the mission and role of two-year degree granting higher education institutions. These recommendations shall be provided to the Secretary no later than April 2012.

The agenda for the Committee's third meeting will include Committee member discussions of the Committee working groups' preliminary findings and recommendations regarding progression, completion, and alternative measures and other related topics.

Individuals interested in attending the meeting must register in advance because of limited space issues. To register, please send an e-mail request to *studentsuccess@ed.gov.* Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify Archie Cubarrubia at (202) 502–7601 no later than May 26, 2011. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Opportunities for public comment are available through the Committee's Web site at *http://www2.ed.gov/about/bdscomm/list/acmss.html.* Records are kept of all Committee proceedings and are available for public inspection on the Web site and at the National Center for Education Statistics, 1990 K Street, NW., Washington, DC 20006 from the hours of 9 a.m. to 5 p.m. E.S.T.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fed-register/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at (202) 512–0000.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2011–11555 Filed 5–10–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–303]

Union Electric Company, dba AmerenUE; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 459–303.

c. *Date Filed:* April 19, 2011.

d. *Applicant:* Union Electric Company, dba AmerenUE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The proposed non-project use would be located near mile marker 18.8 + 0.5 of the Grand Glaize Arm of the Lake of the Ozarks, in Camden County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, AmerenUE, P.O. Box 993, Lake Ozark, MO 65049, (573) 365–9214.

i. *FERC Contact:* Shana High at (202) 502–8674, or e-mail: *shana.high@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* June 6, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the

project number (P–459–303) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee requests Commission authorization to permit Lakeport Marina and Condominiums to add eight commercial docks, modify eight existing docks, and add 1,330 feet of breakwater. The completed development would have 18 docks (16 boat docks, 1 swim dock, and 1 fishing dock) with 240 boat slips and 156 personal watercraft lifts; boat fueling facilities are located on an existing dock.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 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.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (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, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener 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. 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.

Dated: May 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11537 Filed 5–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7269–028]

Janet A. Boyd, Boyd Hydro, LLC; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

On March 25, 2011, Janet A. Boyd (transferor) and Boyd Hydro, LLC (transferee) filed an application for transfer of license for the Jim Boyd Hydroelectric Project No. 7269, located on the Umatilla River in Umatilla County, Oregon.

Applicants seek Commission approval to transfer the license for the Jim Boyd Hydroelectric Project from transferor to transferee.

Applicants' Contact: Transferor: Janet A. Boyd, 78855 Quick Road, Hermiston, OR 97838. *For Transferee:* Ted S. Sorenson, Manager, Boyd Hydro, LLC, 5203 South 11th East, Idaho Falls, Idaho 83404, (208) 522–8069.

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–7269) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: May 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11498 Filed 5–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13629–002]

Coleman Hydro LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original minor water power project.

b. *Project No.:* 13629–002.

c. *Date filed:* April 22, 2011.

d. *Applicant:* Coleman Hydro LLC.

e. *Name of Project:* Coleman Hydroelectric Project.

f. *Location:* On Little Timber Creek in Lemhi County near Leadore, Idaho. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r.)

h. *Applicant Contact:* Nick Josten, Geosense, 2742 Saint Charles Ave., Idaho Falls, ID 83404. (208) 528–6152.

i. *FERC Contact:* Joseph Hassell, (202) 502–8079, *joseph.hassell@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and Tribal agencies with jurisdiction and/or special expertise

with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* June 22, 2011.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. *The proposed Coleman Hydroelectric Project would consist of:* (1) A new screened intake structure on Little Timber Creek that consolidates the withdrawals of the existing second and third ditches; (2) a 26,700-foot-long penstock; (3) a powerhouse with an installed capacity of 750 kilowatts; (4) a 6.7-mile-long, 12.5-kv transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 2,200 megawatt hours.

o. A copy of the application 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Idaho State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Notice of Acceptance	July 2011.
Issue Scoping Document 1 for comments.	August 2011.
Comments on Scoping Document 1.	September 2011.
Issue Scoping Document 2	December 2011.
Issue notice of ready for environmental analysis.	December 2011.
Commission issues EA or draft EA.	May 2012.
Comments on EA or draft EA.	June 2012.
Commission issues final EA.	July 2012.

Dated: May 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11499 Filed 5–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–38–000]

Cobb Customer Requesters v. Cobb Electric Membership Corporation, Cobb Energy Management Corporation, Cooperative Energy Inc., Power4Georgians LLC, Dwight T. Brown, W.T. Nelson III; Notice of Complaint

Take notice that on April 26, 2011, Cobb Customer Requesters (CCR or Complainant) filed a complaint against Cobb Electric Membership Corporation (Cobb EMC), Cobb Energy Management Corporation (Cobb Energy), Cooperative Energy Inc. (CEI), Power4Georgians LLC (P4G), Mr. Dwight T. Brown and Mr. W.T. Nelson III (Respondents). CCR requests the Commission institute an investigation into alleged acts involving the failure to comply with the Federal Power Act and the Commission's regulations. In support of its complaint and request for investigation, CCR points to what it identifies as a series of misstatements, omissions and inaccurate filings with the Commission in relation to Cobb EMC's, and its affiliate, CEI's, request for and the Commission's authorization of market-based rate authorization, and the request for and the Commission's authorization of the holding of interlocking positions by an official of both Cobb EMC and CEI. CCR also points to what it describes as violations of the Commission's rules prohibiting affiliate cross-subsidization and other affiliate abuses associated with dealings among the respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 16, 2011.

Dated: May 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11536 Filed 5–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–107–000]

BG Energy Merchants, LLC, EXCO Operating Company, LP, v. Crosstex LIG, LLC, Notice of Complaint

Take notice that on May 3, 2011, pursuant to Rules 206 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 and 385.212 (2010) and the Commission's regulations of rates and charges for transportation services under section 311 of the Natural Gas Policy Act of 1978 (NGPA), 18 CFR 284.123 (2010), BG Energy Merchants, LLC and EXCO Operating Company, LP (Complainants) filed a formal complaint against Crosstex LIG, LLC (Respondent), alleging that Crosstex LIG, LLC assessed a fuel rate in violation of a stated contract rate resulting in unfair and inequitable charges.

Complainants state that copies of the complaint were served upon the Respondent's representatives as noted on the certificate of service and upon the Commissioner of Conservation of the State of Louisiana as an affected regulatory agency.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 23, 2011.

Dated: May 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11500 Filed 5–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Settlers Trail Wind Farm, LLC	EG11–52–000.
Avenal Park LLC	EG11–53–000.
Sand Drag LLC	EG11–54–000.
Sun City Project LLC	EG11–55–000.
Coyote Canyon Energy LLC	EG11–56–000.
Rinehart Solar Farm LLC	EG11–57–000.
Sorrento Solar Farm LLC	EG11–58–000.
Alta Wind VI, LLC	EG11–59–000.
Alta Wind VIII, LLC	EG11–60–000.

Take notice that during the month of April 2011, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: May 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11535 Filed 5–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–31–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Mid-Atlantic Connector Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Mid-Atlantic Connector Expansion Project (MAC Expansion Project) proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket. Transco requests authorization to abandon, construct, and operate certain natural gas pipeline facilities on its existing mainline system in Prince William, Fairfax, Fluvanna, and Pittsylvania Counties, Virginia. The purpose of the MAC Expansion Project is to increase capacity by 142,000 dekatherms per day from Transco's Cascade Creek Interconnect in Rockingham County, North Carolina, to delivery points in Virginia and Maryland.

The EA assesses the potential environmental effects of the construction and operation of the MAC Expansion Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). 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 National Park Service (NPS) participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The NPS will adopt and use the EA to consider the issuance of a right-of-way grant for the portion of the MAC Expansion Project on Federal lands.

Transco's proposed MAC Expansion Project includes the following facilities:

- Installation of about 2.8 miles of new 42-inch-diameter pipeline looping [1] and replacement in Prince William and Fairfax Counties;
- Modifications at Transco's existing Compressor Stations 165 and 175 in Pittsylvania and Fluvanna Counties;

[1] A pipeline loop is constructed parallel to an existing pipeline to increase capacity.

• Installation and relocation of various appurtenant underground and aboveground facilities; and

• Abandonment of certain facilities.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. 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 government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before June 3, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP11–31–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commenter 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).[2] 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 (866) 208–FERC or on the FERC 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 (*i.e.,* CP11–31). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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 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.*

Dated: May 4, 2011,

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11497 Filed 5–10–11; 8:45 am]

BILLING CODE 6717–01–P

[2] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–81–001]

The East Ohio Gas Company; Notice of Filing

Take notice that on May 4, 2011, The East Ohio Gas Company (East Ohio) filed a supplemental filing to clarify certain aspects of its Operating Statement filed on January 12, 2011, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, May 13, 2011.

Dated: May 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11538 Filed 5–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–106–000]

DCP Guadalupe Pipeline, LLC; Notice of Petition for Rate Approval

Take notice that on May 3, 2011, DCP Guadalupe Pipeline, LLC ("Guadalupe") filed, pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $0.1911 per MMBtu and a 1.87 percent fuel charge for firm and interruptible transportation and parking and lending services. All of these services will be performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Dated: May 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11534 Filed 5–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Exempt:

Docket No.	File date	Presenter or requester
1. CP11–56–000	4–19–11	Hon. Scott M. Stringer.
2. ER11–2224–000	4–19–11	Hon. William Colton.
3. ER11–2224–000	4–19–11	Hon. Kirsten Gillibrand.
4. Project No. 12611–005	4–28–11	Mary Ann Adonizio.[1]
5. Project No. 12737–002	4–28–11	Tylan Dean.[2]
6. Project No. 12737–002	4–28–11	William Hester.[3]
7. Project No. 12737–002	4–28–11	James B. Price.[4]

[1] Record of e-mail correspondence.
[2] Record of e-mail correspondence.
[3] Record of e-mail correspondence.
[4] Record of telephone call to Commission staff.

Dated: May 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11496 Filed 5–10–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9304–5]

EPA Science Advisory Board Staff Invitation to a Session on Public Involvement in EPA Advisory Activities Supported by the SAB Staff Office

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public session on public involvement in activities related to the Advisory Council on Clean Air Compliance Analysis (the Council), Clean Air Scientific Advisory Committee (CASAC), and the SAB.

DATES: The public session will be held on Wednesday, June 1, 2011 from 1 p.m. to 5 p.m. (Eastern Daylight Time).

ADDRESSES: The session will be held at Potomac Yard Conference Center, One Potomac Yard, 2777 S. Crystal Dr., Arlington, Fourth Floor Conference Center South (S–4370–80).

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to attend must register by contacting Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2218, fax (202) 565–2098; or e-mail at *nugent.angela@epa.gov,* by May 27, 2011. Persons unable to attend the public session may send written comments to Dr. Angela Nugent by May 27, 2011.

SUPPLEMENTARY INFORMATION:

Background: The SAB Staff Office provides management and technical support to the Council, CASAC, and the SAB and their committees and panels. The SAB Staff also provides information to the public about committee activities and how the public can provide input into the science advice process. As part of its effort to continuously strengthen policies and procedures for informing the public and involving them in advisory processes, the SAB Staff Office is holding a public session to receive public input and feedback on current processes. The SAB Staff Office will consider this feedback as it develops additional policies and procedures to support Council, CASAC, and SAB advisory activities.

Established by statute, the Council (42 U.S.C 7612), the CASAC (42 U.S.C. 7409), and the SAB (42 U.S.C. 4365) are EPA's chartered Federal Advisory Committees that provide independent scientific and technical peer review, consultation, advice and recommendations directly to the EPA Administrator on the scientific bases for EPA's actions and programs. Members of the SAB, CASAC, and the Council are appointed by the EPA Administrator. As Federal Advisory Committees, the Council, CASAC, and SAB conduct business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Generally, Council, CASAC and SAB meetings are announced in the **Federal Register**, conducted in public view, and provide opportunities for public input during deliberations. Additional information about these Federal Advisory Committees may be found at *http://www.epa.gov/advisorycouncilcaa, http://www.epa.gov/casac* and *http://www.epa.gov/sab,* respectively.

The SAB Staff Office is holding a public session to receive public input and feedback in four areas: (1) The public access Web sites supporting the Council, CASAC and SAB; (2) public involvement in nomination of experts for committees and panels; (3) public involvement in meeting and report development; and (4) other topics of interest to the public.

Public Access Web Sites Supporting the Council, CASAC and SAB

Three inter-related public access Web sites (*http://www.epa.gov/advisorycouncilcaa, http://www.epa.gov/casac* and *http://www.epa.gov/sab)* have been developed to communicate current information about the membership, activities, and reports of the Council, CASAC and SAB and to facilitate public involvement in advisory activities.

The Web sites were designed with the following features: (1) Integration of all information relevant to a specific advisory activity on a single page (*e.g.* key information related to Agency requests for advice, advisory committee or panel membership, **Federal Register** Notices, related meetings, draft and final reports, Agency responses to advice); (2) integration of all information relevant for a specific meeting on a single page (*e.g.* **Federal Register** Notices, meeting agendas, materials, and minutes); (3) a calendar of meetings that can be organized by day, week, month, or year; (4) "Recent Happenings" and "Recent Additions" sections and related "really simple syndication" (RSS) feeds that highlight opportunities for public input, most recent draft and final reports, and recent Agency responses; (5) a search function that identifies Council, CASAC, and SAB final reports, draft reports, advisory activities, **Federal Register** notices, meetings, committees and panels, and special-purpose Web pages; and (6) electronic nomination of experts for committees and panels. The SAB Staff Office is seeking public comment on strengthening the clarity, navigability, and usefulness of the Web sites.

Public Involvement in Nomination of Experts for Committees and Panels

The EPA Administrator appoints members to the Council, CASAC, the chartered SAB and SAB Standing Committees. Members of advisory committees and panels are non-EPA scientists, engineers, and economists and other social scientists who are recognized experts in their respective fields. They may come from academia, industry, state, and tribal governments, research institutes and non-governmental organizations throughout the United States. EPA chooses them for their demonstrated ability to examine and analyze environmental issues with objectivity and integrity and for their interpersonal, oral and written communication, and consensus-building skills.

The SAB Staff annually requests nominations from the public for membership on the chartered SAB and SAB Standing Committees. The latest request was published in the **Federal Register** on April 15, 2011 (76 FR 21349–21350). Members of the public may nominate experts as part of this annual process through the "Nomination of experts" link on the blue navigation bar at *http://www.epa.gov/sab.*

The SAB Staff Office also forms *ad hoc* subcommittees and panels under the auspices of the Council, CASAC, and SAB on environmental science topics. As additional expertise is needed, the SAB Staff Office requests for nominations are published in the **Federal Register** and posted on the public access Web sites. Members of the public may nominate experts for *ad hoc* sub committees and panels, again through the "Nomination of experts" link on the blue navigation bar at *http://www.epa.gov/sab* and may comment on candidates being considered for *ad hoc* committees and panels.

To describe these processes, the SAB Staff has developed: (1) A general

overview of the panel formation process [*Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board,* September 2002 (EPA–SAB–EC–02–010), on the Web at *http://yosemite.epa.gov/sab/sabproduct.nsf/WebFiles/OverviewPanelForm/$File/ec02010.pdf)*]; and (2) "Frequently Asked Questions about SAB, CASAC, and Council Membership and Establishment of Ad Hoc Panels and Committees" (on the Web at *http://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/QsandAsRefMembership?OpenDocument*).

The SAB Staff Office is seeking public comment on the current process regarding public nomination of experts.

Public Involvement in Meeting and Report Development

FACA and General Services Administration regulations mandate public involvement in committee activities primarily by open access to meetings and records and by providing the public opportunity to submit comments to the advisory committee or panel. Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. Public comments are sent to the Designated Federal Officer. The contact information for the Designated Federal Officer is identified in the **Federal Register** notice for committee meetings and is made publicly available on the public access Web site.

To participate in advisory activities of the SAB, CASAC, and Council, members of the public can: (1) Contact the appropriate Designated Federal Officer (DFO) or the SAB Staff Office to obtain information on or provide comments about committee activities; (2) attend and observe public meetings and teleconferences; (3) review materials used by committee members in their deliberations; (4) provide written comments for consideration by committee member; (5) present oral statements for consideration by committee members at public meetings during time periods set aside for that purpose; and (6) review minutes of committee meeting and deliberations. The SAB Staff has developed a description of how SAB, CASAC, and Council committees work and how the public can participate through the steps outlined above (*A Report of the Science Advisory Board Staff Office; Advisory Committee Meetings and Report Development: Process for Public Involvement,* EPA–SABSO–04–001, available on the Web at *http://yosemite.epa.gov/sab/SABPRODUCT.NSF/WEBSABSO/participatemeetingsreports?OpenDocument*).

The SAB Staff Office is seeking public comment on ways to strengthen public access to information about and public involvement in advisory meetings and report development.

Availability of Meeting Materials: A meeting agenda and other materials for the meeting will be placed on the SAB Web site at *http://epa.gov/sab*.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Nugent at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 4, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–11560 Filed 5–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9304–6]

Science Advisory Board Staff Office Notification of a Public Teleconference of the Advisory Council on Clean Air Compliance Analysis Augmented for Review of the Report to Congress on Black Carbon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Black Carbon Review Panel.

DATES: The meeting will be held on June 27, 2011, from 12 p.m. to 4 p.m. Eastern Time.

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this meeting must contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO). Ms. Sanzone may be contacted at the EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by telephone/voice mail at (202) 564–2067; fax at (202) 565–2098; or e-mail at *sanzone.stephanie@epa.gov*. General information concerning the Council can be found at the EPA Council Web site at *http://www.epa.gov/advisorycouncilcaa*. Any inquiry regarding EPA's *Draft Report to Congress on Black Carbon* should be directed to Erika Sasser, EPA Office of Air Quality Planning and Standards (OAQPS), at *sasser.erika@epa.gov* or (919) 541–3889.

SUPPLEMENTARY INFORMATION:

Background: The Advisory Council on Clean Air Compliance Analysis (Council) was established pursuant to Section 812 of the Clean Air Act (CAA) Amendments of 1990 (codified as 42 U.S.C. 7612) to provide independent advice to the Administrator on technical and economic aspects of analyses and reports EPA prepares on the impacts of the CAA on the public health, economy, and environment of the United States. The Council is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the Council augmented with additional experts (hereafter referred to as the Black Carbon Review Panel) will hold a public teleconference to discuss a draft advisory report, *Review of EPA's Draft Report to Congress on Black Carbon.* The Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The October 2009 Interior Appropriations bill (Pub. L. 111–88) requires the EPA, in consultation with other Federal agencies, to prepare a comprehensive report to Congress on the climate and public health effects of black carbon and the potential utility and cost-effectiveness of mitigation options. EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Council review the draft *Report to Congress on Black Carbon* to evaluate the report's scientific rigor, completeness, and technical accuracy. To conduct this review, the Council was augmented with additional experts in climate modeling and black carbon emissions, impacts, and control strategies. The Council's Black Carbon Review Panel met on April 18–19, 2011 (76 FR 17123–17124, March 28, 2011), to review the draft Report to Congress. The purpose of the June 27, 2011, teleconference is to discuss the

Council's draft report, *Review of EPA's Report to Congress on Black Carbon.*

Availability of Meeting Materials: The agenda, the draft Council report, and other meeting materials will be available on the Council Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/BC%20Report%20to%20Congress?OpenDocument* in advance of the meeting.

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. Input from the public to the Council will have the most impact if it provides specific scientific or technical information or analysis for Council panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer for the relevant advisory committee directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at this public meeting will be limited to three minutes per speaker. Interested parties should contact Ms. Stephanie Sanzone, DFO, in writing (preferably via e-mail) at the contact information noted above by June 20, 2011, to be placed on the list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by June 20, 2011, so that the information can be made available to the Panel for their consideration. Written statements should be supplied to the DFO in electronic format via e-mail (acceptable file formats: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Stephanie Sanzone at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 5, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–11561 Filed 5–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0887; FRL–8871–2]

Ziram, Diquat Dibromide, and Chloropicrin; Order for Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of products containing ziram, diquat dibromide, and chloropicrin, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a December 1, 2010 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily amend to terminate uses of all these product registrations. These are not the last products containing these pesticides registered for use in the United States. In the December 1, 2010 notice, EPA indicated that it would issue an order implementing the amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice.

DATES: The amendments are effective May 11, 2011.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed in the following table. You may also reach each contact person by mail at Pesticide Re-evaluation Division, (7508P) Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. For pesticide-specific information contact: The Chemical Review Manager identified in the table below for the pesticide of interest.

Active ingredient	Chemical Review Manager, telephone number, e-mail address
Chloropicrin	Andrea Mojica, (703) 308–0122, *mojica.andrea@epa.gov.*
Diquat dibromide	Eric Miederhoff, (703) 347–8028, *miederhoff.eric@epa.gov.*
Ziram	Kelly Ballard, (703) 305–8126, *ballard.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0887. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What Action is the Agency taking?

This notice announces the amendments to delete uses, as requested by registrants, of products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—ZIRAM, DIQUAT DIBROMIDE, AND CHLOROPICRIN PRODUCT REGISTRATION AMENDMENTS TO DELETE USES

EPA Registration No.	Product name	Chemical	Uses to be deleted
228–675	Nufarm Diquat SPC 2 L Herbicide.	Diquat Dibromide	Sorghum and soybean.
2749–530	Diquat Dibromide 37.3% SL AG.	Diquat Dibromide	Sorghum and soybean (seed crop only).
2749–531	Diquat Manufacturing Concentrate.	Diquat Dibromide	Sorghum and soybean (seed crop only).
5785–17	Chlor-O–Pic	Chloropicrin	Mushroom casing soil, potting soil, and small area seed beds using handheld fumigation devices.
8536–2	Chloropicrin 100 Fumigant	Chloropicrin	Mushroom casing soil, potting soil, and small area seed beds using handheld fumigation devices.
8622–43	Metapicrin	Chloropicrin	Mushroom casing soil, potting soil, and small area seed beds using handheld fumigation devices.
8853–4	HD–Pic Fumigant	Chloropicrin	Mushroom casing soil, potting soil, and small area seed beds using handheld fumigation devices.
8853–6	Pic Plus Fumigant	Chloropicrin	Mushroom casing soil, potting soil, and small area seed beds using handheld fumigation devices.
45728–12	Ziram Granuflo Fungicide	Ziram	Blackberries.
58266–2	Tri-Clor Fumigant	Chloropicrin	Mushroom casing soil, potting soil, and small area seed beds using handheld fumigation devices.
62531–2	ASHTA Gold	Chloropicrin	Mushroom casing soil, potting soil, and small area seed beds using handheld fumigation devices.
66330–47	TM–442	Chloropicrin	Mushroom casing soil, potting soil, and small area seed beds using handheld fumigation devices.
70506–173	Ziram 76DF Fungicide	Ziram	Blackberries.
82542–15	Solear Diquat 2L Desiccant	Diquat Dibromide	Sorghum and soybean (seed crop only).
82633–2	Sharda Diquat Concentrate	Diquat Dibromide	Sorghum and soybean (seed crop only).
83529–13	Diquash Ag	Diquat Dibromide	Sorghum and soybean (seed crop only).
83979–2	Rowrunner Ag Herbicide	Diquat Dibromide	Sorghum and soybean.
85607–1	Reddick PIC C–100	Chloropicrin	Mushroom casing soil, potting soil, and small area seed beds using handheld fumigation devices.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1.

TABLE 2—REGISTRANTS OF AMENDED PRODUCTS

EPA Company No.	Company name and address
228	Nufarm Americas, Inc., 150 Harvester Drive, Suite 200, Burr Ridge, IL 60527.
2749	Aceto Agricultural Chemicals Corporation, One Hollow Lane, Lake Success, NY 11042–1215.
5785	Chemtura Corporation, 1801 Highway 52 West, P.O. Box 2200, West Lafayette, IN 47906.
8536	Soil Chemicals Corporation dba Cardinal Professional Products, P.O. Box 782, 8770 Highway 25, Hollister, CA 95024–0782.
8622	ICL–IP America, Inc., 95 MacCorkle Avenue, SW., South Charleston, WV 25303.
8853	Hendrix and Dail, Inc., P.O. Box 648, Greenville, NC 27835–0648.
45728	Taminco, Inc., 21320 Sweet Clover Place, Ashburn, VA 20147.
58266	Shadow Mountain Products Corporation, 8770 Highway 25, P.O. Box 1327, Hollister, CA 95024–1327.

TABLE 2—REGISTRANTS OF AMENDED PRODUCTS—Continued

EPA Company No.	Company name and address
62531	ASHTA Chemicals Inc., 3509 Middle Road, P.O. Box 858, Ashtabula, OH 44005–0858.
66330	Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
70506	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
82542	Source Dynamics, 10039 E. Troon North Drive, Scottsdale, AZ 85262.
82633	Sharda Worldwide Exports Pvt. Ltd., Domnic Holm, 29th Road, Bandra (West) Mumbai-400050.
83979	Rotam North America, Inc., 1400 N.W. 107th Avenue Suite 310, Miami, FL 33172.
85607	Reddick Fumigants of NC, LLC, 3002 W. Main Street, Williamston, NC 27892.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the December 1, 2010 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary amendments to delete uses of products listed in Table 1 of Unit II.

IV. Termination Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendments to terminate uses of ziram, diquat dibromide, and chloropicrin registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are amended to terminate the affected uses. The effective date of the terminations that are the subject of this notice is May 11, 2011. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on December 1, 2010 (75 FR 74714) (FRL–8854–3). The comment period closed on January 3, 2011.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

The registrants of the chloropicrin products listed in Table 1 of Unit II were permitted to sell and distribute products under the previously approved labeling until December 1, 2010, or a revised date if product labels with the 2010 changes (*i.e.,* Phase I) had not been accepted in all states. The labels were not accepted in all states until after December 1, 2010 and so registrants were permitted by EPA to sell and distribute products under previously approved labeling until December 31, 2010. After December 31, 2010, these registrants are prohibited from selling or distributing the products under previously approved labels that include the deleted uses identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

For the ziram and diquat dibromide products listed in Table 1 of Unit II, once EPA has approved product labels reflecting the requested amendments to delete uses, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 12 months after the date of **Federal Register** publication of the order terminating certain uses, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted uses.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 2, 2011.

Richard P. Keigwin,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–11206 Filed 5–10–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficient Assets To Satisfy Claims Against Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The FDIC has determined that insufficient assets exist in the receivership of AmTrust Bank, Cleveland, Ohio, to make any distribution to general unsecured claims, and therefore such claims will recover nothing and have no value.

DATES: The FDIC made its determination on April 30, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, you may contact an FDIC Claims Agent at (904) 256–3925. Written correspondence may also be mailed to FDIC as Receiver of AmTrust Bank, Attention: Claims Agent, 7777 Baymeadows Way West, Jacksonville, Florida 32256.

SUPPLEMENTARY INFORMATION: On December 4, 2009, AmTrust Bank, Cleveland, Ohio, (FIN #10155) was closed by the Office of Thrift Supervision ("OTS"), and the Federal Deposit Insurance Corporation ("FDIC") was appointed as its receiver ("Receiver"). In complying with its statutory duty to resolve the institution in the method that is least costly to the deposit insurance fund, *see* 12 U.S.C. 1823(c)(4), the FDIC facilitated a transaction with New York Community Bank, Westbury, New York, to acquire the deposits and most of the assets of the failed institution.

Section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(11)(A), sets forth the order of priority for distribution of amounts realized from the liquidation or other resolution of an insured depository institution to pay claims. Under the statutory order of priority, administrative expenses and deposit liabilities must be paid in full before any distribution may be made to general unsecured creditors or any lower priority claims.

As of December 31, 2010, the value of assets available for distribution by the Receiver, together with anticipated recovery sources, including recoveries on claims against directors, officers, and other professionals, claims in bankruptcy, and refunds of Federal and state taxes, was $3,102,153,098. As of the same date, administrative expenses and depositor liabilities equaled $4,555,852,340, exceeding available assets by $1,453,699,242. Accordingly, the FDIC has determined that insufficient assets exist to make any distribution on general unsecured creditor claims (and any lower priority claims) and therefore all such claims, asserted or unasserted, will recover nothing and have no value.

Dated: May 5, 2011.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–11415 Filed 5–10–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President), 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *North Central Bancshares, Inc.,* Fort Dodge, Iowa; to become a bank holding company following the conversion of its subsidiary, First Federal Savings Bank of Iowa, Fort Dodge, Iowa, from a Federally chartered savings bank to a state chartered bank.

Board of Governors of the Federal Reserve System, May 6, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–11527 Filed 5–10–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodin Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

[April 1, 2011 thru April 29, 2011]

ET date	Trans. No.	ET req status	Party name
04/01/2011	20110676	G	Epiq Systems, Inc.; Frontenac VIII Limited Partnership; Epiq Systems, Inc.
	20110678	G	EMC Corporation; NetWitness Corporation; EMC Corporation
	20110681	G	Sidney B. DeBoer; Gregory S. Rasmussen; Sidney B. DeBoer
	20110689	G	International Petroleum Investment Company; Compania Espanola de Petroleos, S.A.; International Petroleum Investment Company
	20110690	G	Mr. Yitshak Sharon (Tshuva); Ergon, Inc.; Mr. Yitshak Sharon (Tshuva)
04/04/2011	20110703	G	Cephalon, Inc.; Gemin X Pharmaceuticals, Inc.; Cephalon, Inc.
04/05/2011	20110679	G	Brazos Equity Fund III, L.P.; TLC Holdings, LLC; Brazos Equity Fund III, L.P.
	20110700	G	Friedman Fleischer & Lowe Capital Partners III, L.P.; Thoma Cressey Fund VIII, L.P.; Friedman Fleischer & Lowe Capital Partners III, L.P.
04/07/2011	20110697	G	Cowen Group, Inc.; LaBranche & Co. Inc.; Cowen Group, Inc.
04/08/2011	20110557	G	James Ratcliffe; Styrolution; James Ratcliffe
	20110558	G	BASF SE; Styrolution; BASF SE
	20110567	G	Kindred Healthcare, Inc.; RehabCare Group, Inc.; Kindred Healthcare, Inc.
	20110693	G	Berkshire Hathaway Inc.; The Lubrizol Corporation; Berkshire Hathaway Inc.
	20110701	G	International Business Machines Corporation; The AM3 Irrevocable Trust; International Business Machines Corporation
	20110702	G	Gores Capital Partners III, L.P.; The Azalea Fund III, L.P.; Gores Capital Partners III, L.P.
	20110708	G	Wellspring Capital Partners IV, L.P.; Wells Fargo & Company; Wellspring Capital Partners IV, L.P.
	20110710	G	Charles W. Ergen; DBSD North America, Inc.; Charles W. Ergen.
	20110712	G	CB Richard Ellis Group, Inc.; ING Groep N.V.; CB Richard Ellis Group, Inc.
	20110720	G	Dr. Patrick Soon-Shiong, M.D.; Celgene Corporation; Dr. Patrick Soon-Shiong, M.D.
	20110722	G	Schneider Electric SA; Weston Presidio V, L.P.; Schneider Electric SA.
	20110728	G	Charles W. Ergen; Blockbuster Inc.—Debtor-in-Possession; Charles W. Ergen.
04/11/2011	20110718	G	Carl C. Icahn; Blockbuster Inc.—Debtor-in-Possession; Carl C. Icahn.
04/13/2011	20110716	G	Align Technology, Inc.; Cadent Holdings, Inc.; Align Technology, Inc.
	20110717	G	Kirby Corporation; First Reserve Fund XI, L.P.; Kirby Corporation.
	20110719	G	Carlyle U.S. Growth Fund III, L.P.; Redflex Holdings Limited; Carlyle U.S. Growth Fund III, L.P.
	20110723	G	Highstar Capital IV Prism, L.P.; LS Power Equity Partners, L.P.; Highstar Capital IV Prism, L.P.
04/14/2011	20110666	G	James River Coal Company; International Resource Partners LP; James River Coal Company.
04/15/2011	20110724	G	London Stock Exchange Group plc; TMX Group Inc.; London Stock Exchange Group plc.
	20110725	G	PerkinElmer, Inc.; CambridgeSoft Corporation; PerkinElmer, Inc.
	20110737	G	LLR Equity Partners III, L.P.; Tom Gores; LLR Equity Partners III, L.P.
	20110739	G	Bernard Arnault; Bulgari S.p.A.; Bernard Arnault.
	20110744	G	Apax Europe VII–B, L.P.; Epicor Software Corporation; Apax Europe VII–B, L.P.

EARLY TERMINATIONS GRANTED—Continued

[April 1, 2011 thru April 29, 2011]

ET date	Trans. No.	ET req status	Party name
	20110745	G	Apax Europe VII–B, L.P.; Hellman & Friedman Capital Partners V, L.P.; Apax Europe VII–B, L.P.
04/18/2011	20110732	G	Michael G. Rubin; eBay Inc.; Michael G. Rubin.
	20110733	G	eBay Inc.; GSI Commerce, Inc.; eBay Inc.
	20110734	G	AGL Resources Inc.; Nicor Inc.; AGL Resources Inc.
	20110743	G	Warburg Pincus Private Equity X, L.P.; Rural/Metro Corporation; Warburg Pincus Private Equity X, L.P.
04/19/2011	20110735	G	Chicago Growth Partners II, L.P.; Richard Stamper; Chicago Growth Partners II, L.P.
	20110738	G	Arlington Capital Partners H, L.P.; Jeffrey D. Smock; Arlington Capital Partners II, L.P.
04/22/2011	20110682	G	Manulife Financial Corporation; Electric Power Development Co., Ltd.; Manulife Financial Corporation.
	20110731	G	The Charles Schwab Corporation; optionsXpress, Holdings, Inc.; The Charles Schwab Corporation.
	20110736	G	AMETEK, Inc.; River V. L.P.; AMETEK, Inc.
	20110741	G	Cephalon, Inc.; ChemGenex Pharmaceuticals Limited; Cephalon, Inc.
	20110748	G	Genpact Limited; Headstrong Corporation; Genpact Limited.
	20110752	G	Andrea Pignataro; Warburg Pincus Private Equity IX, L.P.; Andrea Pignataro.
	20110753	G	Parkway Properties, Inc.; James R. Heistand; Parkway Properties, Inc.
	20110756	G	SEI, Inc.; Retail Ventures, Inc.; SEI, Inc.
	20110757	G	Schottenstein RVI, LLC; Retail Ventures, Inc.; Schottenstein RVI, LLC.
	20110758	G	Terry Taylor; Estate of R.C. Alexander; Terry Taylor.
	20110760	G	TCV VII, L.P.; K12 Inc.; TCV VII, L.P.
	20110761	G	Klockner & Co. SE; The Second Dave Samson Trust; Klockner & Co. SE.
	20110765	G	JSM Acquisition, L.P.; Padres L.P.; JSM Acquisition, L.P.
04/25/2011	20110751	G	Walter Investment Management Corp.; Centerbridge Capital Partners AIV II, L.P.; Walter Investment Management Corp.
04/26/2011	20110278	G	Hikma Pharmaceuticals PLC; Baxter International Inc.; Hikma Pharmaceuticals PLC.
04/29/2011	20110709	G	Bronson Healthcare Group, Inc.; Trinity Health Corporation; Bronson Healthcare Group, Inc.
	20110770	G	Frac Tech International, LLC; World Investment Group, LLC; Frac Tech International, LLC.
	20110775	G	Investindustrial III, L.P.; Momentive Performance Materials Holdings LLC; Investindustrial III, L.P.
	20110780	G	Jefferies Group, Inc.; Prudential Financial, Inc.; Jefferies Group, Inc.
	20110782	G	New Mountain Partners III, L.P.; Dr. Romesh Wadhwani; New Mountain Partners III, L.P.
	20110783	G	KKR 2006 Fund (Overseas), Limited Partnership; Pfizer Inc.; KKR 2006 Fund (Overseas), Limited Partnership.
	20110786	G	Permira IV Continuing L.P.2; The Lightyear Fund, L.P.; Permira IV Continuing L.P.2.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative; or Renee Chapman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–11303 Filed 5–10–11; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held Thursday, May 26, 2011 and Friday, May 27, 2011. The meeting will be held from 10 a.m. to approximately 5 p.m. on May 26, 2011 and 9 a.m. to approximately 3 p.m. on May 27, 2011.

ADDRESSES: Department of Health and Human Services, Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Joppy, Committee Manager, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue, Room 443H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 690–5560. More detailed information about PACHA can be obtained by accessing the Council's Web site at *http://www.pacha.gov* .

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995 as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies to promote effective prevention of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the Council's Web site *http://www.pacha.gov* .

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the building. Individuals who plan to attend and need special assistance, such as language interpretation or reasonable accommodations, should notify the designated contact person. Pre-registration for public attendance is advisable and can be accomplished by contacting the PACHA Committee Manager.

Members of the public will have the opportunity to provide comments on during the public comment period(s) of the meeting. Pre-registration is required for public comment. Any individual who wishes to participate in the public comment session must *contact:* Melvin Joppy, Office of HIV/AIDS Policy, *melvin.joppy@hhs.gov,* by close of business Monday, May 23, 2011. Public comment will be limited to three minutes per speaker. Members of the public who wish to have printed materials distributed to PACHA members for discussion at the meeting are asked to provide, at a minimum, 2 copies of the materials to the PACHA Committee Manager no later than close of business Tuesday, May 24, 2011. Contact information for the PACHA Committee Manager is provided above.

Dated: May 5, 2011.

Christopher H. Bates,

Executive Director, Presidential Advisory on HIV/AIDS.

[FR Doc. 2011–11542 Filed 5–10–11; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Pre-test of an Assisted Living Consensus Instrument." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by July 11, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRO.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Pre-Test of an Assisted Living Consensus Instrument

Using a consensus-based process and in partnership with the Center for Excellence in Assisted Living (CEAL), AHRQ has developed a data collection tool that will collect uniform information about individual assisted living facilities (ALFs) in the United States to increase the value of healthcare for consumers by helping them make informed choices when selecting an ALF. Included in the development process were a voluntary committee of national representatives of Assisted Living Facilities, consumers, and researchers.

Assisted living (AL) is a relatively new long-term care option that currently serves approximately one million older and dependent Americans. Unlike skilled nursing facilities which are Federally regulated and relatively uniform from state to state, ALFs vary from state to state, as well as within each state, reflecting various core values that embrace consumer choice and provider diversity.

Most states mandate a set of basic services that an ALF must offer, such as meals and housekeeping. The upper limits of allowable services are also often prescribed. However, within the range of services required and allowed, ALFs in most states are given some

latitude as to who they choose to serve and what services they choose to provide. Further, the choice of services is not always confined by geography; that is, given the widespread dispersion of families, potential AL residents may be looking to choose among assisted living properties in different states, thereby widening the choices available.

While some ALFs are equipped to serve a wide range of resident needs, it is more common that an assisted living property will address a particular "market niche." There are many ways in which ALFs offer diversity—in the religious or cultural affiliations of its target market; in the house rules that influence expectations about dress and behavior in the dining room; in the admission and discharge criteria in place; as well as in the range of services provided. Major variation is found in the extent to which a particular ALF is able and willing to serve those with dementia. While most ALFs admit and retain residents with mild cognitive impairment, those without a specialized dementia program may have difficulty serving residents with common symptoms such as a lack of safety awareness, wandering, sleep disturbances and agitation.

To some extent, admission and discharge criteria are dictated by the laws and regulations of the state in which a particular ALF operates. Beyond this, ALFs have considerable latitude in assessing individuals whom they will admit and retain in their facilities.

In addition to the assessment of needed services in relation to the services that are available, the ability to pay for AL services is a critical factor for both the consumer and ALF decision-making about whether and when an individual moves into and out of a particular ALF. Approximately ten percent of AL residents receive subsidies through State Medicaid Waiver or State Plan programs, and fewer than three percent are covered by long-term care insurance. Thus, a substantial percentage of AL consumers use savings and other assets, including proceeds from the sale of their homes, to pay for their stay in an ALF. In choosing an ALF, consumers need to consider whether a particular facility is able to accept Medicaid or other third party payments, both now and in the future, should their assets become depleted.

This research has the following goals:

(1) Refine the data collection tool through pre-testing with a sample of ALFs; and

(2) Make the data collection tool publically available through the AHRQ Web site.

This study is being conducted by AHRQ through its contractor, Abt Associates Inc., pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services. 42 U.S.C. 299a(a)(1).

Method of Collection

To achieve the goals of this project the following data collection will be undertaken:

(1) Telephone verification. The purpose of the telephone verification is to ensure that the most current mailing address of each ALF is utilized for the survey pre-test, and to obtain the name of the Administrator or Executive Director of the ALF so the mailed pre-test survey can be addressed directly to that person; and

(2) Pre-test of the Assisted Living Provider Information Tool for Consumer Education. The data collection will include information on several topics of interest to consumers including services available in ALFs and costs of those services, criteria for moving into and out of an ALF, resident's rights, house rules, life safety features, staffing within the ALF, and the availability of dementia care services within the ALF. The purpose of the pre-test is to assess the utility of the data collection tool as well as the feasibility for its implementation.

The data that will be collected through this effort will be used to make final refinements to the Assisted Living Provider Information Tool for Consumer Education and to make adjustments to the recommended processes for implementing a similar data collection effort on a broader basis.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for the respondents' time to participate in this project. The telephone verification will be completed by 285 AL providers and will take approximately one minute to complete. The pre-test of the Assisted Living Provider Information Tool for Consumer Education will be completed by 191 ALFs and will require approximately 25 minutes to complete. The total annual burden is estimated to be 85 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this project. The total annualized cost burden is estimated to be $3,576.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Telephone verification	285	1	1/60	5
Pre-test	191	1	25/60	80
Total	476	na	na	85

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Telephone verification	285	5	$15.37	$77
Pre-Test	191	80	43.74	3,499
Total	476	85	na	3,576

* Based upon the mean of the average wages reflected in the National Compensation Survey (May 2009) U.S. Department of Labor, Bureau of Labor Statistics. Wage categories used: phone verification—office and administrative support workers; pre-test—medical and health services managers in the United States.

Estimated Annual Costs to the Federal Government

The total cost of this contract to the government is $424,000. The project extends over four years, but this request is for a one year OMB clearance. Exhibit 3 shows a breakdown of the total cost as well as the annualized cost.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized
Project Development	$125,000	$31,250
Data Collection Activities	90,000	22,500
Data Processing and Analysis	30,000	7,500
Reporting of results	30,000	7,500
Project Management	164,552	41,138
Total Costs	439,552	109,888

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 22, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–11302 Filed 5–10–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11EX]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel L. Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of Enhanced Implementation of the "Learn the Signs. Act Early." Campaign in 4 Target Sites,—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's "Learn the Signs Act Early" campaign is a health education campaign that aims to improve parent awareness of early child development and improve early identification of children with autism spectrum disorders and other developmental disabilities. The proposed information collection activity will allow necessary evaluation of the supplemental program to determine if the program has achieved its intended goals; to identify efficient implementation strategies that reach the greatest numbers of parents of young children within defined population groups; and determine the effectiveness of those strategies in changing parents' awareness of the campaign and behavior related to monitoring early development.

This information collection activity will consist of two surveys of parents of young children in the demographic groups and geographic areas targeted by this enhanced implementation of the "Learn the Signs Act Early" campaign; one at baseline (before campaign implementation) and one at follow-up (near implementation end). The surveys will capture information from the program's target audience to determine campaign reach and exposure among this group, as well as identify change in knowledge, awareness, and behavior related to the campaign and monitoring early child development. The project aims to attain 250 completed parent surveys from each of the 4 sites at baseline and again at follow-up (for a total of 2,000 completed surveys). It is estimated that 2400 respondents will have to be screened in order to recruit 2000 total survey participants.

Participants will be recruited to participate in one of two surveys that will be conducted in the following four target areas: Washington: Yakima, Benton, Franklin, and Walla Walla counties; Missouri: St. Louis City; Utah: Salt Lake County; and Alaska: Anchorage, Palmer, Wasilla, Homer, Kenai.

This request is to obtain OMB clearance for two years. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Parents	Screener	2400	1	3/60	120
Parents	Baseline Survey	1000	1	10/60	167
Parents	Follow-up Survey	1000	1	10/60	167
Total					454

Dated: May 5, 2011.

Daniel L. Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–11520 Filed 5–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11BZ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Quantitative Survey of Physician Practices in Laboratory Test Ordering and Interpretation—NEW—Office of Surveillance, Epidemiology, and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Quantitative Survey of Physician Practices in Laboratory Test Ordering and Interpretation is a national systematic study investigating how the rapid evolution of laboratory medicine is affecting primary care practice. This will be a new collection. The survey will be funded in full by the Office of Surveillance, Epidemiology, and Laboratory Services (OSELS) of the Centers for Disease Control and Prevention (CDC).

The survey follows focus groups of fewer than ten participants with primary care physicians that identified common concerns and problems with laboratory test ordering and test interpretation. The survey will quantify the prevalence and impact of the issues identified within the focus groups. Understanding the relative importance of physician issues in the effective and efficient use of laboratory medicine in diagnosis will guide future efforts of the CDC to improve primary care practice and improve health outcomes of the American public.

The survey covers basic physician demographic characteristics (year of birth, gender, years in practice, physician specialty, professional memberships, practice size and practice setting), practice-related questions including number and type of patients seen weekly. The majority of the questions request information about physician decision making processes involved in test ordering and interpretation.

The effective use of laboratory testing is an important component of the diagnostic process within physician practices. The field of laboratory medicine is undergoing rapid change with the continuing introduction of new tests, increased focus on evidence-based medicine, the deployment of Electronic Health Records, and the wide availability to physicians of electronic information resources, interactive diagnostic tools, and computerized order entry systems. To date, no systematic study has been conducted to investigate how physicians are incorporating these laboratory testing innovations into their day-to-day practices. This survey seeks to provide insight into how physicians integrate laboratory medicine into their routines, and how they manage any challenges they encounter.

The survey will be conducted on a national sample of primary care physicians. There are no costs to respondents except their time. The total estimated annualized burden hours are 373.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)
Family Practice Physicians & Internal Medicine Generalists	Laboratory Practices	1600	1	14/60

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–11528 Filed 5–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Meeting

Studies at the Animal-Human Interface of Influenza and Other Zoonotic Diseases in Vietnam, Funding Opportunity Announcement (FOA) IP11–005, The Incidence and Etiology of Influenza-Associated Community-Acquired Pneumonia in Hospitalized Persons Study; FOA IP11–011, Spectrum of Respiratory Pathogens in Acute Respiratory Tract Infection Among Children and Adults in India; FOA IP11–012, Influenza Vaccine Efficacy in Tropical and Developing Countries; FOA IP11–013, Influenza and Other Respiratory Diseases in Southern Hemisphere; and FOA IP11–014, initial review.

Correction: The notice was published in the **Federal Register** on March 11, 2011, Volume 76, Number 48, Pages 13413–13414. The place should read as follows:

Place: Holiday Inn Decatur Conference Center, 130 Clairemont Avenue, Decatur, Georgia 30030, *Telephone:* (404) 371–0204.

Contact Person For More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, *Telephone:* (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–11522 Filed 5–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Combining Subjective and Objective Methods for Quantifying Contact Rates and Mixing Pattern in School-Aged Children, Funding Opportunity Announcement, CK11–006, Initial Review

Correction: The notice was published in the **Federal Register** on March 22, 2011, Volume 76, Number 55, Page 15984. The time, date, and place should read as follows:

Time And Date: 11 a.m.–2 p.m., May 3, 2011 (Closed).

Place: Teleconference.

Contact Person For More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, *Telephone:* (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–11523 Filed 5–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Virologic Evaluation of the Modes of Influenza Virus Transmission Among Humans, Funding Opportunity Announcement, IP11–001

Correction: The notice was published in the **Federal Register** on April 4, 2011, Volume 76, Number 64, Page 18555.

The place should read as follows:

Place: Holiday Inn Decatur Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030, *Telephone:* (404) 371–0204.

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, *Telephone:* (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–11521 Filed 5–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis Meeting (ACET)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates

11 a.m.–5 p.m., June 7, 2011.
8:30 a.m.–2:30 p.m., June 8, 2011.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333, telephone (404) 639–8317.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include issues pertaining to TB Surveillance/Epidemiology/Outbreaks; Role of U.S. program in global TB control; Federal role in TB clinical and diagnostic research; Role of CDC in development of evidence-based policies; Forecasting the U.S. TB Trends and

Challenges; and other related tuberculosis issues. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., M/S E–07, Atlanta, Georgia 30333, telephone: (404) 639–8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–11526 Filed 5–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0042]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 10, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0014. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Investigational New Drug (IND) Regulations—21 CFR Part 312—(OMB Control Number 0910–0014)—Extension

FDA is requesting OMB approval for the reporting and recordkeeping requirements contained in the FDA regulations "Investigational New Drug Application" in part 312 (21 CFR part 312). Part 312 implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the FD&C Act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts. The IND regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other Agency scientific reviewers assigned responsibility for overseeing the specific study. The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements are dictated by the scientific procedures and human subject safeguards that must be followed in the clinical tests of INDs.

The IND information collection requirements provide the means by which FDA can do the following: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; and (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry in response to the IND regulations, FDA cannot authorize or monitor the clinical investigations which must be conducted prior to authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, to assure subject safety, to assure that a study will be conducted ethically, and to increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the drug should be marketed and available for use in medical practice.

There are two forms that are required under part 312:

Form FDA–1571—"Investigational New Drug Application"—A person who intends to conduct a clinical investigation submits this form to FDA. It includes the following information: (1) A cover sheet containing background information on the sponsor and investigator; (2) a table of contents; (3) an introductory statement and general investigational plan; (4) an investigator's brochure describing the drug substance; (5) a protocol for each planned study; (6) chemistry, manufacturing, and control information for each investigation; (7) pharmacology and toxicology information for each investigation; and (8) previous human experience with the investigational drug.

Form FDA–1572—"Investigator Statement"—Before permitting an investigator to begin participation in an investigation, the sponsor must obtain and record this form. It includes background information on the investigator and the investigation, and a general outline of the planned investigation and the study protocol.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements in part 312:

Reporting Requirements

21 CFR 312.2(e)—Requests for FDA advice on the applicability of part 312 to a planned clinical investigation.
21 CFR 312.8—Charging for investigational drugs under an IND.
21 CFR 312.10—Applications for waiver of requirements under part 312. As indicated in § 312.10(a), estimates for this requirement are included under §§ 312.23 and 312.31. In addition, separate requests under § 312.10 are estimated in Table 1.
21 CFR 312.20(c)—Applications for investigations involving an exception from informed consent under § 50.24 (21 CFR 50.24). Estimates for this requirement are included under § 312.23.
21 CFR 312.23—INDs (content and format).
21 CFR 312.23(a)(1)—Cover sheet FDA–1571.
21 CFR 312.23(a)(2)—Table of Contents.
21 CFR 312.23(a)(3)—Investigational plan for each planned study.
21 CFR 312.23(a)(5)—Investigator's brochure.
21 CFR 312.23(a)(6)—Protocols—Phases 1, 2, and 3.
21 CFR 312.23(a)(7)—Chemistry, manufacturing, and control information.
21 CFR 312.23(a)(7)(iv)(a),(b),(c)—A description of the drug substance, a list of all components, and any placebo used.
21 CFR 312.23(a)(7)(iv)(d)—Labeling: Copies of labels and labeling to be provided each investigator.
21 CFR 312.23(a)(7)(iv)(e)—Environmental impact analysis regarding drug manufacturing and use.
21 CFR 312.23(a)(8)—Pharmacological and toxicology information.
21 CFR 312.23(a)(9)—Previous human experience with the investigational drug.
21 CFR 312.23(a)(10)—Additional information.
21 CFR 312.23(a)(11)—Relevant information.
21 CFR 312.23(f)—Identification of exception from informed consent.
21 CFR 312.30—Protocol amendments.
21 CFR 312.30(a)—New protocol.
21 CFR 312.30(b)—Change in protocol.
21 CFR 312.30(c)—New investigator.
21 CFR 312.30(d)—Content and format.
21CFR 312.30(e)—Frequency.
21 CFR 312.31—Information amendments.
21CFR 312.31(b)—Content and format.
—Chemistry, toxicology, or technical information.
21 CFR 312.32—Safety reports.
21 CFR 312.32(c)(1)—Written reports to FDA and to investigators.
21 CFR 312.32(c)(2)—Telephone reports to FDA for fatal or life-threatening experience.
21 CFR 312.32(c)(3)—Format or frequency.
21 CFR 312.32(d)—Follow up submissions.
21 CFR 312.33—Annual reports.
21 CFR 312.33(a)—Individual study information.
21 CFR 312.33(b)—Summary information.
21 CFR 312.33(b)(1)—Adverse experiences.
21 CFR 312.33(b)(2)—Safety report summary.
21 CFR 312.33(b)(3)—List of fatalities and causes of death.
21 CFR 312.33(b)(4)—List of discontinuing subjects.
21 CFR 312.33(b)(5)—Drug action.
21 CFR 312.33(b)(6)—Preclinical studies and findings.
21 CFR 312.33(b)(7)—Significant changes.
21 CFR 312.33(c)—Next year general investigational plan.
21 CFR 312.33(d)—Brochure revision.
21 CFR.312.33(e)—Phase I protocol modifications.
21 CFR.312.33(f)—Foreign marketing developments.
21 CFR 312.38(b) and (c)—Notification of withdrawal of an IND.
21 CFR 312.42(e)—Sponsor requests that a clinical hold be removed and submits a complete response to the issues identified in the clinical hold order.
21 CFR 312.44(c) and (d)—Opportunity for sponsor response to FDA when IND is terminated.
21 CFR 312.45(a) and (b)—Sponsor request for, or response to, inactive status determination of an IND.
21 CFR 312.47(b)—"End-of-Phase 2" meetings and "Pre-NDA" meetings.
21 CFR 312.53(c)—Investigator information.
Investigator report (Form FDA–1572) and narrative; Investigator's background information; Phase 1 outline of planned investigation and Phase 2 outline of study protocol.
21 CFR 312.54(a) and (b)—Sponsor submissions concerning investigations involving an exception from informed consent under § 50.24.
21 CFR 312.55(b)—Sponsor reports to investigators on new observations, especially adverse reactions and safe use. Only "new observations" are estimated under this section; investigator brochures are included under § 312.23.
21 CFR 312.56(b), (c), and (d)—Sponsor monitoring of all clinical investigations, investigators, and drug safety; notification to FDA.
21 CFR 312.58(a)—Sponsor's submission of records to FDA on request.
21 CFR 312.64—Investigator reports to the sponsor.
21 CFR 312.64(a)—Progress reports.
21 CFR 312.64(b)—Safety reports.
21 CFR 312.64(c)—Final reports.
21 CFR 312.66—Investigator reports to Institutional Review Board. Estimates for this requirement are included under § 312.53.
21 CFR 312.70(a)—Investigator disqualification; opportunity to respond to FDA.
21 CFR 312.83—Sponsor submission of treatment protocol. Estimates for this requirement are included under § 312.320.
21 CFR 312.85—Sponsors conducting phase 4 studies. Estimates for this requirement are included under § 312.23 in 0910–0014, and §§ 314.50, 314.70, and 314.81 in 0910–0001.
21 CFR 312.110(b)—Request to export an investigational drug.
21 CFR 312.120—Submissions related to foreign clinical studies not conducted under an IND.
21 CFR 312.130(d)—Request for disclosable information for investigations involving an exception from informed consent under § 50.24.
21 CFR 312.310(b); 312.305(b)—Submissions related to expanded access and treatment of an individual patient.
21 CFR 312.310(d)—Submissions related to emergency use of an investigational new drug.
21 CFR 312.315(c); 312.305(b)—Submissions related to expanded access and treatment of an intermediate size patient population.
21 CFR 312.320—Submissions related to treatment IND or treatment protocol.

Recordkeeping Requirements

21 CFR 312.52(a)—Transfer of obligations to a contract research organization.
21 CFR 312.57—Sponsor recordkeeping.
21 CFR 312.59—Sponsor recordkeeping of disposition of unused supply of drugs. Estimates for this requirement are included under § 312.57.
21 CFR 312.62(a)—Investigator recordkeeping of disposition of drugs.

21 CFR 312.62(b)—Investigator recordkeeping of case histories of individuals.

21 CFR 312.120(d)—Recordkeeping requirements for submissions related to foreign clinical studies not conducted under an IND. Estimates for this requirement are included under § 312.57.

21 CFR 312.160(a)(3)—Records maintenance: shipment of drugs for investigational use in laboratory research animals or in vitro tests.

21 CFR 312.160(c)—Shipper records of alternative disposition of unused drugs.

In the tables below, the estimates for "No. of Respondents," "Annual Frequency per Response," and "Total Annual Responses" were obtained from the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) reports and data management systems for submissions received in 2007 and from other sources familiar with the number of submissions received under part 312. The estimates for "Hours per Response" were made by CDER and CBER individuals familiar with the burden associated with these reports and from estimates received from the pharmaceutical industry.

In the **Federal Register** of January 27, 2011 (76 FR 4914), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours) [2]	Total hours
312.2(e)	455	1.03	469	24	11,256
312.8	30	1.13	34	48	1,632
312.10	4	1	4	10	40
312.23(a) through (f)	2,496	1.26	3,145	1,600	5,032,000
312.30(a) through (e)	2,030	8.91	18,087	284	5,136,708
312.31(b)	153	2.97	454	100	45,400
312.32(c) and (d)	985	23.06	22,714	32	726,848
312.33(a) through (f)	2,564	2.34	6,000	360	2,160,000
312.38(b) and (c)	654	1.34	876	28	24,528
312.42(e)	149	1.10	164	284	46,576
312.44(c) and (d)	44	1	45	16	704
312.45(a) and (b)	254	1.43	363	12	4,356
312.47(b)	281	1.8	506	160	80,960
312.53(c)	21,194	1	21,194	80	1,695,520
312.54(a) and (b)	0	0	0	48	0
312.55(b)	985	2,306	2,271,410	48	109,027,680
312.56(b), (c), and (d)	18	1	18	80	1,440
312.58(a)	91	4.10	373	8	2,984
312.64	31,791	1	31,791	24	762,984
312.70(a)	4	1	4	40	160
312.110(b)	23	18.26	420	75	31,500
312.120	115	5	575	32	18,400
312.130(d)	3	1	3	8	24
312.310(b) and 312.305(b)	988	1	988	8	7,904
312.310(d)	525	1.23	646	16	10,336
312.315(c) and 312.305(b)	68	1	68	120	8,160
312.320	9	1.11	10	300	3,000
Total					124,841,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in the format "[number of minutes per response]/60".

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (in hours) [2]	Total hours
312.52(a)	335	1.5	503	2	1,006
312.57	75	485.28	36,396	100	3,639,600
312.62(a)	14,732	1	14,732	40	589,280
312.62(b)	147,320	1	147,320	40	5,892,800
312.160(a)(3)	547	1.4	766	30/60	383
312.160(c)	547	1.4	766	30/60	383
Total					10,123,452

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in the format "[number of minutes per response]/60".

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours) [2]	Total hours
312.7(d)	41	1.4	57	24	1,368
312.23(a) through (f) and 312.120(b), (c)(2), and (c)(3)	433	1.3	563	1,808	1,017,904
312.30(a) through (e)	590	6.8	4,012	284	1,139,408
312.31(b)	263	29.3	7,706	100	770,600
312.32(c) and (d) and 312.56(c)	294	13.7	4,028	32	128,896
312.33(a) through (f) and 312.56(c)	647	2.3	1,488	360	535,680
312.35(a) and (b)	1	1	1	300	300
312.36	6	1	6	16	96
312.38(b) and (c)	117	1.3	152	28	4,256
312.42(e)	74	1.5	111	284	31,524
312.44(c) and (d)	17	1.1	18	16	304
312.45(a) and (b)	60	1.8	108	12	1,296
312.47(b)	43	1.5	65	160	10,400
312.53(c)	348	6.6	2,297	80	183,760
312.54(a) and (b)	1	1	1	48	48
312.55(b)	138	2.5	345	48	16,560
312.56(b) and (d)	14	1.6	22	80	1,760
312.58(a)	8	1	8	8	64
312.64(a) through (d)	6,003	3.5	21,010	24	504,240
312.70(a)	6	1	6	40	240
312.110(b)	21	1	21	75	1,575
312.130(d)	1	1	1	8	8
Total					4,350,287

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in the format "[number of minutes per response]/60".

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (in hours) [2]	Total hours
312.52(a)	139	1.4	195	2	390
312.57(a) and (b)	433	2.6	1,126	100	112,600
312.62(a)	5,570	1	5,570	40	222,800
312.62(b)	5,570	10	55,700	40	2,228,000
312.160(a)(3)	146	1.4	204	30/60	102
312.160(c)	146	1.4	204	30/60	102
Total					2,563,994

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in the format "[number of minutes per response]/60".

Dated: May 6, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–11540 Filed 5–10–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0272]

Draft Guidance for Industry and Food and Drug Administration Staff; Establishing the Performance Characteristics of In Vitro Diagnostic Devices for Chlamydia Trachomatis and/or Neisseria Gonorrhoeae: Screening and Diagnostic Testing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Establishing the Performance Characteristics of In Vitro Diagnostic Devices for *Chlamydia Trachomatis* and/or *Neisseria Gonorrhoeae:* Screening and Diagnostic Testing." This draft guidance document provides industry and Agency staff with recommendations for studies to establish the analytical and clinical performance of in vitro diagnostic devices (IVDs) intended for *C. trachomatis* and/or *N. gonorrhoeae* screening and diagnostic testing using nucleic acid based assays. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 9, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Establishing the Performance Characteristics of In Vitro Diagnostic Devices for *Chlamydia Trachomatis* and/or *Neisseria Gonorrhoeae:* Screening and Diagnostic Testing" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kathleen Whitaker, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5500, Silver Spring, MD 20993–0002, 301–796–6208.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing this draft guidance to provide industry and Agency staff with recommendations for studies to establish the analytical and clinical performance of IVDs intended for *C. trachomatis* and/or *N. gonorrhoeae* screening and diagnostic testing using nucleic acid based assays. These devices are used to aid in the diagnosis of urogenital *C. trachomatis* and *N. gonorrhoeae* infection. They include devices that detect one specific organism, as well as devices that may detect both organisms with or without further differentiation.

This draft guidance provides detailed information on the types of studies FDA recommends to support class I and class II premarket submissions for these devices. The draft guidance includes a list of *C. trachomatis* and *N. gonorrhoeae* strains recommended for analytical sensitivity studies and a list of micro-organisms recommended for analytical specificity studies. This document also addresses recommendations for fulfilling labeling requirements applicable to all in vitro diagnostic devices intended to screen for, or aid in the diagnosis of, *C. trachomatis* and/or *N. gonorrhoeae* directly from human specimens.

This document is limited to studies intended to establish the performance characteristics of devices that detect chlamydial and/or gonococcal nucleic acid. It does not address detection of serological response from the host to bacterial antigens, nor does it address establishing performance of non-chlamydial or non-gonococcal components of multianalyte or multiplex devices.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on establishing the performance characteristics of in vitro diagnostic devices for *C. trachomatis* and/or *N. gonorrhoeae* screening and diagnostic testing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive "Establishing the Performance Characteristics of In Vitro Diagnostic Devices for *Chlamydia Trachomatis* and/or *Neisseria Gonorrhoeae:* Screening and Diagnostic Testing," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1733 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations and guidance documents. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR parts 56.115 have been approved under OMB control number 0910–0130; and the collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 6, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–11532 Filed 5–10–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0621]

Proposal To Withdraw Approval for the Breast Cancer Indication for Bevacizumab; Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: The Food and Drug Administration (FDA) is granting a hearing to Genentech, Inc. (Genentech), on the Center for Drug Evaluation and Research's (CDER's) proposal to withdraw approval of the breast cancer indication for bevacizumab (Avastin). Genentech is the sponsor for Avastin. Genentech and CDER are the parties to the hearing. The issues to be discussed and resolved at the hearing relate directly to the statutory and regulatory standard for FDA to withdraw accelerated approval of the metastatic

breast cancer (MBC or breast cancer) indication for Avastin.

DATES: *Date and Time:* The hearing will be held on June 28 and 29, 2011, from 8 a.m. to 5 p.m.

ADDRESSES: The hearing will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg 31, Rm. 1503 (Great Room), Silver Spring, MD 20993.

FOR FURTHER INFORMATION CONTACT: Talisha Williams, Office of the Ombudsman, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8530, e-mail: *Talisha.Williams@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: *Registration and Requests to Make Oral Presentations:* On June 28, 2011, up to 2 hours of the hearing have been reserved for oral presentations by persons other than the parties.

If you wish to make an oral presentation during the hearing, you must register by submitting an electronic or written request by May 27, 2011, to Talisha Williams (see **FOR FURTHER INFORMATION CONTACT**). Depending on the number of requests, FDA may not be able to honor all such requests. You must provide your name, title, business affiliation (if applicable), address, telephone and fax numbers, e-mail address, and (if applicable) type of organization you represent (*e.g.,* industry, consumer organization). You also should submit a brief summary of the presentation, including the discussion topic(s) that will be addressed and the approximate time requested for your presentation. We encourage individuals and organizations with common interests to consolidate or coordinate their presentations to allow adequate time for each request for presentation. If there are many requests to present during the 2-hour period, the amount of time that can be allotted to each presenter may be limited to provide an opportunity to as many persons wishing to present as possible. Persons registered to make an oral presentation should check in with Talisha Williams before the hearing. Participants should submit a copy of each presentation to Talisha Williams.

We will file the hearing schedule, indicating the order of presentation and the time allotted to each person, with the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 and it will be posted on *http://www.regulations.gov.* We will mail, e-mail, or telephone the schedule to each participant before the hearing. In anticipation of the hearing presentations moving ahead of schedule, participants are encouraged to arrive early to ensure their designated order of presentation. Participants who are not present when called risk forfeiting their scheduled time.

If you need special accommodations due to a disability, please contact Talisha Williams at least 7 days in advance.

Registration and Requests to Attend the Hearing: The public hearing is free, but all persons wishing to attend the hearing, who have not registered to make an oral presentation, must register with FDA in advance of the hearing. By May 20, 2011, FDA will post further details regarding the registration process for attendees to its Web site at *http://www.fda.gov.* Beginning May 27, 2011, you will be able to register to attend the hearing via FDA's Web site at *http://www.fda.gov.* Space in the Great Room, where the hearing is to be held, will be limited to 300 persons from the general public, and thus registration will be first-come, first-served.

Web cast: The hearing will also be available to be viewed online via a Web cast. Availability of the Web cast to the public will also be limited to a certain number of persons, and registration will be required to access the Web cast. By May 20, 2011, FDA will post further details regarding the Web cast and the registration process for the Web cast to the Agency's Web site at *http://www.fda.gov.* Beginning May 27, 2011, you will be able to register to access the Web cast via FDA's Web site at *http://www.fda.gov.*

Comments: Regardless of participation in the public hearing, interested persons may submit electronic or written comments on CDER's proposal to withdraw approval of the MBC indication. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (see *Registration and Requests to Make Oral Presentations*). Comments must be submitted by July 14, 2011. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Submission of comments prior to the meeting is strongly encouraged.

All documents filed or posted in this matter are available for public review under Docket No. FDA–2010–N–0621 in the Division of Dockets Management (see *Registration and Requests to Make Oral Presentations*) between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain documents at *http://www.regulations.gov.*

I. Background

Section 506 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 356), which was added to the statute with the passage of the Food and Drug Modernization Act of 1997, provides for the accelerated, or fast track, approval of a drug product when FDA determines that the "* * * product has an effect on a clinical endpoint or on a surrogate endpoint that is reasonably likely to predict clinical benefit" (section 506(b)(1)). Section 506 of the FDC&C Act also provides explicit authority for FDA to use expedited procedures to withdraw accelerated approval of a product under certain circumstances.

FDA's regulations regarding the accelerated approval of biological products (§§ 601.40 through 601.46; part 601, subpart E) (21 CFR 601.40 through 601.46; 21 CFR part 601, subpart E)) set forth the procedures that FDA uses to withdraw accelerated approval for a biological product. Under § 601.43(b), FDA notifies the sponsor of the biological product of an opportunity for a hearing on a proposal to withdraw approval of the product. FDA conducts such hearings in accordance with the procedures set forth in part 15 (21 CFR part 15), with some specific modifications, including the presence of an advisory committee duly constituted under 21 CFR part 14, which provides advice and recommendations to the Agency (§ 601.43(e)).

On February 22, 2008, under section 506 of the FD&C Act and FDA's implementing regulations for accelerated approval of biological products, CDER approved supplemental biological license application 125085/91 (the sBLA), which was submitted by Genentech. The sBLA sought approval of Avastin for use in combination with the chemotherapy drug paclitaxel for the treatment of patients who have not received chemotherapy for metastatic HER2 negative breast cancer. Consistent with the regulations requiring postmarket studies for accelerated approval (see CFR 601.41 and 601.43), CDER's approval of the MBC indication for Avastin was subject to the requirement that the product be studied further to verify and describe clinical benefit. The two specific ongoing clinical trials identified to verify and describe clinical benefit were: Trial BO17708 (AVADO) (NCT 00333775) and Trial AVF 3694g (RIBBON1) (NCT 00262067). On November 16, 2009, Genentech submitted the results of the AVADO and RIBBON1 trials to CDER.

On December 16, 2010, CDER issued a notice for opportunity for a hearing (NOOH) on a proposal to withdraw approval of the MBC indication for Avastin. The NOOH stated CDER's conclusions that AVADO and RIBBON1 failed to verify clinical benefit with respect to the MBC indication for Avastin and that, because of that failure, the risk/benefit assessment that supported the initial approval of the MBC indication had changed significantly such that Avastin no longer met the safety and effectiveness requirements for continued marketing for that indication. On January 16, 2011, Genentech requested a hearing and submitted the data and information on which it intends to rely at the hearing.

By letter dated February 23, 2011, Karen Midthun (the Presiding Officer), advised the parties that FDA was granting the hearing request and that the Commissioner of Food and Drugs (the Commissioner) had appointed her as presiding officer. The letter stated that, although not required by FDA's regulations (see § 601.43(d)), the Agency would be observing separation of functions for purposes of the hearing. The letter further communicated FDA's conclusion that FDA's regulations require that the Agency's Oncologic Drugs Advisory Committee (ODAC) serve as the advisory committee for the hearing and to provide advice and recommendations to the Commissioner under § 601.43(e)(1). Finally, the Presiding Officer directed Genentech and CDER to submit a joint statement of undisputed facts and disputed issues.

On April 7, 2011, Genentech and CDER submitted a "Joint Statement of Undisputed Facts and Select Issues in Dispute" (Joint Statement). On April 8, 2011, Genentech and CDER submitted separate statements of questions to be presented at the hearing.

II. Hearing Issues and Process

FDA hereby grants Genentech's request for a hearing under § 601.43 and part 15 on CDER's proposal to withdraw approval of the MBC indication for Avastin.

A. Issues

The issues to be decided at the hearing relate directly to the statutory and regulatory standard for FDA to withdraw accelerated approval of the MBC indication for Avastin. On April 7, 2011, in response to direction from the Presiding Officer to consult with each other and submit an agreed statement of the issues in dispute in this hearing, counsel for Genentech and CDER reported that they were unable to reach agreement on how to frame the issues to be resolved. The issues for decision will thus be stated in accordance with the statute and regulations.

The applicable regulation is § 601.43. This regulation was finalized in 1992 (57 FR 58942, December 11, 1992). In 1997, Congress enacted section 506 of the FD&C Act, which sets out criteria for expedited approval and withdrawal of approval of "fast-track products." It is FDA's position that section 506(b) of the FD&C Act, while enacted after the finalization of the regulation, essentially codifies in the statute FDA's accelerated approval regulations. Section 506(b)(3) of the FD&C Act sets out four bases for expedited withdrawal of approval of a product approved under the accelerated procedures. Section 601.43(a) sets out six bases. In this matter, there appears to be agreement that two of the bases will be at issue in this hearing. These two bases appear in both the regulations and the statute.

One basis for withdrawal of approval of a product approved under the accelerated procedures, set out in nearly identical language in § 601.43(a)(1) and section 506(b)(3)(B) of the FD&C Act, is that FDA may withdraw approval if, in the words of the regulation: "A postmarketing clinical study fails to verify clinical benefit", or, in the words of the statute, if: "[A] post-approval study of the fast track product fails to verify clinical benefit of the product."

In this case, the parties agree that "During CDER's review of [the sBLA], Genentech proposed and CDER agreed that the AVADO and RIBBON1 trials could serve as the required trial(s) to verify and describe the clinical benefit" (Joint Statement, paragraph 31). Thus, one ultimate issue in this hearing is:

Issue 1. Do the AVADO and RIBBON1 trials fail to verify the clinical benefit of Avastin for the breast cancer indication for which it was approved?

If, after the hearing, the Commissioner concludes that these studies fail to verify the clinical benefit of Avastin for that indication, FDA may withdraw the approval.

CDER also seeks to base the withdrawal of approval on an alternative ground. This ground is set forth in the regulation and in the statute. Section 601.43(a)(6) states that FDA may withdraw approval if: "Other evidence demonstrates that the biological product is not shown to be safe or effective under its conditions of use."

Section 506(b)(3)(C) of the FD&C Act states that withdrawal is authorized if: "[O]ther evidence demonstrates that the fast track product is not safe or effective under the conditions of use."

In this case, the parties have agreed that the FDA-approved prescribing information for Avastin "is a fair and accurate description of the safety profile of Avastin," and that "[t]he safety data observed in the E2100, AVADO, and RIBBON1 studies were consistent with the safety profile of Avastin described in its approved prescribing information" (Joint Statement, paragraphs 22 and 23). In light of this agreement, the dispute with respect to this issue centers on the effectiveness information for the breast cancer indication, and on the appropriate risk-benefit analysis to be made in light of that information as compared to the agreed risk of the product. Thus, FDA does not anticipate that the hearing will involve any dispute about the safety information in the clinical studies.

The safety profile of Avastin described in its approved prescribing information includes a black box warning concerning gastrointestinal perforation, surgery and wound healing complications, and severe or fatal hemorrhage. Genentech does not state that the use of this drug in the treatment of breast cancer is safe in the abstract. Instead, it states that the drug should be found to be safe because its use provides benefits to patients that outweigh its risks. Applying the standard in the regulation and statute to the facts presented, therefore, the issue for resolution will be:

Issue 2.A. Does the available evidence on Avastin demonstrate that the drug has not been shown to be effective for the breast cancer indication for which it was approved?

Issue 2.B. Does the available evidence on Avastin demonstrate that the drug has not been shown to be safe for the breast cancer indication for which it was approved, in that Avastin has not been shown to present a clinical benefit that justifies the risks associated with use of the product for this indication?

A third issue is presented by the fact that both section 506(b)(3) of the FD&C Act and § 601.43(a) do not by their terms require the withdrawal of an accelerated approval even if the bases for withdrawal they describe are present. Instead, in each case, the statute and regulation state that FDA "may" withdraw approval in those circumstances. This standard reflects the fact that decisions on withdrawals of approval of products necessarily reflect judgment on FDA's part as to what actions are appropriate to protect the public with respect to approved products, and what uses of those products should be stated on the labels of those products.

Genentech has stated that the "core issue presented in this proceeding [is] whether FDA should maintain or

withdraw the accelerated approval of Avastin for [the MBC indication], subject to Genentech's conduct of a new confirmatory study of Avastin with paclitaxel" (Letter from Michael Labson to the Presiding Officer, April 8, 2011, page 1). CDER has stated the issue, "Whether CDER has appropriately exercised its authority by proposing to withdraw approval of the MBC indication, rather than allowing the indication to remain on the label while the sponsor designs and conducts additional studies intended to verify the drug's clinical benefit" (CDER's Statement of Questions Presented, page 3). Ultimately, while stated differently, the parties seem to agree that there is an issue of the propriety of CDER's proposed withdrawal of this indication now as opposed to the alternative of continuing the approval of the breast cancer indication while Genentech performs new clinical studies of Avastin with paclitaxel to verify the clinical benefit of the MBC indication. This statement of the issue raises the question of why, to confirm an indication for combination use with paclitaxel, Genentech proposed, and CDER agreed, that Genentech could rely on studies of Avastin in combination with chemotherapeutic agents other than paclitaxel. It appears that the explanation is that these studies were already ongoing at the time of the initial approval and both CDER and Genentech believed, at that time, that the results of these studies could provide evidence to verify the claim that Avastin, combined with paclitaxel, would have the effect indicated in the approved labeling.

FDA is addressing the issue of whether to maintain the accelerated approval while additional studies are conducted as the third issue for this hearing as follows:

Issue 3. If the Commissioner agrees with the grounds for withdrawal set out in issue 1, issue 2.A, or issue 2.B, should FDA nevertheless continue the approval of the breast cancer indication while the sponsor designs and conducts additional studies intended to verify the drug's clinical benefit?

While the parties would state the issues differently, the three issues stated in this notice will be those upon which the Commissioner expects to decide this matter. If Genentech prevails on issues 1, 2.A, and 2.B, the approval will be continued. If CDER prevails on issue 1, 2.A, or 2.B, the question of withdrawal will depend on issue 3.

In addition to the issues 1, 2.A, 2.B, and 3, Genentech has proposed to raise issues concerning the consistency of CDER's position here with CDER's decisions with respect to other products for the treatment of MBC or of other products approved under the accelerated approval program. Issues with respect to FDA action on other products are not relevant to this proceeding. Each decision to withdraw or not to withdraw the approval of a product must be made on its own merits. If the decision with respect to another product is in error, that would not justify continuing that error with respect to the MBC indication for Avastin. Moreover, as a practical matter, it would not be possible to evaluate the different circumstances associated with decisions with respect to other products in the context of this or any hearing. FDA has consistently rejected attempts to bring evidence with respect to decisions on other products into hearings on approval or withdrawal of approval of products and will not deviate from that position here.

B. Process

As further specified previously in this document, the hearing will be held in the Agency's White Oak Conference Center on June 28 and 29, 2011. Although no statute or regulation requires that separation of functions be applied to this proceeding, the Agency is observing separation of functions as a matter of policy in this matter. As the Center responsible for the proposed action, CDER, like Genentech, will be a party to the hearing and will be responsible for presenting its position at the hearing in accordance with § 601.43 and part 15.

In accordance with § 601.43(e)(2), no person other than the Presiding Officer, the three designated representatives for each party, and the members of the advisory committee may question witnesses present at the hearing.

Because this is a public hearing, it is subject to our regulations concerning the policy and procedures for electronic media coverage of public agency administrative proceedings (§§ 10.200 through 10.206 (21 CFR 10.200 through 10.206)). These procedures are primarily intended to expedite media access to our public proceedings. Representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record our public administrative proceedings, including the testimony of witnesses in the proceedings. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to §§ 10.200 through 10.206, for a more complete explanation of those regulations' effect on this hearing.

III. Transcripts

Please be advised that, as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Registration and Requests to Make Oral Presentation*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, Rm. 6–30, Rockville, MD 20857.

Dated: May 6, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–11539 Filed 5–6–11; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Laboratory Animal Welfare: Proposed Adoption and Implementation of the Eighth Edition of the Guide for the Care and Use of Laboratory Animals

AGENCY: National Institutes of Health, HHS.

ACTION: Notice of Additional Extension of Comment Period.

SUMMARY: NIH is further extending the period for public comments on (1) NIH's adoption of the eighth edition of the *Guide for the Care and Use of Laboratory Animals (Guide)* as a basis for evaluation of institutional programs receiving or proposing to receive Public Health Service (PHS) support for activities involving animals; and (2) if NIH decides to adopt the eighth edition of the *Guide,* NIH's proposed implementation plan, which would require that institutions complete at least one semiannual program and facility evaluation using the eighth edition of the *Guide* as the basis for evaluation by March 31, 2012. NIH will consider comments on (1) The adoption of the *Guide* and (2) the implementation plan. The notice on the proposed adoption and implementation plan for the eighth edition of the *Guide* was published in the **Federal Register** on February 24, 2011 (76 FR 10379). The comment period is extended by an additional 30 days and thus will end on May 24, 2011. Additionally, character limits on the comment form fields have been removed.

DATES: Written comments on the adoption and implementation of the eighth edition of the Guide must be received by NIH on or before May 24, 2011, in order to be considered.

ADDRESSES: Public comments may be entered at: *http://grants.nih.gov/grants/olaw/2011guidecomments/add.htm.* Character limits on the comment form fields have been removed. If the character limit previously in place prevented you from submitting your entire comment, please resubmit by the deadline in order to be considered. Comments will be made publicly available. Personally identifiable information (except organizational affiliations) will be removed prior to making comments publicly available.

FOR FURTHER INFORMATION CONTACT: Office of Laboratory Animal Welfare, Office of Extramural Research, National Institutes of Health, RKL1, Suite 360, 6705 Rockledge Drive, Bethesda, MD 20892–7982; telephone 301–496–7163.

SUPPLEMENTARY INFORMATION:

I. Background

The *Guide,* first published in 1963, is a widely accepted primary reference on animal care and use. Recommendations in the *Guide* are based on published data, scientific principles, expert opinion, and experience with methods and practices that are determined to be consistent with high quality, humane animal care and use. The eighth edition of the *Guide* was published in January 2011 following a study by the Institute for Laboratory Animal Research of the National Academy of Sciences (NAS). The NAS study process began in 2008 and followed the requirements of Section 15 of the Federal Advisory Committee Act. The NAS study process is described at the NAS Web site: *http://www.nationalacademies.org/studyprocess/index.html.*

Since 1985, the PHS Policy on Humane Care and Use of Laboratory Animals, authorized by Public Law 99–158, 42 U.S.C. 289d, and incorporated by reference at 42 CFR 52.8 and 42 CFR 52a.8, has required that institutions receiving PHS support for animal activities base their animal care and use programs on the current edition of the *Guide* and comply, as applicable, with the Animal Welfare Act and other Federal statutes and regulations relating to animal activities. The PHS Policy is applicable to all PHS-conducted or -supported activities (including research, research training, experimentation, biological testing, or related purposes) involving live vertebrate animals.

The eighth edition of the *Guide* contains substantive changes and additions from the previous edition. To gain insight from institutions on the impact of changes to the *Guide* on their animal care and use programs, NIH seeks comments on whether it should adopt the eighth edition of the *Guide.* NIH simultaneously proposes an implementation plan for the eighth edition of the *Guide* and seeks comments on the proposed plan.

The implementation plan proposed by NIH would require institutions to complete at least one semiannual program and facility evaluation, using the eighth edition of the Guide as the basis for evaluation, by March 31, 2012. For such an evaluation to be considered complete by NIH, it would need to include reasonable and specific plans and schedules for corrections of deficiencies where appropriate.

II. Electronic Access

The eighth edition of the *Guide* is available on the NIH Office of Laboratory Animal Welfare Web site at *http://olaw.nih.gov*.

Dated: May 4, 2011.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2011–11490 Filed 5–10–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public 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 on Aging, 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, NIA.

Date: June 14–15, 2011.

Closed: June 14, 2011, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: June 14, 2011, 8:30 a.m. to 12 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed June 14, 2011, 12 p.m. to 1:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: June 14, 2011, 1:15 p.m. to 3:15 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Agenda: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: June 14, 2011, 3:15 p.m. to 3:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: June 14, 2011, 3:30 p.m. to 4:15 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: June 14, 2011, 4:15 p.m. to 5:50 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: June 15, 2011, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: June 15, 2011, 8:30 p.m. to 11:15 a.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: June 15, 2011, 11:15 a.m. to 11:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: June 15, 2011, 11:30 a.m. to 12 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: June 15, 2011, 12 p.m. to 1 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: June 15, 2011, 1 p.m. to 2:45 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: June 15, 2011, 2:45 p.m. to 3 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: June 15, 2011, 3 p.m. to 3:45 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: June 15, 2011, 3:45 p.m. to 5:20 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Contact Person: Michele K Evans, MD, Acting Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 04C221, Baltimore, MD 21224, 410–558–8110, *me2v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11529 Filed 5–10–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, COBRE 1, Part 2.

Date: June 22–23, 2011.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, National Institutes of Health, National Center for Research Resources, Office of Review, Room 1074, 6701 Democracy Blvd. MSC 4874, Bethesda, MD 20892. 301–435–0965. *newmanla2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: May 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11530 Filed 5–10–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–1116]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee postponed its originally scheduled February 3, 2011, meeting due to inclement weather. The new meeting date is June 21, 2011, in Texas City, Texas, to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. The meeting will be open to the public.

DATES: The Committee will meet on Tuesday, June 21, 2011, from 9 a.m. to noon. Please note that meeting may close early if the Committee has completed its business. Comments on the issues to be considered by the committee should reach the online docket or Docket Management Facility by June 7, 2011.

ADDRESSES: The meeting will be held at Coast Guard Marine Safety Unit Building in Texas City, 3101 FM 2004, Texas City, Texas 77591. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

You may submit comments identified by docket number USCG–2010–1116 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. To avoid duplication, please use only one of these four methods. See the "Public Participation" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have any questions concerning the meeting, contact Lieutenant Junior Grade Margaret Brown, Waterways Management Branch, Coast Guard, telephone (713) 678–9001, e-mail *Margaret.A.Brown@uscg.mil.* 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: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 93–463). The

HOGANSAC is an advisory committee as provided for in section 18 of the Coast Guard Authorization Act of 1991, (Pub. L. 102–241 as amended) and chartered under the provisions of the FACA. HOGANSAC provides advice and recommendations to the Commandant of the U.S. Coast Guard on matters relating to safe transit of vessels and products through Galveston Bay, and to and from the Ports of Galveston, Houston, Texas City, and Galveston Bay.

Public Participation: To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the "Agenda" portion below. All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read background documents or comments received by the committee, go to *http://www.regulations.gov* and enter the docket number in the search box.

Public Comment Period: A public comment period will be held during the meeting on June 21 from 11 to 11:30 a.m. Speakers are requested to limit their comments to three minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Agenda

The tentative agenda for the Committee is as follows:

(1) Opening Remarks by the Designated Federal Officer (CAPT Woodring) and Committee Chair (Mrs. Tava Foret).

(2) Approval of September 23, 2010, minutes.

The HOGANSAC minutes will be available at the following link as soon as they are approved by the committee: *http://homeport.uscg.mil/mycg/portal/ep/channelView.do?channelId=-18426&channelPage=%2Fep%2Fchannel%2Fdefault.jsp&pageTypeId=13489&BV_SessionID=@@@@1196828626.1302537172@@@@&BV_EngineID=ccccadfdfemhkfhcfjgcfgfdffhdghk.0.*

(3) Old Business.

(a) Waterways Safety and Utilization subcommittee report. Copies of the report will be available to the public on June 8, 2011 at the Homeport Web site: *http://homeport.uscg.mil/mycg/portal/ep/programView.do?channelId18426&programId=13300&programPage=%2Fep%2Fprogram%2Feditorial.jsp&pageTypeId=13489&BV_SessionID=@@@@0584297917.1302013571@@@@&BV_EngineID=cccfadfdemifmekcfjgcfgfdffhdghm.0.* The subcommittee is reviewing safety issues at Bolivar Ferry Landings and is requesting any real time videos and examples of unsafe wake in the area that users may have. The subcommittee continues to revise the safe boating publications including the Navigating the Houston Ship Channel brochure, a guide for commercial users of the waterway; and the Sharing Our Bay Brochure, a guide for recreational users of the waterway. The subcommittee is conducting a study of Galveston Anchorage Area and is requesting that National Oceanic and Atmospheric Administration (NOAA) update Galveston-area nautical charts with new survey information. The subcommittee is also requesting that NOAA utilize bottom contour information for Anchorage A on applicable charts and that hydrography information is added to applicable charts for Anchorage A, B, and C in Galveston Bay. The subcommittee recently advised the Coast Guard regarding the costs and benefits of the new U.S. Coast Guard Boarding Procedures and has since closed the issue;

(b) Area Maritime Security Committee (AMSC) Liaison's report: The AMSC representative will discuss the Annual Report from the Facility Security Working Group, highlighting their new Web site and the progress they have made on various issues such as TWIC escorting and Mariner Access/Shore Leave. The representative will also discuss lessons learned from the 2011 SECUREX, which took place on March 24, 2011. The SECUREX is an exercise that focused on long-term recovery of the ship channel and the marine transportation system following a security incident. The AMSC representative will summarize the amount, type, finances, and timeline associated with the Port Security Grants Round 11 proposed projects.

(3) New Business.

(a) Review of 2011 Area Maritime Security Committees/Harbor Safety Committees Conference in Houston, Texas;

(b) Brief presentation on Seafarer Access;

(5) Announcements.

(a) Schedule Next Meetings;

(b) Solicitation for public comments.

Dated: April 14, 2011.

M.E. Woodring,

Captain, U.S. Coast Guard, Commander, Sector Houston-Galveston.

[FR Doc. 2011–11486 Filed 5–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1974–DR; Docket ID FEMA–2011–0001]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1974–DR), dated May 1, 2011, and related determinations.

DATES: *Effective Date:* May 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 1, 2011.

Bledsoe, Cocke, Johnson, McMinn, Monroe, and Rhea Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Dated: May 5, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–11565 Filed 5–10–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1971–DR; Docket ID FEMA–2011–0001]

Alabama; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1971–DR), dated April 28, 2011, and related determinations.

DATES: *Effective Date:* May 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 28, 2011.

Clarke and Perry Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: May 5, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–11563 Filed 5–10–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1966–DR; Docket ID FEMA–2011–0001]

Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1966–DR), dated April 5, 2011, and related determinations.

DATES: *Effective Date:* May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2011.

Green County for Public Assistance. Green County for emergency protective measures (Category B), including snow assistance, under the Public Assistance program, for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Dated: May 4, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–11517 Filed 5–10–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1971–DR; Docket ID FEMA–2011–0001]

Alabama; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1971–DR), dated April 28, 2011, and related determinations.

DATES: *Effective Date:* May 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 28, 2011.

Chambers County for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: May 4, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–11516 Filed 5–10–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1959–DR; Docket ID FEMA–2011–0001]

Massachusetts; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Massachusetts (FEMA–1959–DR), dated March 7, 2011, and related determinations.

DATES: *Effective Date:* May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Massachusetts is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 7, 2011.

Hampden County for, debris removal and emergency protective measures (Categories A and B), including snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Dated: May 4, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–11515 Filed 5–10–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1973–DR; Docket ID FEMA–2011–0001]

Georgia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1973–DR), dated April 29, 2011, and related determinations.

DATES: *Effective Date:* May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 29, 2011.

Cherokee, Habersham, Newton, Upson, and White Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–11512 Filed 5–10–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1961–DR; Docket ID FEMA–2011–0001]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1961–DR), dated March 23, 2011, and related determinations.

DATES: *Effective Date:* May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 23, 2011.

Buchanan and Pike Counties for Public Assistance.

Buchanan and Pike Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program, for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–11510 Filed 5–10–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1971–DR; Docket ID FEMA–2011–0001]

Alabama; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1971–DR), dated April 28, 2011, and related determinations.

DATES: *Effective Date:* May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 28, 2011.

Lamar and Lauderdale Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–11507 Filed 5–10–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–14]

Notice of Proposed Information Collection for Public Comment; Indian Housing Block Grant (IHBG) Program Reporting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

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 11, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202–402–3400, (this is not a toll-free number) or e-mail Ms. Pollard at *Colette.Pollard@hud.gov* for a copy of the proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit 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 of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Indian Housing Block Grant Information Collection.

OMB Control Number: 2577–0218.

Description of the need for the information and proposed use: Indian Tribes, Alaska Natives, Native Hawaiians, or Tribally designated housing entities that receive Indian Housing Block Grant (IHBG) funds are required annually to submit HUD–52737—the *Indian Housing Plan/Annual Performance Report* (IHP/APR) that consists of two components: the Indian Housing Plan (IHP) component and the Annual Performance Report (APR) component

The IHP is required by Section 102 of the Native American Housing Assistance and Self-Determination Act (NAHASDA) and describes the eligible IHBG-funded, affordable housing activities the recipient plans to conduct for the benefit of low and moderate income Tribal members and identifies the intended outcomes and outputs for the upcoming 12-month year. HUD conducts a limited review of the IHP to determine that the planned activities are in compliance with NAHASDA requirements, as defined at 24 CFR Part 1000.

At the end of the 12-month period, the recipient submits the APR that is required by Section 404 of NAHASDA and describes (1) the use of grant funds during the prior 12-month period; (2) the actual outcomes and outputs achieved; (3) program accomplishments; and (4) jobs supported by IHBG-funded activities. HUD uses the information in the APR to review the recipient's progress in implementing the IHP, verify whether the activities are eligible and to determine if the recipient has the capacity to continue implementing the activities described in the IHP in a timely manner. The information in the APR also will be used to provide Congress, stakeholders, and other interested parties with information on how the IHBG funds are being used to

meet affordable housing needs within Native American communities.

Recipients of Native American Housing Block Grants (NAHBG) funds under the American Recovery and Reinvestment Act of 2008 are required to submit annually the *Annual Performance Report* (HUD–52735–AS) to describe (1) the use of NAHBG funds during the prior 12-month period; (2) the actual outcomes and outputs achieved; (3) program accomplishments; and (4) jobs supported by NAHBG-funded activities. (Since NAHBG was authorized under the auspices of NAHASDA, §§ 102 and 404 apply).

Participants in the IHBG program are responsible for notifying HUD of changes to the Formula Current Assisted Stock (FCAS) component of the IHBG formula. HUD is notified of changes in the FCAS through a *Formula Response Form* (HUD–4117), as defined at 24 CFR 1000.302. A Tribe, TDHE, or HUD may challenge the data from the U.S. Decennial Census or provide an alternative source of data by submitting the *Guidelines for Challenging U.S. Decennial Census Data Document* (HUD–4119). Census challenges are due June 15 of each fiscal year, as defined at 24 CFR 1000.336. This information collection is required of participants in the IHBG program to demonstrate compliance with eligibility and other requirements of NAHASDA; provision of correction or challenge documentation of the formula calculation; and provision of data for HUD's annual report to Congress. The information gathered will be used to allocate funds under the IHBG program. The quality assurance of data reported is a very important issue in maintaining HUD's databases used to monitor participant's proposed plans, accomplishments, determine program compliance, and to ensure fair and equitable allocations. In some cases, the FCAS information addressing the conveyances and conversions of units has resulted in the recouping of funds. The information collected will allow HUD to accurately audit the program.

Agency form numbers: HUD–52737, HUD–52735–AS, HUD–4117, HUD–4119.

Members of affected public: Native American Tribes and Tribally Designated Housing Entities, Alaska Natives and Corporations, and Native Hawaiians.

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 estimated number of respondents is 579; the frequency of response is once per year; and the total reporting burden is estimated at 54,578 hours.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 3, 2011.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2011–11518 Filed 5–10–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act; Notice of Intent To Accept Proposals, Select a Potential Lessee, and Contract for Hydroelectric Power Development at the Spanish Fork Flow Control Structure

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice.

SUMMARY: Current Federal policy encourages non-Federal development of environmentally sustainable hydropower potential on Federal water resource projects. The Department of the Interior (Interior), in consultation with the Department of Energy, Western Area Power Administration (Western), will consider proposals for non-Federal development of hydroelectric power at the Spanish Fork Flow Control Structures of the Central Utah Project (CUP). Interior is considering such hydroelectric power development under a lease of power privilege. No Federal funds will be available for such hydroelectric power development. Western would have the first opportunity to purchase and/or market the power that would be generated by such development under a lease of power privilege. The CUP is a Federal Bureau of Reclamation (Reclamation) project under the administration of the Assistant Secretary for Water and Science. This notice presents background information, proposal content guidelines, and information concerning selection of a non-Federal entity to develop hydroelectric power at the Spanish Fork Flow Control Structure, and power purchasing and/or marketing considerations. Interested entities are invited to submit a proposal for hydroelectric power development at the Spanish Fork Flow Control Structure site for consideration by Interior.

DATES: A written proposal and seven copies must be submitted on or before 5 p.m. (MST), on October 14, 2011. A proposal will be considered timely only if it is received in the office of the Program Director by or before 5 p.m. on the designated date. Interested entities are cautioned that delayed delivery to this office due to failures or misunderstandings of the entity and/or of mail, overnight, or courier services will not excuse lateness and, accordingly, are advised to provide sufficient time for delivery. Late proposals will not be considered.

ADDRESSES: Send written proposals and seven copies to Mr. Reed R. Murray, Program Director, Central Utah Project Completion Act, Department of the Interior, 302 East 1860 South, Provo, UT 84606–7317. Requests for technical data should also be sent to Mr. Murray. Any release of such data will be subject to applicable Homeland Security laws and policy.

A copy of the proposal should also be sent to Ms. LaVerne Kyriss, CRSP Manager, Western Area Power Administration, 150 Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1580. Information related to Western's purchasing and/or marketing the power may also be obtained from Ms. Kyriss at the address above, or by calling (801) 524–6372.

Information related to the operation and maintenance of the Spanish Fork Flow Control Structure may be obtained from Mr. Rich Tullis, Central Utah Water Conservancy District, 355 West University Parkway, Orem, UT 84058–7303; or by calling (801) 226–7122.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Hansen, (801) 379–1238.

SUPPLEMENTARY INFORMATION:

Background Information: The CUP, Bonneville Unit, located in northern Utah, was originally authorized for construction, including hydroelectric power, by the Colorado River Storage Project (CRSP) Act of April 11, 1956 (ch. 203, 70 Stat. 105) (CRSP Act). The Spanish Fork Flow Control Structure was constructed under the Central Utah Project Completion Act (CUPCA), comprised of Titles II–VI of the Act of October 30, 1992 (106 Stat. 4600, Pub. L. 102–575). CUPCA also authorized the construction of other features of the Bonneville Unit. Section 208 of CUPCA provides that power generation facilities associated with the CUP be developed and operated in accordance with the CRSP Act, which explicitly embodies all Reclamation law except as otherwise provided in the CRSP Act. Section 208 also specifies that water diverted for power purposes shall only be incidental

to the delivery of water for other authorized project purposes. The Central Utah Water Conservancy District (District), under its contracts with the United States and under CUPCA has certain responsibilities and obligations for the CUP and specifically for the Spanish Fork Flow Control Structure including operation, maintenance, replacement, and repayment.

Interior, in consultation with Western, is considering hydroelectric power development at the Spanish Fork Flow Control Structure through a lease of power privilege. A lease of power privilege is an alternative to Federal hydroelectric power development. A lease of power privilege is a contractual right given to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes. Leases of power privilege have terms not to exceed 40 years. The general authority for lease of power privilege under Reclamation law includes, among others, Section 5 of the Town Sites and Power Development Act of 1906 (43 U.S.C. 522) and Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) (1939 Act). Interior will be the lead Federal agency for ensuring compliance with the National Environmental Policy Act (NEPA) of any lease of power privilege considered in response to this notice. Leases of power privilege may be issued only when Interior, upon completion of the NEPA process, determines that the affected hydroelectric power sites are environmentally acceptable. Any lease of power privilege at the Spanish Fork Flow Control Structure must accommodate existing contractual commitments related to operation and maintenance of such existing facilities. The potential lessee (*i.e.,* successful proposing entity) would be required to coordinate with the District in the operation and maintenance of any proposed hydropower developments with existing project features.

Western would have the first opportunity to purchase and/or market the power that would be generated under any lease of power privilege. Under this process, Western would either purchase and market the power as Salt Lake City Area—Integrated Projects (SLCA–IP) power or market the power independently by first offering it to preference entities and secondly to non-preference entities. Western would have 60 days from the date of notification of selection of a potential lessee in which to decide whether to purchase and/or market the power.

All costs incurred by the United States related to development and operation and maintenance under a lease of power privilege, including NEPA compliance and development of the lease of power privilege, would be the expense of the lessee. In addition, the lessee would be required to make annual payments to the United States for the use of a Government facility. Depending on the economic capability of the proposed hydroelectric development, this amount will not be less than 3 mills per kilowatt-hour of generation. If conditions provide opportunity for substantial benefit to accrue to the lessee, then the United States will benefit proportionally. Also, under the lease of power privilege, provisions will be included for inflation of the annual payment with time. Such annual payments to the United States would be deposited as a credit to the Upper Colorado River Basin Fund.

Interested Parties: Interior will be available to meet with interested entities only upon written request to the Program Director at the above address. Interior reserves the right to schedule a single meeting and/or visit to address at once the questions of all entities that have submitted questions or requested site visits. Western will also be available to meet with Interior and interested entities to discuss Western's potential marketing of hydropower.

Proposal Content Guidelines: Interested parties should submit a proposal explaining in as precise detail as is practicable how the hydropower potential at the site would be developed. Factors which a proposal should consider and address include, but are not limited to, the following:

A. Provide all information relevant to the qualifications of the proposing entity to plan and implement such a project, including, but not limited to, information about preference status, type of organization, length of time in business, experience in funding, design and construction of similar projects, industry rating(s) that indicate financial soundness and/or technical and managerial capability, experience of key management personnel, history of any reorganizations or mergers with other companies, and any other information that demonstrates the interested entity's organizational, technical and financial ability to perform all aspects of the work. Include a discussion of past experience in operating and maintaining similar facilities and provide references as appropriate. The term "preference entity," as applied to a lease of power privilege, means an entity qualifying for preference under Section 9(c) of the Reclamation Project Act of 1939, as a municipality, public corporation or agency, or cooperative or other nonprofit organization financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936, as amended.

B. Provide geographical locations and describe principal structures and other important features of the proposed development including roads and transmission lines. Estimate and describe installed capacity and the capacity of the power facilities under dry, average, and wet hydrological conditions. Also describe seasonal or annual generation patterns. Include estimates of the amount of electrical energy that would be produced from the facility for each month of average, dry, and wet water years. If capacity and energy can be delivered to another location, either by the proposing entity or by potential wheeling agents, specify where capacity and energy can be delivered. Include concepts for power sales and contractual arrangements, involved parties and the proposed approach to wheeling if required. To determine the marketability of the generated hydropower, Western requires the following information: cost of delivered generation in $/megawatt-hour, including any variations in cost (on-peak, off-peak, seasonal), including escalation factors and any other charges; delivery point and voltage of generation plus any arrangements the lessee has to wheel power to an alternate location(s); the daily, weekly, monthly, and annual pattern of expected generation under average, wet, and dry hydrological conditions; ability of generation to provide ancillary services such as regulation, spinning reserves, and volt-ampere reactive support; and information on the reliability of the generation, potential maintenance outage schedule, and duration.

C. Indicate title arrangements and the ability for acquiring title to or the right to occupy and use lands necessary for the proposed development(s), including such additional lands as may be required during construction.

D. Discuss any studies necessary to adequately define impacts on the CUP and the environment of the development. Describe any significant environmental issues associated with the development and the proposing entity's approach for gathering relevant data and resolving such issues to protect and enhance the quality of the environment. Explain any proposed use of the hydropower development for conservation and utilization of the available water resources in the public interest.

E. Describe any contractual arrangements with the entity having operation and maintenance responsibility for the CUP feature(s) that

are proposed for utilization in the hydropower development under consideration. Define how the hydropower development would operate in harmony with the CUP and existing applicable contracts related to operation and maintenance of CUP feature(s) being considered for modification.

F. Identify plans for assuming liability for damage to the operational and structural integrity of the CUP caused by construction, operation, and/or maintenance of the hydropower development.

G. Identify the organizational structure planned for the long-term operation and maintenance of any proposed hydropower development.

H. Provide a management plan to accomplish such activities as planning, NEPA compliance, lease of power privilege development, design, construction, facility testing, and start of hydropower production. Prepare schedules of these activities as is applicable. Describe what studies are necessary to accomplish the hydroelectric power development and how the studies would be implemented.

I. Estimate development cost. This cost should include all investment costs such as the cost of studies to determine feasibility, NEPA compliance, design, construction, and financing as well as the amortized annual cost of the investment; also, the annual operation, maintenance, and replacement expense for the hydropower development; lease payments to the United States; and expenses that may be associated with the CUP; and the anticipated return on investment. If there are additional transmission or wheeling expenses associated with the development of the hydropower development, these should be included. Identify proposed methods of financing the hydropower development. An economic analysis should be presented that compares the present worth of all benefits and costs of the hydropower development.

Selection of the Potential Lessee: Interior, in consultation with Western, will evaluate proposals received in response to this published notice. Interior may request additional information from individual proposing entities and/or all proposing entities after proposals are submitted, but prior to making a selection of a potential lessee.

Interior will give more favorable consideration to proposals that (1) utilize water and natural resources in an environmentally and economically sound manner: (2) improve ecosystem function; (3) clearly demonstrate that the offeror is qualified to develop the hydropower facility and provide for long-term operation and maintenance, and (4) best share the economic benefits of the hydropower development among parties (including the United States) to the lease of power privilege. A proposal will be deemed unacceptable if it is inconsistent with CUP purposes, as determined by Interior. Interior will give preference to those entities that qualify as preference entities (as defined under Proposal Content Guidelines, item A.), provided that their proposal is at least as well-adapted to developing, conserving, and utilizing the water and natural resources as other submitted proposals and that the preference entity is well qualified. Through written notice, all preference entities would be allowed 90 days to improve their proposals, if necessary, to be made at least equal to a proposal(s) that may have been submitted by a non-preference entity.

Power Purchasing and/or Marketing Considerations: Western would have the first opportunity to purchase and/or market the power that would be generated by the project under a lease(s) of power privilege. Western will consult with Interior on such power purchasing and/or marketing considerations.

Western may market the power available from the project as part of its Salt Lake City Area Integrated Projects (SLCA/IP) or on a stand-alone basis, first to preference entities qualified under criteria established by Western and second to non-preference entities, by developing an individual marketing plan for this power. This marketing plan would be developed through a separate subsequent public process beginning with a notice in the **Federal Register** of Western's intent to market the power. The marketing plan would include all aspects of marketing the power, including assignment of power to qualified preference and/or non-preference entities, pricing, transmission, and delivery of power. Western would recover the costs it would incur in purchasing and/or marketing the power through the rates charged for the power. Firm power rates would be established through a public process, initiated by a notice in the **Federal Register**, separate from the marketing plan.

In the event Western elects to not purchase and/or market the power generated by the hydropower development or such a decision cannot be made within 60 days of notification of selection of a potential lessee, the lessee(s) would be responsible for marketing the power generated by the project with priority given to preference entities as heretofore defined in Proposal Content Guidelines, item A.

Notice and Time Period to Enter Into Lease of Power Privilege: Interior will notify, in writing, all entities submitting proposals of Interior's decision regarding selection of the potential lessee(s). The selected potential lessee(s) will have five years from the date of such notification to enter into a lease(s) of power privilege for the site or sites identified in the proposal. This period may only be extended by the United States in writing.

Dated: May 4, 2011.

Reed R. Murray,

Program Director, Department of the Interior.

[FR Doc. 2011–11525 Filed 5–10–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–0215–6786; 8381–1001–NZW]

Water Resources Management Plan/ Environmental Impact Statement, Mojave National Preserve, San Bernardino County, CA

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare a Water Resources Management Plan/ Environmental Impact Statement for Mojave National Preserve.

SUMMARY: In accordance with § 102(2)(C) of the National Environmental Policy Act of 1969, Mojave National Preserve is initiating the conservation planning and environmental impact analysis process needed to inform preparation of a Water Resources Management Plan/ Environmental Impact Statement (WRMP/EIS). This plan is intended to guide future management of ground and surface water sources within Mojave National Preserve. Through this process the National Park Service (NPS) will identify and assess potential impacts of a range of alternatives to management of water resources. As part of the EIS process, the NPS will evaluate different approaches for water resources management to determine the potential impacts on land use, water quality, geology, biological and cultural resources, human health and safety, aesthetics, visitor experience, Wilderness, and other stewardship considerations.

Mojave National Preserve (Preserve) is a 1.6 million-acre unit of the National Park System, established by Congress on October 31, 1994, by the California Desert Protection Act. The Act protected

a vast expanse of desert lands that represent a combination of Great Basin, Sonoran, and Mojave desert ecosystems. The Act also specified hunting as a permitted activity within the Preserve. By the time of establishment, many artificial water sources had been developed within the Preserve to support cattle grazing operations and game populations. Human manipulation of natural springs and seeps, with intermittent maintenance, enhanced surface flow to provide additional water for the same purposes. There also existed 133 small game wildlife water developments (also known as "guzzlers" or "drinkers"), and 6 big game guzzlers, which intercept and store rainwater for wildlife use. All of the big game guzzlers and many of the small game water developments are in areas of the Preserve which are now designated Wilderness.

Since 1998, private donors have purchased and retired approximately 1,260,980 acres of grazing land in the Preserve. As cattle have been removed, watering troughs, windmills, and pipelines were also removed or fell into disrepair. This has led to calls by some hunting proponents to convert abandoned wells to game guzzlers. Conversely, wildlife advocates have cited guzzler-related injuries to bighorn sheep, protected desert tortoises, and other wildlife species as a rationale for reducing the number of water developments.

Since 1994, the NPS has managed water sources in the Preserve on a case-by-case basis, while conducting inventories and studies to develop the information needed for an ecosystem-scale management approach. The Preserve's general management plan (GMP) identified the need to develop a comprehensive ecosystem-scale Water Resources Management Plan for springs, seeps, water diversions, and artificial water sources to maintain healthy wildlife communities and groundwater flow conditions at safe yields—this conservation planning effort seeks to fulfill that objective. Desired future condition goals will be developed through public engagement with hunting groups, environmental organizations, park visitors, local, state and Federal agencies, and other interested parties, in keeping with existing laws, regulations, and NPS management policies.

Surface water availability in the form of springs and seeps is a function of groundwater flow and discharge. The relationship between groundwater, surface water, and wells is complex. Preserve stewardship and resource management activities must be guided by general principles that can be applied to specific problems. Developing and clearly explaining how these principles should be applied is a goal of the Draft WRMP/EIS. The relationship between surface water availability and wildlife populations is also multifaceted, and may be complicated by the potential effects of climate change. The Draft WRMP/EIS will provide the basis for preserving wildlife and preventing resource impairment.

DATES: To facilitate sound planning and consideration of environmental resources, the NPS intends to gather information necessary for preparing the Draft WRMP/EIS and to obtain suggestions from the public on issues and concerns which should be addressed. The NPS is seeking pertinent environmental information regarding scope of the analysis, and suggestions regarding preliminary alternatives which should be considered. All comments must be postmarked or transmitted not later than July 11, 2011. Full public participation by park stakeholders, concerned organizations and private citizens, as well as Federal, State, and local agencies, is invited so as to fully inform the process of preparing the Draft WRMP/EIS. Four public meetings will be hosted during the scoping period: June 27 (Henderson, NV), June 28 (Needles, CA), June 29 (San Bernardino, CA), and June 30 (Barstow, CA). Confirmed details on time and location will be announced in the local press and on the park Web site (*http://www.nps.gov/moja*); details may also be obtained by contacting the Preserve directly. These meetings will provide current information and respond to questions and comments on issues and alternatives to assist NPS in developing the Draft WRMP/EIS.

SUPPLEMENTARY INFORMATION: Periodically updated information will be available on the project Web site at *http://parkplanning.nps.gov/mojave_water.* You may request to be added to the project mailing list by mailing, e-mailing, or faxing your request to: Superintendent, Mojave National Preserve, *Attn:* Mojave WRMP, 2701 Barstow Road, Barstow, California 92311 (*E-mail: MOJA_Superintendent@nps.gov* and *Fax:* (760) 252–6171). Please note in your request whether you wish to receive a printed or compact disk version of the Draft WRMP/EIS, or just wish to receive notice that the document is available for review.

If you wish to comment during the scoping phase for the Draft WRMP/EIS, you may use any one of several methods. To comment electronically, submit your comments online by visiting the project Web site *http://parkplanning.nps.gov/mojave_water.* If you wish to submit written comments (*e.g.,* in a letter), you may send your comments via U.S. Postal Service (or other mail delivery service) or hand-deliver them to the address provided above. Oral statements and written comments will also be accepted during public meetings. Comments will not be accepted by fax, e-mail, or in any other way than those specified above. Comments in any format (hard copy or electronic) submitted by an individual or organization on behalf of another individual or organization also will not be accepted.

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.

Decision Process: Following careful analysis of all responses received concerning the Draft WRMP/EIS, a final plan will be prepared and its availability similarly announced in the **Federal Register**. Thereafter, but not sooner than 30 days after release of the Final WRMP/EIS, a Record of Decision would be prepared. As a delegated EIS, the official responsible for final approval of the Water Resources Management Plan is the Regional Director, Pacific West Region. Subsequently the official responsible for implementation of the approved plan would be the Superintendent, Mojave National Preserve.

Dated: February 10, 2011.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 2011–11410 Filed 5–10–11; 8:45 am]

BILLING CODE 4310–6E–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0411– 7274; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National

Park Service before April 23, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted May 26, 2011. 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.

J. Paul Loether,

Chief, National Register of Historic Places, National Historic Landmarks Program.

COLORADO

Mesa County

Calamity Camp, (Mining Industry in Colorado, MPS) Address Restricted, Gateway, 11000313

ILLINOIS

Cook County

Building at 7600–7604 South Cottage Grove Avenue, (Terra Cotta Commercial Buildings in Chatham—Greater Grand Crossing MPS) 7600–7604 S. Cottage Grove Ave., Chicago, 11000315

Building at 8000–8008 South Cottage Grove Avenue, (Terra Cotta Commercial Buildings in Chatham—Greater Grand Crossing MPS) 8000–8008 S. Cottage Grove Ave., Chicago, 11000316

Building at 8030 South Cottage Grove Avenue, (Terra Cotta Commercial Buildings in Chatham—Greater Grand Crossing MPS) 8030 S. Cottage Grove Ave., Chicago, 11000317

Building at 932–944 East 79th Street, (Terra Cotta Commercial Buildings in Chatham—Greater Grand Crossing MPS) 932–944 E. 79th St., Chicago, 11000314

Champlain Building, (Terra Cotta Commercial Buildings in Chatham—Greater Grand Crossing MPS) 635–637 E. 79th St., Chicago, 11000320

East 75th Street and South Cottage Grove Avenue Historic District, (Terra Cotta Commercial Buildings in Chatham—Greater Grand Crossing MPS) 7439–41,7445–53,7455–59,7500–7504,7452–58 S. Cottage Grove Ave., 802–810,749–759,737–743,745,748–758 E. 75th St., Chicago, 11000318

East 79th Street and South Cottage Grove Avenue Historic District, (Terra Cotta Commercial Buildings in Chatham—Greater Grand Crossing MPS) 7850–58,7851–59,7901–11 S. Evans,714–26,734–44,746–58,735–37,739–59,804–06,805–11 E. 79th St., Chicago, 11000319

O'Hanley Building, (Terra Cotta Commercial Buildings in Chatham—Greater Grand Crossing MPS) 7701–7705 S. Cottage Grove Ave., Chicago, 11000321

MARYLAND

Prince George's County

Clagett House at Cool Spring Manor, 17500 Clagett Landing Rd., Upper Marlboro, 11000322

MINNESOTA

Hennepin County

Abbott Hospital, 110 E. 18th St., Minneapolis, 11000323

St. Louis County

Duluth Armory, 1301–1305 London Rd., Duluth, 11000324

YWCA of Duluth, (Duluth's Central Business District, MPS) 202 W. 2nd St., Duluth, 11000325

NEW YORK

Delaware County

Schoolhouse No. 5, 5942 Dunk Hill Rd., Hamden, 11000326

Onondaga County

Huntley Apartments, 407–409 Stolp Ave., Syracuse, 11000327

OREGON

Lane County

Springfield Motors Buick Dealership, 702 N. A St., Springfield, 11000328

Williams, Lew, Chevrolet Dealership, 2020 Franklin Blvd., Eugene, 11000329

A request for REMOVAL has been made for the following resource:

INDIANA

Vanderburgh County

Buckingham Apartments (Downtown Evansville MRA) 314–316 SE. 3rd St., Evansville, 82000082

[FR Doc. 2011–11504 Filed 5–10–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments for 1029–0118.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request continued approval for the collection of information which relates to a citizen's written request for a Federal inspection.

DATES: Comments on the proposed information collection must be received by July 11, 2011, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783 or by e-mail at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR 842, Federal inspections and monitoring. OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for 30 CFR 842 is 1029–0118.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR 842—Federal inspections and monitoring.

OMB Control Number: 1029–0118.

Summary: For purposes of information collection, this part establishes the procedures for any person to notify the Office of Surface Mining in writing of any violation that may exist at a surface coal mining operation. The information will be used to investigate potential violations of the Act or applicable State regulations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Citizens.

Total Annual Responses: 47.

Total Annual Burden Hours: 188 hours.

Total Annual Non-Wage Burden: $0.

Dated: May 4, 2011.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–11305 Filed 5–10–11; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

[OMB Number 1122–0009]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested: Semi-Annual Progress Report for the Safe Havens: Supervised Visitation and Safe Exchange Grant Program

ACTION: 30-Day notice of information collection under review.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 40, page 11278–11279, on March 1, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 10, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Cathy Poston at 202–514–5430 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Safe Havens: Supervised Visitation and Exchange Grant Program (Supervised Visitation Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0009. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 33 grantees of the Supervised Visitation Program who are States, Indian Tribal governments, and units of local government. The Supervised Visitation Program provides an opportunity for communities to support the supervised visitation and safe exchange of children, by and between parents, in situations involving domestic violence, child abuse, sexual assault, or stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 33 respondents (Supervised Visitation Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Supervised Visitation Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 66 hours, that is 33 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Murray, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

Dated: May 5, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–11505 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0011]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested: Semi-Annual Progress Report for Grantees From the Grants to State Sexual Assault and Domestic Violence Coalitions Program

ACTION: 30-Day notice of information collection under review.

The Department of Justice, Office on Violence Against Women (OVW) will be

submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 40, page 11279, on March 1, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 10, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Cathy Poston at 202–514–5430 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Grants to Support Tribal Domestic Violence and Sexual Assault Coalitions Program (Tribal Coalitions.)

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0011. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 14 grantees from the Tribal Coalitions Program. The Tribal Coalitions Program grantees include Indian Tribal governments that will support the development and operation of new or existing nonprofit Tribal domestic violence and sexual assault coalitions in Indian country. These grants provide funds to develop and operate nonprofit Tribal domestic violence and sexual assault coalitions in Indian country to address the unique issues that confront Indian victims. The Tribal Coalitions Program provides resources for organizing and supporting efforts to end violence against Indian women.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 14 respondents (grantees from the Tribal Coalitions Program) approximately one hour to complete a Semi-Annual Progress Report. The Semi-Annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 28 hours, that is 14 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–808, Washington, DC 20530.

Dated: May 5, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–11508 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0005]

Agency Information Collection Activities; Extension of a Currently Approved Collection; Comments Requested: Semi-Annual Progress Report for the Grantees From the Grants To Reduce Violent Crimes Against Women on Campus Program

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 40, pages 11279–11280, on March 1, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 10, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Cathy Poston at 202–514–5430 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Grants To Reduce Violent Crimes Against Women on Campus Program (Campus Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0005. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 100 grantees (institutions of higher education) of the Grants To Reduce Violent Crimes Against Women on Campus Program whose eligibility is determined by statute. Campus Program grants may be used to enhance victim services and develop programs to prevent violent crimes against women on campuses. The Campus Program also enables institutions of higher education to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including domestic violence, dating violence, sexual assault, and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 100 respondents (Campus Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Campus Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 200 hours, that is 100 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–808 NW., Washington, DC 20530.

Dated: May 5, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–11509 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0010]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested: Semi-Annual Progress Report for the Grants to State Sexual Assault and Domestic Violence Coalitions Program

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 40, pages 11277–11278 on March 1, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 10, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Cathy Poston at 202–514–5430 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program (State Coalitions Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0010. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 88 grantees from the State Coalitions Program. The State Coalitions Program provides Federal financial assistance to state coalitions to support the coordination of state victim services activities, and collaboration and coordination with Federal, state, and local entities engaged in violence against women activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 88 respondents (State Coalitions Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A State Coalitions Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 176 hours, that is 88 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

Dated: May 5, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–11503 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on April 27, 2011, a proposed Consent Decree in *United States* v. *Town of Greenwich, Connecticut,* Civil Action No. 3:11–CV–00674–RNC, was lodged with the United States District Court for the District of Connecticut.

In this action, the United States seeks, *inter alia,* injunctive relief in relation to unauthorized discharges from the Town's wastewater collection system ("Collection System"), in violation of the Town's National Pollutant Discharge Elimination System Permit issued under the Clean Water Act, 33 U.S.C. 1251, *et seq.* The discharges resulted from ruptures in the Old Greenwich Common Force Main, which is a critical component of the Collection System. The Consent Decree requires the Town, among other things, to pay a $200,000 penalty and rehabilitate a section of the Old Greenwich Common Force Main. The Consent Decree further requires the town to evaluate the need to replace other sections of the force main that have not been replaced in the past. In the event another rupture to the force main occurs, the agreement requires the town to pay additional penalties and replace some or all of the older sections of the force main—depending on the circumstances of the rupture.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Town of Greenwich,* Civil Action No. 3:11–CV–00674–RNC, D.J. Ref. 90–5–1–1–06717/1.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree 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 no. (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 $13.50 (25 cents per page reproduction costs of Consent Decree and Appendices) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–11403 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0047]

Agency Information Collection Activities: Proposed collection comments requested Race and National Origin Identification

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This notice requests comments from the public and affected agencies concerning the proposed information collection. Comments are encouraged and will be accepted for "sixty days" until July 11, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ann Marie Hannon, *Annmarie.Hannon@atf.gov*, Policy and Human Capital Planning Branch, Room 2.S–189, 99 New York Avenue, NE., Washington, DC 20226.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Ann Marie Hannon 202–648–9010 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Race and National Origin Identification.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 2931.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None.

Need for Collection

The information collection is used to maintain Race and National Origin data on all employees and new hires to meet diversity/EEO goals and act as a component of a tracking system to ensure that personnel practices meet the requirements of Federal laws.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 3 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 500 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–808, Washington, DC 20530.

Dated: May 5, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–11502 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Marine Well Containment Venture

Notice is hereby given that, on March 04, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Marine Well Containment Venture ("MWCV") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership, nature and objectives. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BP Offshore Response Company LLC, Houston, TX, has been added as a party to this venture. The changes in its nature and objectives are: (1) In furtherance of the venture's previously-disclosed objectives, the previously-disclosed parties to MWCV have formed Marine Well Containment Company LLC ("MWCC LLC"), a Delaware limited liability company located in Houston, TX; and (2) in furtherance of the venture's previously-disclosed objectives, MWCC LLC and the parties to MWCV have entered into a System Development Agreement.

No other changes have been made in either the membership or planned activity of the venture. The composition of members in this venture may change, and MWCV intends to file additional written notifications disclosing all changes in membership.

On August 18, 2010, MWCV filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 12, 2010 (75 FR 62570).

The last notification was filed with the Department on September 29, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act November 15, 2010 (75 FR 69705).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–11455 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Biodiesel Accreditation Commission

Notice is hereby given that, on April 14, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Biodiesel Accreditation Commission ("NBAC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the NBAC has amended various aspects of its BQ–9000 standard in several ways, including, but not limited to, the following: The Producer Standard now requires reporting of significant process changes; adds more specific requirements for product homogeneity and sampling; codifies several previously informal policies; and implements a weighted ranking system. The Marketer Standard is amended to answer questions about operating multiple facilities; adds an oxidation stability reporting requirement; addresses a marketer functioning as a broker; creates exceptions for blends of 399 and higher; codifies several previously informal policies; implements a weighted ranking system; and adds a provision for external laboratory verification.

On August 27, 2004, NBAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 4, 2004 (69 FR 59269).

The last notification was filed with the Department on May 15, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2009 (74 FR 34788).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–11454 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on April 12, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), American Society Of Mechanical Engineers ("ASME") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since January 7, 2011, ASME has published one new standard

and initiated three new standards activities within the general nature and scope of ASME's standards development activities, as specified in its original notification. More details regarding these changes can be found at *http://www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on January 10, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 4, 2011 (76 FR 6497).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–11452 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0021]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Dispensing Records of Individual Practitioners

ACTION: 30-Day Notice of Information Collection under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at 76 FR Number 44, pages 12372–12373, March 7, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 10, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the eight-digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, (202) 307–7297, or the DOJ Desk Officer at (202) 395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection 1117–0021

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Dispensing records of individual practitioners.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: N/A.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit; Federal government; State, local, or Tribal government.

Abstract: 21 U.S.C. 827 requires that individual practitioners keep records of the dispensing and administration of controlled substances. This information is needed to maintain a closed system of distribution.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 81,397 registrants respond to this information collection, with 81,397 responses annually. DEA estimates that it takes 30 minutes per year for each practitioner to maintain the necessary records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection takes 40,699 annual burden hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–808, Washington, DC 20530.

Dated: May 5, 2011.

Lynn Murray,

Department Clearance Officer, PRA,

U.S. Department of Justice.

[FR Doc. 2011–11506 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0004]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Application for Permit To Export Controlled Substances/Export Controlled Substances for Reexport DEA Forms 161 and 161r

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was

previously published in the **Federal Register** at 76 FR 12371, March 7, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 10, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the eight-digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152 or the DOJ Desk Officer at (202) 395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection 1117–0004

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Permit to Export Controlled Substances/Export Controlled Substances for Reexport.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA Forms 161 and 161r.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21 CFR 1312.21 and 1312.22 require persons who export controlled substances in Schedules I and II and who reexport controlled substances in Schedules I and II and narcotic controlled substances in Schedules III and IV to obtain a permit from DEA. Information is used to issue export permits, exercise control over exportation of controlled substances, and compile data for submission to the United Nations to comply with treaty requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 69 respondents will respond with Form 161, and 12 respondents will respond with Form 161r, with submissions as follows:

	Number of annual responses	Average time per response	Burden hours
DEA Form 161 (exportation only)	5,577	30 minutes (0.5 hours)	2,788.5
DEA Form 161r (reexportation)	196	45 minutes (0.75 hours)	147
Certification of exportation from United States to first country	196	15 minutes (0.25 hours)	49
Certification of reexportation from first country to second country*	235.2	15 minutes (0.25 hours)	58.8
Total			3,043.3

* Assumes three separate reexports to second countries.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,043.3 annual burden hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

Dated: May 5, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–11501 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0035]

Agency Information Collection Activities; Existing Collection, Comments Requested: Approval of an Existing Collection; The National Instant Criminal Background Check System (NICS) Point of Contact (POC) State Final Determination Electronic Submission

ACTION: 30-Day notice of information collection under review.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 41, Pages 11513–11514, on March 2, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 10, 2011. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Sherry L. Kuneff at fax 304–625–7540 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Approval of an Existing Collection.

(2) *Title of the Forms:* The National Instant Criminal Background Check System (NICS) Point of Contact (POC) State Final Determination Electronic Submission.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0035.

Sponsor: Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Full Point of Contact (POC) States, Partial POC States, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-qualified Alternate Permit States.

Brief Abstract: This collection is requested of Full Point of Contact (POC) States, Partial POC States, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-qualified Alternate Permit States. Per 28 Code of Federal Regulations, Section 25.6(h), State POCs are required to transmit electronic determination messages to the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division's National Instant Criminal Background Check System (NICS) Section of the status of a firearm background check in those instances in which a transaction is "open" (transactions unresolved before the end of the operational day on which the transaction was initiated); "denied" transactions; transactions reported to the NICS as open and subsequently changed to proceed; and overturned denials. The POC States must communicate this response to the NICS immediately upon communicating their determination to the Federal Firearms Licensee or in those cases in which a response has not been communicated, no later than the end of the operational day in which the transaction was initiated. For those responses that are not received, the NICS will assume the transaction resulted in a "proceed."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

There are 21 POC States who are required to submit electronic notifications to the FBI CJIS Division's NICS Section and 18 ATF-qualified Alternate Permit States who voluntarily submit electronic notifications to the FBI CJIS Division's NICS Section. Both POC States and ATF-qualified Permit States conduct an average of 5,313,445 transactions per year. It is estimated that 26 percent would be affected by this collection and would require electronic messages sent to the NICS. This translates to 1,381,496 transactions, which would be the total number of annual responses. The other 74 percent would not be reported in this collection. It is estimated it will require one minute (60 seconds) for each POC State to transmit the information per transaction to the NICS. Thus, it is estimated that collectively all respondents will spend 23,024 hours yearly submitting determinations to the NICS. If the number of transactions were distributed evenly among the POC States, then 590 hours would be the estimated time for each of the 39 states to respond. Record keeping time is part of the routine business process and is not part of this calculation.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The average yearly hour burden for submitting final determinations combined is: (5,313,445 total checks × 26 percent)/60 seconds = 23,024 hours.

If additional information is required, contact: Ms. Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

Dated: May 5, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–11495 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1554]

2011 National Institute of Justice Body Armor Workshop

AGENCY: National Institute of Justice, DOJ.

ACTION: Notice of Meeting of the 2011 NIJ Body Armor Workshop.

SUMMARY: The National Institute of Justice invites manufacturers of ballistic-resistant body armor, ballistic laboratory testing facilities and other interested parties to the 2011 NIJ Body Armor Workshop. This year's workshop will have topics of interest for management and technical personnel from the manufacturing and laboratory communities.

The workshop will be held at the Baltimore Convention Center, located at One W. Pratt St., Baltimore, MD, on Thursday, June 2, 2011 from 8 a.m. to 4 p.m. For the time being, the number of representatives is limited to three from each company or organization. As the workshop draws closer, space availability will be reassessed and a notice will be posted if more space is available.

Registration will close at 5 p.m. Eastern time on May 27, 2011. Please visit the Web site below to submit your registration request: *http://www.justnet.org/Pages/2011NIJBodyArmorWorkshop.aspx.*

FOR FURTHER INFORMATION CONTACT: Debra Stoe, by telephone at 202–616–7036 [*Note:* this is not a toll-free telephone number], or by e-mail at *Debra.Stoe@usdoj.gov.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2011–11568 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1553]

Law Enforcement Vehicular Digital Multimedia Evidence Recording System Selection and Application Guide

AGENCY: National Institute of Justice, DOJ.

ACTION: Notice and Request for Comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will make available, to the general public, the "Law Enforcement Vehicular Digital Multimedia Evidence Recording System Selection and Application Guide."

The opportunity to provide comments on these documents is open to industry technical representatives, law enforcement agencies and organizations, research, development and scientific communities, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft documents under consideration are directed to the following Web site: *http://www.justnet.org.*

DATES: The comment period will be open until June 27, 2011.

FOR FURTHER INFORMATION CONTACT: Casandra Robinson, by telephone at 202–305–2596 [*Note:* this is not a toll-free telephone number], or by e-mail at *casandra.robinson@usdoj.gov.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2011–11569 Filed 5–10–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Mine Accident, Injury & Illness Report and Quarterly Mine Employment and Coal Production Report

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Mine Accident, Injury & Illness Report and Quarterly Mine Employment and Coal Production Report," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 10, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The reporting and recordkeeping provisions in 30 CFR part 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in the MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners. Accident, injury, and illness data, when correlated with employment and production data, provide information that allows the MSHA to improve its safety and health enforcement programs, focus its education and training efforts, and establish priorities for its technical assistance activities in mine safety and health. Maintaining a current database allows the MSHA to identify and direct increased attention to those mines, industry segments, and geographical areas where hazardous trends are developing. This could not be done effectively using historical data. The information collected under part 50 is the most comprehensive and reliable occupational data available concerning the mining industry.

This submission has been characterized as a revision, because the MSHA has reformatted Forms MSHA–7000–1 and MSHA–7000–2 to collect this data. These changes have not affected the burden estimates.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a

collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0007. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 5, 2011 (76 FR 589).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1219–0007. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title of Collection: Mine Accident, Injury & Illness Report and Quarterly Mine Employment and Coal Production Report.

OMB Control Number: 1219–0007.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 27,193.

Total Estimated Number of Responses: 144,450.

Total Estimated Annual Burden Hours: 210,976.

Total Estimated Annual Costs Burden: $5,832.

Dated: May 4, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–11475 Filed 5–10–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: D–11528, 2011–06, Wachovia Corporation and Its Current and Future Affiliates or Successors (collectively, Wachovia or the Applicant), D–11580, 2011–07, Robert W. Baird and Co. Incorporated and its Future Affiliates and Subsidiaries (collectively, Baird); D–11621, 2011–08, Security Benefit Mutual Holding Company (MHC) and Security Benefit Life Insurance Company (SBL, and together with MHC the Applicants); and D–11635, 2011–09, The Parvin Nahvi, M.D. Inc. 401(k) Profit Sharing Trust (the Plan).

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Wachovia Corporation and Its Current and Future Affiliates or Successors (Collectively, Wachovia or the Applicant); Located in San Francisco, California; [Prohibited Transaction Exemption 2011–06; Exemption Application No. D–11528]

Exemption

Section I. Sales of Auction Rate Securities From Plans to Wachovia: Unrelated to a Settlement Agreement

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to Wachovia, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.

Section II. Conditions Applicable to Transactions Described in Section I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Wachovia to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Wachovia for its own employees (a Wachovia Plan), the

Unrelated Sale is made pursuant to a written offer by Wachovia (the Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due and unpaid with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction Rate Security (if reliable information is available). Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Wachovia, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Wachovia Plan) receives advance written notice regarding the Unrelated Sale, where such notice contains all of the material terms of the Unrelated Sale, including, but not limited to, the material terms described in the preceding sentence;

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or an individual retirement account (an IRA (as defined in Section V(e)) owner who is independent (as defined in Section V(d)) of Wachovia. Notwithstanding the foregoing: (1) In the case of an IRA which is beneficially owned by an employee, officer, director or partner of Wachovia, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Wachovia Plan or a pooled fund maintained or advised by Wachovia, the decision to accept the Offer may be made by Wachovia after Wachovia has determined that such purchase is in the best interest of the Wachovia Plan or pooled fund;[1]

(h) Except in the case of a Wachovia Plan or a pooled fund maintained or advised by Wachovia, neither Wachovia nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) Wachovia and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption have been met, except that:

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Wachovia and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Wachovia or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(l)(1) Except as provided below in paragraph (l)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission;

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraphs (l)(1)(B)–(C) shall be authorized to examine trade secrets of Wachovia, or commercial or financial information which is privileged or confidential; and

(3) Should Wachovia refuse to disclose information on the basis that such information is exempt from disclosure, Wachovia shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III. Sales of Auction Rate Securities From Plans to Wachovia: Related to a Settlement Agreement

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan of an Auction Rate Security to Wachovia, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

Section IV. Conditions Applicable to Transactions Described in Section III

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement and acceptance of the Offer does not constitute a waiver of any claim of the tendering Plan;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) The securities available for purchase under the Offer;

(2) The background of the Offer;

(3) The methods and timing by which Plans may accept the Offer;

(4) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer, if the Offer had any limitation on such dates;

(5) The timing for acceptance by Wachovia of tendered Auction Rate Securities, if there were any limitations on such timing;

(6) The timing of payment for Auction Rate Securities accepted by Wachovia for payment, if payment was materially delayed beyond the acceptance of the Offer;

(7) The expiration date of the Offer; and

(8) How to obtain additional information concerning the Offer;

[1] The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Wachovia for the par value of the Auction Rate Security, plus unpaid interest and dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by Wachovia of all relevant information.

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met.

Section V. Definitions

For purposes of this exemption:

(a) The term "affiliate" means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "Auction Rate Security" or "ARS" means a security: (1) that is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and (2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(d) A person is "independent" of Wachovia if the person is: (1) not Wachovia or an affiliate; and (2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(e) The term "Plan" means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of the Act; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by section 3(42) of the Act; and

(f) The term "Settlement Agreement" means a legal settlement involving Wachovia and a U.S. state or Federal authority that provides for the purchase of an ARS by Wachovia from a Plan.

Effective Date: This exemption is effective February 1, 2008.

For Further Information Contact: Gary Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Robert W. Baird and Co. Incorporated and Its Current and Future Affiliates and Subsidiaries (Collectively, Baird); Located in Milwaukee, Wisconsin; [Prohibited Transaction Exemption 2011–07; Exemption Application No. D–11580]

Exemption

Section I.—Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective October 9, 2009, to the cash sale (the Sale) by a Plan (as defined in Section II(d)) of an Auction Rate Security (as defined in Section II(b)) to Baird, provided that the following conditions are met: [2]

(a) The Sale was a one-time transaction made on a delivery versus payment basis in the amount described in paragraph (b);

(b) The Plan received an amount equal to the par value of the Auction Rate Securities (the ARS or the Securities) plus accrued but unpaid income (interest or dividends, as applicable) as of the date of the Sale;

(c) The last auction for the Securities was unsuccessful;

(d) The Sale was made in connection with a written offer (the Offer) by Baird containing all of the material terms of the Sale;

(e) The Plans did not bear any commissions or transaction costs with respect to the Sale;

(f) The decision to accept the Offer or retain the Auction Rate Security was made by a Plan fiduciary or Plan participant or an individual retirement account (an IRA (as defined in Section II(d)) owner who is independent (as defined in Section II(c)) of Baird. Notwithstanding the foregoing, in the case of an IRA which is beneficially owned by an employee, officer, director or partner of Baird, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner if all of the other conditions of this Section I have been met;

(g) The Plan does not waive any rights or claims in connection with the Sale;

(h) The Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest with respect to the Plan;

(i) If the exercise of any of Baird's rights, claims or causes of action in connection with its ownership of the Securities results in Baird recovering from the issuer of the Securities, or any third party, an aggregate amount that is more than the sum of:

(1) The purchase price paid to the Plan for the Securities by Baird; and

(2) The income (interest or dividends, as applicable) due on the Securities from and after the date Baird purchased the Securities from the Plan, at the rate specified in the respective offering documents for the Securities or determined pursuant to a successful auction with respect to the Securities, Baird will refund such excess amount promptly to the Plan (after deducting all reasonable expenses incurred in connection with the recovery);

(j) Neither Baird nor any affiliate exercises investment discretion or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the decision to accept the written Offer or retain the Security (unless the Sale involves an IRA whose owner is an employee, officer, director or partner of Baird);

(k) Baird and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Sale such records as are necessary to enable the person described below in paragraph (l)(i), to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to a Plan which engages in a Sale, other than Baird and its affiliates, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(i);

(ii) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of Baird, such records are lost or destroyed prior to the end of the six-year period.

(l)(i) Except as provided, below, in paragraph (l)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of any Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any IRA owner, participant or beneficiary of a Plan that engages in the Sale, or duly authorized representative of such IRA owner, Plan participant or beneficiary;

(ii) None of the persons described, above, in paragraph (l)(i)(B)–(D) shall be authorized to examine trade secrets of

[2] For purposes of this exemption, references to section 406 of ERISA refer as well to the corresponding provisions of section 4975 of the Code.

Baird, or commercial or financial information which is privileged or confidential; and

(iii) Should Baird refuse to disclose information on the basis that such information is exempt from disclosure, Baird shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

(a) The term "affiliate" of another person means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a "Dutch Auction" process.

(c) The term "Independent" means a person who is not Baird or an affiliate (as defined in Section II(a)).

(d) The term "Plan" means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); or an employee benefit plan as defined in section 3(3) of the Act.

Effective Date: This exemption is effective October 9, 2009.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 19, 2011 at 76 FR 3165.

Notice to Interested Persons: Baird represents that it was unable to comply with the notice to interested persons requirement within the time frame set forth in its application. However, Baird has represented that it notified all interested persons, in the manner agreed upon between Baird and the Department, by February 9, 2011. Interested persons were notified that they had until March 14, 2011, to submit comments to the Department with respect to the proposed exemption. No comments were received by the Department.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Security Benefit Mutual Holding Company (MHC) and Security Benefit Life Insurance Company (SBL, and Together With MHC, the Applicants); Located in Topeka, Kansas; [Prohibited Transaction Exemption 2011–08; Exemption Application No. D–11621]

Exemption

Section I. Covered Transaction

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,[3] shall not apply, effective July 30, 2010, to the receipt of cash or policy credits (Policy Credits), by or on behalf of a policy owner of SBL (Policyholder) that is an Eligible Member, which is an employee benefit plan or retirement arrangement that is subject to section 406 of the Act and/or section 4975 of the Code (a Plan), other than a Plan maintained by MHC and/or its affiliates, in exchange for the extinguishment of such Eligible Member's membership interest in MHC, in accordance with the terms of a plan of demutualization and dissolution (the D&D Plan), adopted by MHC and implemented in accordance with Kansas Insurance Law.

This exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The D&D Plan was implemented in accordance with procedural and substantive safeguards that were imposed under the laws of the State of Kansas and was subject to review, approval, and supervision by the Kansas Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviewed the terms that were provided to Eligible Members as part of the Commissioner's review of the D&D Plan, and the Commissioner approved the D&D Plan following a determination that such D&D Plan was fair and equitable to all Eligible Members.

(c) Each Eligible Member had an opportunity to comment on the D&D Plan at the Commissioner's public comment meeting or evidentiary hearing on the D&D Plan.

(d) Each Eligible Member had an opportunity to vote to approve the D&D Plan after full written disclosure was given to the Eligible Members by MHC.

(e) Pursuant to the D&D Plan, an Eligible Member generally received cash, except that an Eligible Member received or will receive Policy Credits, and not cash, to the extent that—

(1) Consideration was allocable to the Eligible Member based on ownership of a Tax-Qualified Contract; or

(2) SBL made an objective determination that payment of Consideration in the form of cash would be disadvantageous to such Eligible Member in respect of applicable income or other taxation provisions.

(f) Any determination made by SBL under Paragraphs (e)(1) or (e)(2) above was based upon objective criteria that was applied consistently to similarly situated Eligible Members.

(g) Any act or determination undertaken by an Eligible Member that was a Plan with respect to attending and/or submitting comments for the Commissioner's public comment meeting and/or evidentiary hearing, attending MHC's special meeting to consider the D&D Plan, and/or voting on the D&D Plan, was made by one or more Plan fiduciaries that were independent of SBL and its affiliates, and neither SBL nor any of its affiliates provided investment advice within the meaning of 29 CFR 2510.3–21(c) or exercised investment discretion with respect to such act or determination.

(h) All Eligible Members that were Plans participated in the demutualization of MHC (the Demutualization) on the same basis as all other Eligible Members that were not Plans.

(i) No Eligible Member paid any brokerage commissions or fees in connection with the receipt of Policy Credits.

(j) All of SBL's Policyholder obligations remained in force and were not affected by the D&D Plan.

(k) The terms of the Demutualization were at least as favorable to the Plans as the terms of an arm's length transaction between unrelated parties.

(l) Any Plan Eligible Member whose Consideration was placed in a trust, escrow account, or other similar arrangement (the Escrow Arrangement), pursuant to the D&D Plan, will receive a distribution of such Consideration from the Escrow Arrangement, and will not forfeit such Consideration.

(m) SBL maintains or causes to be maintained, for a period of (6) six years, the records necessary to enable the persons described in paragraph (n)(1) of this section to determine whether the applicable conditions of this exemption have been met. Such records are readily available to assure accessibility by the persons identified in paragraph (n)(1) of this section.

[3] For purposes of this exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(n)(1) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (m) of this section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of an Eligible Member that is a Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Eligible Member that is a Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any Eligible Member that is a Plan, or any duly authorized representative of such participant or beneficiary.

(2) A prohibited transaction is not deemed to have occurred if, due to circumstances beyond the control of SBL, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than SBL is subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (n)(1) of this section.

(3) None of the persons described in paragraphs (B)–(D) of section (n)(1) are authorized to examine the trade secrets of SBL or commercial or financial information which is privileged or confidential.

(4) Should SBL refuse to disclose information on the basis that such information is exempt from disclosure, SBL shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

Section III. Definitions

For purposes of this exemption:

(a) The term "MHC" means Security Benefit Mutual Holding Company, and any affiliate of MHC, as defined below in Section III(b).

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity (for purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual); and

(2) Any officer of, director of, or partner in such person.

(c) The "Adoption Date" refers to March 2, 2010, the date that MHC's Board of Directors adopted the D&D Plan.

(d) The term "Consideration" means the cash or Policy Credits receivable by an Eligible Member in exchange for the extinguishment of such Eligible Member's membership interest in MHC, in accordance with the terms of the D&D Plan.

(e) The "D&D Plan" means the plan of demutualization and dissolution adopted by MHC and implemented in accordance with Kansas Insurance Law, dated as of March 2, 2010.

(f) The term "Eligible Member" means a person, other than MHC or its subsidiaries, who, as reflected in the records of SBL or other relevant entities, is the owner of one or more Eligible Policies on the Adoption Date.

(g) The term "Eligible Policy" or "Eligible Policies" means a policy that, as reflected in the records of SBL or other relevant entities, is in force on the Adoption Date, unless the policy is excluded pursuant to the D&D Plan.

(h) The term "Policy Credit" means consideration to be paid in the form of an increase in cash value, account value, dividend accumulations or benefit payment, as appropriate, depending upon the policy.

(i) The term "SBL" means Security Benefit Life Insurance Company and any affiliate of SBL, as defined in Section III(b).

(j) The term "Tax-Qualified Contract" means an Eligible Policy in one of the following forms, that is held, other than through a trust, on the date that Consideration is distributed—

(1) An annuity contract that qualifies for the treatment described in section 403(b) of the Code;

(2) An individual retirement annuity within the meaning of section 408(b) of the Code;

(3) An individual annuity contract or an individual life insurance policy issued directly to a Plan participant pursuant to a Plan qualified under section 401(a) or section 403(a) of the Code;

(4) A group annuity contract issued to an employer, designed to fund benefits under a Plan sponsored by the employer that qualifies under section 401(a) or section 403(a) of the Code;

(5) An annuity contract issued in connection with a Plan established by a governmental entity that qualifies for the treatment described in section 457 of the Code; or

(6) Any other form of contract MHC determines must receive Policy Credits in order to retain the contract's tax-favored status.

Section IV. Effective Date

This exemption is effective as of July 30, 2010.

Written Comments

The Department invited all interested persons to submit written comments with respect to the notice of proposed exemption on or before March 4, 2011. During the comment period, the Department received 30 telephone inquiries, 1 e-mail inquiry, and 2 written comments from Policyholders. Furthermore, the Department received a written comment from the Applicants, which supported the exemption and requested certain modifications and/or clarifications regarding the Summary of Facts and Representations (the Summary) in the notice of proposed exemption.

Following is a discussion of the aforementioned comments, including the responses made by the Applicants or the Department to address the issues raised therein. Any capitalized terms herein not otherwise defined have the meanings ascribed to them in the Summary.

Policyholder Comments and Applicants' Responses

The majority of Policyholder inquiries and/or written comments concerned the commenters' difficulties in understanding the notice of proposed exemption or the effect of the proposed exemption on such Policyholders' policies. The Department also received written comments from two Eligible Members which generally concerned the benefit of the Covered Transaction to Policyholders and whether there were adequate protections for Plan Eligible Members.

A. First Commenter

The first commenter questioned the benefit of the proposed exemption to Policyholders as compared to the benefit to the Applicants. In response, the Applicants state that holders of Eligible Policies will benefit more from the Department's grant of the proposed exemption than from denial of it. The Applicants explain that, if the proposed exemption is granted, the Policyholders that are Plan Eligible Members will receive the Consideration allotted to them and now held in the Escrow Arrangement in the form of cash or Policy Credits. If, however, the proposed exemption is denied, (1) the Policyholders that are Plan Eligible Members will be unable to receive the Consideration allotted to them in the

Escrow Arrangement; and (2) the Applicants will be unable to distribute such Consideration to such Plans because of the risk of committing a prohibited transaction. Instead, the Applicants state, the Consideration will be paid to, and will add to the capital of, SBL.[4] Furthermore, the Applicants suggest that, although enhancing SBL's capital may have some benefit to the Policyholders, such capital ultimately belongs to the Applicants' shareholders. Thus, the Applicants state that payment of the Consideration to the Policyholders would be more beneficial to them.

B. Second Commenter

The second commenter suggested that the proposed exemption does not adequately protect the interests of Plan Eligible Members. In this regard, the second commenter inquired about (1) How Plan Eligible Members' financial interests would be protected; (2) what assurances exist that SBL's policies would not be changed as a result of the exemption; (3) what prudent measures would new management undertake to ensure SBL's future; and (4) what other courses of action are available to protect Plan Eligible Members that would also benefit SBL's long-term survival.

In response to the second commenter's inquiry about the protection of Plan Eligible Members' financial interests, the Applicants state that MHC's Board of Directors believed its approval of MHC's (1) sale of SBC to Guggenheim and (2) concurrent Demutualization and dissolution (cumulatively, the Transaction) to be in the best interests of SBL's Policyholders, as it expected the Transaction to provide SBL with a significantly improved financial condition that would allow SBL to mitigate liquidity and regulatory concerns and permit SBL to operate with a stronger capital position, better prospects, higher financial strength ratings and thus greater assurance it would fulfill its obligations to its Policyholders. The Applicants note that, as had been anticipated, S&P improved its financial strength rating for SBL upon announcement of the Transaction, again upon completion of the Interim Recapitalization, and yet again, as the Department noted in Footnote 4 of the Summary, immediately following the closing of the Transaction. In contrast, the Applicants point out that, without the Transaction, MHC's Board of Directors could not, given the condition of SBL, guarantee that the Kansas Insurance Department (KID) would refrain from taking regulatory action that could adversely affect the Policyholders of SBL.

Furthermore, the Applicants emphasize that the Transaction was monitored from its inception by the KID and, as part of the KID's approval process for the D&D Plan, the Commissioner determined that the D&D Plan was fair and equitable to Eligible Members and Policyholders. The Applicants note that the Commissioner's order approving the Transaction found that the evidence established that the D&D Plan would not unjustly enrich any director, officer, agent, or employee of SBL.[5] The Applicants also relate that Policyholders, as Members of MHC, likewise demonstrated their support for the Transaction, noting that approximately 90% of the Eligible Members voting at the May 26, 2010 meeting voted in favor of the D&D Plan.

In response to the second commenter's inquiry regarding guarantees that the Transaction would not change the policies of SBL to the detriment of the Policyholders, the Applicants note that the preamble of the D&D Plan, which was distributed to Eligible Members with the MIB, provides that: "[t]he Transaction will not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of SBL to its Policyholders." Further, the Applicants note that the Commissioner determined that the evidence established that the Investor had no plans to make any "material change in [SBL's] business or corporate structure or management that would be unfair and unreasonable to SBL's Policyholders and not in the public interest."[6] The Applicants also stress that SBL's actions with respect to Policyholders' policies continue to be subject to oversight and regulation by the KID and, as binding contractual agreements, such policies cannot be unilaterally changed by SBL except as expressly permitted pursuant to the terms thereof.

In response to the second commenter's inquiry regarding the ability to ensure future prudent operational practices of management, the Applicants reiterate that SBL remains subject to oversight and regulation by the KID. Moreover, according to the Applicants, SBL's new owners, whose representatives now comprise a majority of the board of directors of Security Benefit Corporation (SBC), SBL's parent, have a substantial investment in SBL, indirectly through SBC,[7] and thus a significant financial interest in SBL being well operated and managed lest they lose on their investment.

Finally, in response to the second commenter's inquiry regarding other courses of action available to protect Policyholders and benefit the long term survival of SBL, the Applicants suggest that, as the Transaction closed on July 30, 2010, there are currently no alternative courses of action available. However, the Applicants stress that MHC's Board of Directors, the Commissioner and an overwhelming majority of Eligible Members supported the D&D Plan. In addition, the Applicants note that MHC's Board of Directors previously considered possible alternatives and determined that the Transaction was in the best interests of Policyholders. The Applicants state further that it is in the best interests of the Policyholders for the exemption to be granted by the Department so that the Consideration can be distributed to the Plan Eligible Members in accordance with the D&D Plan.

The Applicants' Comment

The Applicants also delivered a written comment to the Department which was meant to clarify some of the information provided in the Summary. The comment generally clarifies the status of Consideration held in the Escrow Arrangement, the corporate structure of SBL and SBC, the timing of certain key events in the Transaction, developments in the allocation of

[4] As stated in Representation 36 of the Summary, the Department views the mechanism in the D&D Plan whereby Consideration in the Escrow Arrangement allotted to Plan Eligible Members is returned to SBL if no exemption is received by June 30, 2011 (the failsafe mechanism), as contrary to the protections afforded to plan assets and the parties who are entitled to such assets under the Act. Moreover, the Department believes that the failsafe mechanism is violative of Section II(h) of the exemption, which provides that Plan Eligible Members that participated in the Demutualization be treated in the same manner as Eligible Members that were not Plans, and Section II(l) of the exemption, which prohibits the forfeiture of Consideration.

[5] See In re Security Benefit Mutual Holding Company, Docket No. 4103–DM, paragraphs 91–92.

[6] See In re Security Benefit Mutual Holding Company, Docket No. 4103–DM, paragraph 77.

[7] The Applicants note that approximately $350 million of the $400 million paid by the Investors to acquire SBC was contributed by SBC as equity capital to SBL, and the Investors are limited by law in their ability to remove such capital from SBL. In this regard, the Applicants explain that section 40–3306(f) of the Kansas Insurance Code prevents a Kansas life insurer from paying a dividend to its shareholders without the prior approval of the Commissioner if the dividend is more than (A) 10% of its surplus as regards Policyholders as of December 31 immediately preceding; or (B) the net gain from operations of such insurer, not including realized capital gains for the 12-month period ending December 31 immediately preceding.

Consideration pursuant to the D&D Plan, and the description of the failsafe mechanism employed in the D&D Plan.

A. Distribution of Consideration Held in the Escrow Arrangement

Section II(e) of the proposed exemption provides that pursuant to the D&D Plan, an Eligible Member generally received cash, except that an Eligible Member received Policy Credits, and not cash, to the extent that (1) Consideration was allocable to the Eligible Member based on ownership of a Tax-Qualified Contract; or (2) SBL made an objective determination that payment of Consideration in the form of cash would be disadvantageous to such Eligible Member in respect of applicable income or other taxation provisions. The Applicants explain that while Section II(e) of the proposed exemption uses the past tense to describe the Eligible Members' receipt of Consideration pursuant to the D&D Plan, a portion of available Consideration, payable in Policy Credits, continues to be held in the Escrow Arrangement, as described in Representations 29 though 36 of the Summary, and will not be distributed until the exemption is granted.

In response to the Applicants' comment, the Department has revised Section II(e) of the operative language by including the phrase "or will receive" after the word "received" and before the term "policy credits." Section II(e) of the exemption now reads, in relevant part, as follows:

> (e) Pursuant to the D&D Plan, an Eligible Member generally received cash, except that an Eligible Member received or will receive Policy Credits, and not cash, to the extent that * * *

In addition, the Department notes corresponding revisions to Representations 29–36 of the Summary.

B. Corporate Structure of MHC and SBC

In Representation 1 and Footnote 3 of the Summary, the Applicants suggest certain technical corrections to clarify their corporate structure. In this regard, the Applicants suggest that the first sentence in Representation 1 of the Summary should be revised to read "MHC, which is no longer in existence, was the Topeka, Kansas-based, former parent of Security Benefit Corporation (SBC), which in turn was the parent corporation of Security Benefit Life Insurance Company (SBL)." Furthermore, the Applicants state that "Security Distributors, Inc." should be removed from the list of entities in Footnote 3 because it is a subsidiary of SBL rather than SBC, and "Security Benefit Academy, Inc." should be inserted in its place. The Department takes note of the foregoing clarifications and revisions to Representation 1 and Footnote 3 of the Summary.

C. Timing of Key Events in the Transaction

In Representation 17 of the Summary, the Applicants suggest that the date on which the MIB was mailed to Eligible Members be changed to more accurately reflect the timing of the mailing of the MIB. Thus, the Applicants state that "April 5, 2010" be inserted in place of "March 31, 2010," so that the first sentence of Representation 17 now reads, "On or before April 5, 2010, at least 20 days in advance of the Public Comment Meeting to be held by the Commissioner, MHC provided each Eligible Member with a copy of the Security Benefit Member Information Booklet (MIB), describing in detail the transactions described herein."

Representation 30 of the Summary explains that the Escrow Arrangement was necessary to protect Plan Eligible Members from adverse consequences in the event that the exemption or IRS Rulings were not received by the time Consideration was payable to such Policyholders. The Applicants note that while delivery of Consideration to certain members was conditioned upon the grant of the exemption, the Transaction itself was not. Thus, the Applicants suggest that in the penultimate sentence of Representation 30 of the Summary, the phrase "delivery of Consideration to Eligible Members" be replaced with the word "Transaction," to reflect that the Transaction was not contingent upon the receipt of the exemption or the IRS Rulings and proceeded to closing on July 30, 2010. The Department takes note of the foregoing clarifications and revisions to Representations 17 and 30 of the Summary.

D. Allocation of Consideration Pursuant to the D&D Plan

As described in the Summary, the D&D Plan provides that Consideration was generally paid to Eligible Members in cash; however, Consideration was paid by the crediting of Policy Credits to each Eligible Member whose Eligible Policy was held in a Tax-Qualified Contract. The Applicants suggest a new footnote to be added to Representation 32, which clarifies that, as a result of the allocation process, it was determined that all of the Eligible Members holding ERISA Contracts will receive Policy Credits, because the ERISA Contracts are all also Tax-Qualified Contracts. Thus, the suggested footnote would read, "SBL determined during the allocation process that (1) all of the ERISA Contracts held by Eligible Members were Tax-Qualified Contracts and (2) the Consideration allocable to such ERISA Contracts would consist solely of Policy Credits." The Department concurs and takes note of the Applicants' clarification and update to the Summary.

E. Description of the Failsafe Mechanism in the D&D Plan

Representation 33 of the Summary characterizes the December 31, 2010 deadline for receipt of the IRS Rulings or the exemption as the "failsafe" mechanism. The Applicants suggest a technical correction to Representation 33 to clarify that the failsafe mechanism was not just the December 31, 2010 deadline for receipt of the IRS Rulings and the exemption, subject to extension by the Commissioner, but also the associated release of the amounts remaining in the Escrow Arrangement to the general account of SBL for the benefit of all Policyholders. Thus, the first sentence of Representation 33, as modified, would read as follows:

> According to the Applicants, the December 31, 2010 deadline for receipt of the IRS Rulings or the exemption, following which the amounts remaining in the Escrow Arrangement would be released to the general account of SBL in the absence of, as applicable, the IRS Rulings only, the exemption only or both of the IRS Rulings and the exemption, constitutes a "failsafe" mechanism, in that it is designed to protect Plans from potential adverse tax consequences or disqualification in the event that Consideration is paid to Eligible Members holding Tax-Qualified Contracts or ERISA Contracts without the requisite regulatory approvals.

The Applicants also suggest a technical correction to the penultimate sentence in Representation 33 which would clarify that the Applicants believed that there was a "possibility," not a "probability," that only the exemption or the IRS Rulings would be approved (but not the other). Thus, the sentence, as modified, would read, "Furthermore, the Applicants claim that there was a possibility that only the exemption or the IRS Rulings would be approved (but not the other), thereby creating a "catch-22" where Consideration could neither be paid to Eligible Members nor kept in the Escrow Arrangement indefinitely." The Department takes note of the Applicants' clarifications and concurs with the foregoing revisions of Representation 33.

Finally, the Department notes that, due to a publication error, the reference to the date of issuance of the IRS Rulings in Footnote 17 of the Summary

erroneously refers to "Footnote 13," and that such reference should be re-designated as "Footnote 14."

After giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, US Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the proposed exemption published in the **Federal Register** on January 19, 2011 at 76 FR 3167.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

The Parvin Nahvi, M.D., Inc. 401(k) Profit Sharing Trust (the Plan); Located in Templeton, CA; [Prohibited Transaction Exemption 2011–09; Exemption Application No. D–11635]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, in connection with the cash sale by the Plan (the Sale) of a parcel of improved real property (the Property), to Dr. Parvin Nahvi and Dr. Javad Sani (the Applicants), the 100% owners of the Plan sponsor, Parvin Nahvi, M.D., Inc. (the Employer), and parties in interest with respect to the Plan; provided that:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The Plan's obligations with respect to the remaining principal balance of a loan (the Loan) on the Property that is secured by a first deed of trust (the Deed of Trust) with Santa Lucia Bank, an unrelated lender, are:

(1) satisfied in full out of the proceeds of the Sale, or

(2) assumed in full by the Applicants, who indemnify and hold the Plan harmless for any further payment on, or any claims arising in connection with, the Loan;

(c) The Plan receives an amount in cash, equal to the greater of:

(1) the original purchase price paid by the Plan for the Property, plus additional contributions or expenses paid by the Plan relating to the holding of the Property, less any income generated by the Property and paid to the Plan, less the Loan principal assumed by the Applicants pursuant to Section (b)(2), or

(2) the Property's appraised value of $1,825,000, which represents the fair market value of the Property, less the Loan principal assumed by the Applicants pursuant to Section (b)(2);

(d) The fair market value of the Property has been determined by a qualified independent appraiser (the Appraiser) and is updated by such appraiser on the date the Sale is consummated;

(e) The Sale is a one-time transaction for cash;

(f) The Plan incurs no real estate fees, or commissions, in connection with the Sale; and

(g) The Plan fiduciaries (1) Determine whether it is in the interest of the Plan to proceed with the Sale, (2) review and approve the methodology used in the appraisal that is being relied upon, and (3) ensure that such methodology is applied by the Appraiser in determining the fair market value of the Property on the date of the Sale.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, US Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the proposed exemption published in the **Federal Register** on February 17, 2011, at 76 FR 9370.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 5th day of May, 2011.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2011–11440 Filed 5–10–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request (ICR) for the Impact Evaluation of the YouthBuild Program; Comment Request

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department or DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and

the impact of collection requirements on respondents can be properly assessed.

The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 5 CFR 1320.5(a) and 1320.6.

A copy of the proposed ICR can be obtained by contacting the office listed below in the addresses section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 11, 2011.

ADDRESSES: Send comments to Eileen Pederson, U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room N–5641, Washington, DC 20210, telephone number (202) 693–3647 (this is not a toll-free number); e-mail address is *Pederson.eileen@dol.gov* and fax number is (202) 693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Impact Evaluation of the YouthBuild program is a seven-year experimental design impact evaluation funded by DOL/ETA. This information collection covers the first year of the project. YouthBuild is a youth and community development program that addresses several core issues facing low-income communities: available housing, and youth education, employment and criminal behavior. The program primarily serves high school dropouts and focuses on helping them attain a high school diploma or general educational development, or GED, and teaching them construction skills geared toward career placement. The evaluation will measure core program outcomes including educational attainment, postsecondary planning, employment, earnings, delinquency and involvement with the criminal justice system, and youth social and emotional development. The evaluation represents an important opportunity for DOL to add to the growing body of knowledge about the impacts of "second chance" programs for youth who have dropped out of high school. Compared to peers who remain in school, high school dropouts are more likely to be disconnected from school and work, be incarcerated, be unmarried, and have children outside of marriage.

The evaluation of the YouthBuild program will address the following research questions:

Operation: How is YouthBuild designed in each participating site? What are the key implementation practices that affect how the program operates? How does the local context affect program implementation and the services available to members of the control group?

Participation: What are the characteristics of youth who enroll in the study? How are these characteristics shaped by YouthBuild recruitment and screening practices?

Impacts: What are YouthBuild's impacts on educational attainment, planning, and aspirations? What are YouthBuild's impacts on employment, earnings, and job characteristics? What are YouthBuild's impacts on crime and delinquency? What are the program's impacts on social-emotional development, identity development, and self-regulation?

Costs: How does the net cost per participant compare with the impacts the program generates?

The evaluation study started in June 2010 and is scheduled to continue until July 2017. MDRC, the prime contractor, is working with Mathematica Policy Research and Social Policy Research Associates to design and implement the evaluation. The study includes a baseline information collection, a Web-based questionnaire and a Web-based survey of YouthBuild grantees, site-specific qualitative and cost data, and three mixed-mode (Web and computer-assisted telephone interviewing) surveys of youth that will take place 12, 30, and 48 months after random assignment.

The target population for the study is out-of-school youth aged 16–24, who are from low-income families; in foster care; offenders; migrants; disabled; or are children of incarcerated parents. Of the universe of YouthBuild programs, the study team will recruit 77 sites (60 DOL-funded sites and 17 sites that are not currently funded by DOL but do receive funding from the Corporation for National and Community Service [CNCS], referred to hereafter as CNCS-funded programs) and will seek to enroll 3,465 eligible participants into the study. Study participants will be randomly assigned to either the treatment group, which will be eligible for YouthBuild services, or to the control group which will not be eligible. Study participants will be followed for four years after random assignment.

Data for the study will be collected from YouthBuild grantees and from study participants through the following methods:

Grantee Questionnaire and Survey and Site Visits. A brief grantee questionnaire and subsequent grantee survey will provide information about the grantee sites that run individual YouthBuild programs. The questionnaire will be a mandatory component of grant awards for all DOL-funded and CNCS-funded YouthBuild programs funded in 2011, and will request general information about the staff and participants at each site. Information provided in this questionnaire will be used to inform selection of those grantees which will participate in the participant random assignment component of the evaluation. The grantee survey is also mandatory and will be administered after programs are fully operational. It will request detailed information about the services each program offers, including the frequency and location of particular services, as well as more in-depth information about the staff and participants. The information from the grantee survey will be used to support the implementation analysis and will assess how outcomes may vary across YouthBuild program models. As part of the implementation analysis, the evaluation team will conduct site visits to at least 60 sites. These visits will include classroom observations to assess the quality of instruction, youth focus groups, and semi-structured in-depth interviews with program staff and collect cost data to ascertain the cost of the program.

Baseline Data Forms Completed by Sample Group Members. Prior to random assignment in the sites selected for this component of the study, all eligible youth participants will complete baseline data forms, which will include an Informed Consent Form, a Baseline Information Form, and a Contact Information Form. Taken together, these will provide participants with information about the study while collecting information for both future subgroup analysis and locating study participants during future study follow-ups.

Three Follow-up Surveys of Sample Group Members. Members of both the treatment and control groups will complete follow-up surveys at 12, 30,

and 48 months following random assignment. These surveys will request information about the services that participants have received through YouthBuild and other community service providers, as well as information about their educational attainment, postsecondary planning and engagement, employment, earnings, delinquency and involvement with the criminal justice system, and social and emotional development.

At this time, clearance is requested for the site selection questionnaire and grantee survey and the study participant baseline data forms. A future request will be submitted for the follow-up surveys, site visit protocols and cost data collection forms.

II. Desired Focus of Comments

Currently, DOL is soliciting comments concerning the above data collection for the Impact Evaluation of the YouthBuild program. Comments are requested to:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed 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 information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

At this time, DOL is requesting clearance for the three study participant enrollment forms—the informed consent form, the baseline information form, and the contact information form—as well as the initial Site Selection Questionnaire and subsequent Grantee Survey. A future request for comment (and OMB clearance) will be submitted for the site visit protocols, cost data forms and follow-up surveys.

Type of review: New information collection request.

Title of collection: Impact Evaluation of the YouthBuild Program.

OMB Control Number: 1205–0NEW.

Affected Public: Low-income, disadvantaged youth and DOL- and CNCS-funded YouthBuild programs.

Cite/Reference/Form/etc: Workforce Investment Act Section 172.

1. The Site Selection Questionnaire:

Frequency: Once.

Total Responses: 117 sites (all 2011 DOL-funded YouthBuild grantees and all 17 of the CNCS-funded grantees [excluding those which receive DOL funding]).

Average Time per Response: 10 minutes per staff for each response.

Estimated Total Burden Hours: 19.5 (117 responses × 10 minutes).

Total Burden Cost: $487.50 (19.5 hours × $25/hour).

2. The study member enrollment forms:

Frequency: Once.

Total Responses: 3,465 study participants.

Average Time per Response: 15 minutes per study participant.

Estimated Total Burden Hours: 866.25 (3,465 participants × 15 minutes each).

Total Burden Cost: $6,280.31 (866.25 hours × $7.25/hour).

3. The Grantee Survey:

Frequency: Once.

Total Responses: 117 sites (all 2011 DOL-funded YouthBuild grantees and all 17 of the CNCS-funded grantees [excluding those which receive DOL funding]).

Average Time per Response: 30 minutes per staff for each response.

Estimated Total Burden Hours: 58.5 (117 responses × 30 minutes).

Total Burden Cost: $1,462.50 (58.5 hours × $25/hour).

Note that, due to rounding, the total amounts may differ from the sum of the components.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval; they will also become a matter of public record.

Signed at Washington, DC this 5th day of May, 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–11531 Filed 5–10–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,099]

West, A Thomson Reuters Business, Thomson Reuters Legal Division, Including On-Site Leased Workers From ADECCO, Albuquerque, NM; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated April 12, 2011, a Trade Adjustment Assistance Coordinator from the State of New Mexico requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of West, A Thomson Reuters Business, Thomson Reuters Legal Division, Albuquerque, New Mexico (subject firm). The determination was issued on March 4, 2011. The Department's Notice of Determination was published in the **Federal Register** on March 17, 2011 (76 FR 14693). The workers are engaged in activities related to the supply of legal, business, and regulatory information services.

The negative determination was based on the findings that the group eligibility requirements under Section 222(a) and (c) of the Act, 19 U.S.C. 2272(a) and (c), have not been satisfied because the investigation revealed that only one worker has been totally or partially separated from the subject firm. 29 CFR 90.2 states that a significant number or proportion of the workers means at least three workers in a firm (or appropriate subdivision thereof) with a workforce of fewer than 50 workers, or five percent of the workers or 50 workers, whichever is less, in a workforce of 50 or more workers. Finally, the group eligibility requirements under Section 222(f) of the Act, 19 U.S.C. 2272(f), have not been satisfied because the workers' firm has not been identified in an affirmative finding of injury by the International Trade Commission.

In the request for reconsideration, the TAA Coordinator alleges a mistake in fact with regards to the number and/or proportion of workers separated, or threatened with separation.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 28th day of April, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11476 Filed 5–10–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,900]

CEVA Freight, LLC, Dell Logistics Division, Including On-Site Leased Workers From Prologistix, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through Spartan Staffing and/or Staffing Solutions, Winston-Salem, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 19, 2010, applicable to workers of CEVA Freight, LLC, Dell Logistics Division, including on-site leased workers from Prologistix, Winston-Salem, North Carolina. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21357). The notice was amended on June 21, 2010 to include on-site leased workers from Employment Staffing Solutions. The amended notice was published in the **Federal Register** on July 1, 2010 (75 FR 38128–38129).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers supply freight management services.

Information shows that leased workers from Prologistix who were separated from employment at the Winston-Salem, North Carolina location of CEVA Freight, LLC had wages reported under a separate unemployment insurance (UI) tax account under Spartan Staffing and/or Staffing Solutions. Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers employed at CEVA Freight, LLC, Dell Logistics Division, Winston-Salem, North Carolina who were adversely affected as a supplier of freight management services.

The amended notice applicable to TA–W–72,900 is hereby issued as follows:

All workers of CEVA Freight, LLC, Dell Logistics Division, including on-site leased workers from Prologistix, including workers whose unemployment insurance (UI) wages were paid through Spartan Staffing and/or Staffing Solutions, Winston-Salem, North Carolina, who became totally or partially separated from employment on or after November 18, 2008, through March 19, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 29th day of April, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11477 Filed 5–10–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,023]

Chrysler Group, LLC, Power Train Division, Mack Avenue Engine Plants #1 And #2, Including On-Site Leased Workers from Caravan Knight, Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 6, 2011, applicable to workers of Chrysler Group, LLC, Power Train Division, Mack Avenue Engine Plant #1, including on-site leased workers of Caravan Knight, Detroit, Michigan. The workers are engaged in the production of automotive engines. The notice was published in the **Federal Register** on April 22, 2011 (76 FR 22731). The notice was amended on April 12, 2011 to correct the impact date. The notice was published in the **Federal Register** on April 22, 2011 (76 FR 22729).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred during the relevant time period at the Mack Avenue Engine Plant #2, Detroit, Michigan location of Chrysler Group, LLC, Power Train Division. Together, the Mack Avenue Engine Plants #1 and #2 are part of an integrated production process for the Jeep Commander and Jeep Grand Cherokee at the North Jefferson Assembly Plant and are also adversely affected by the loss of business that was experienced at the North Jefferson Assembly plant affiliate of the subject firm.

Accordingly, the Department is amending the certification to include workers of the Detroit, Michigan location of Mach Avenue Engine Plant #2 of Chrysler Group, LLC, Power Train Division.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift of automotive engines to Saltillo, Mexico.

The amended notice applicable to TA–W–75,023 is hereby issued as follows:

All workers of Chrysler Group, LLC, Power Train Division, Mack Avenue Engine Plant #1 and #2, including on-site leased workers of Caravan Knight, Detroit, Michigan, who became totally or partially separated from employment on or after December 5, 2010, through April 6, 2013, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 27th day of April 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11479 Filed 5–10–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,448]

Blue Heron Paper Company, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through Barrett Business Services, Inc., Oregon City, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"),

19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 27, 2010, applicable to workers of Blue Heron Paper Company, Oregon City, Oregon. The notice was published in the **Federal Register** on June 16, 2010 (75 FR 34174).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of pulp and paper.

Information shows that Blue Heron Paper Company, through bankruptcy, was assigned a trustee, Barrett Business Services, Inc., to provide payroll services while preparing for closure. Some workers separated from employment at the Oregon City, Oregon location of the subject firm had their wages reported under a separated unemployment insurance (UI) tax account under the name Barrett Business Services, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of pulp and paper.

The amended notice applicable to TA–W–73,448 is hereby issued as follows:

All workers of Blue Heron Paper Company, including workers whose unemployment insurance (UI) wages are paid through Barrett Business Services, Inc., Oregon City, Oregon, who became totally or partially separated from employment on or after February 1, 2009 through May 27, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 27th day of April, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11478 Filed 5–10–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0063]

Slings; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Standard on Slings (29 CFR 1910.184). The collection of information (paperwork) provisions of the Standard specify affixing identification tags or markings on slings, developing and maintaining inspection records, and retaining proof testing certificates.

DATES: Comments must be submitted (postmarked, sent, or received) by July 11, 2011.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0063, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., *e.t.*

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0063) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Slings Standard (29 CFR 1910.184) specifies several collection of information (paperwork) requirements, depending on the type of sling. The purpose of each of these requirements is to prevent workers from using defective or deteriorated slings, thereby reducing their risk of death or serious injury

caused by sling failure during material handling.

Paragraph (e) of the Standard covers alloy steel chain slings. Paragraph (e)(1) requires that alloy steel chain slings have permanently affixed and durable identification stating the size, grade, rated capacity, and reach of the sling. The information, supplied by the manufacturer, is typically marked on a metal tag and affixed to the sling.

Paragraph (e)(3)(i) requires the employer to make a thorough periodic inspection of alloy steel chain slings in use on a regular basis, but at least once a year. Paragraph (e)(3)(ii) requires the employer to make and maintain a record of the most recent month in which each alloy steel chain sling was thoroughly inspected, and make this record available for examination.

Paragraph (e)(4) requires the employer to retain certificates of proof testing. Employers must ensure that before use, each new, repaired, or reconditioned alloy steel chain sling, including all welded components in the sling assembly, has been proof tested by the sling manufacturer or an equivalent entity. The certificates of proof testing must be retained by the employer and made available for examination.

Paragraph (f) of the Standard covers wire rope slings. Paragraph (f)(4)(ii) requires that all welded end attachments of wire rope slings be proof tested by the manufacturer at twice their rated capacity prior to initial use, and that the employer retain a certificate of the proof test and make it available for examination.

Paragraph (g) of the Standard covers metal mesh slings. Paragraph (g)(1) requires each metal mesh sling to have a durable marking permanently affixed that states the rated capacity for vertical basket hitch and choker hitch loadings. Paragraph (g)(8)(ii) requires that once repaired, each metal mesh sling be permanently marked or tagged, or a written record maintained to indicate the date and type of the repairs made, and the person or organization that performed the repairs. Records of the repairs shall be made available for examination.

Paragraph (i) of the Standard covers synthetic web slings. Paragraph (i)(1) requires that synthetic web slings be marked or coded to show the rated capacities for each type of hitch and the type of synthetic web material used in the sling.

Paragraph (i)(8)(i) prohibits the use of repaired synthetic web slings until they have been proof tested by the manufacturer or an equivalent entity. Paragraph (i)(8)(ii) requires the employer to retain a certificate of the proof test and make it available for examination.

The information on the identification tags, markings, and codings assist the employer in determining whether the sling can be used for the lifting task. The sling inspections enable early detection of faulty slings. The inspection and repair records provide employers with information about when the last inspection was made and about the type of the repairs made. This information provides some assurance about the condition of the slings. These records also provide the most efficient means for an OSHA compliance officer to determine that an employer is complying with the Standard. Proof testing certificates give employers, employees, and OSHA compliance officers assurance that slings are safe to use. The certificates also provide the compliance officers with an efficient means to assess employer compliance with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Slings (29 CFR 1910.184). OSHA is proposing to increase the existing burden hour estimate for the collection of information requirements specified by the Standard from 17,760 to 19,833 hours, a total increase of 2,073 hours. The increase occurred as a result of an overall increase in the total number of slings. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Slings (29 CFR 1910.184).

OMB Number: 1218–0223.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 1,116,667.

Frequency of Response: On occasion.

Average Time per Response: Varies from 1 minute (.02 hour) to maintain a certificate to 30 minutes (.50 hour) for a manufacturing employee to acquire information from a manufacturer for a new tag, make a new tag, and affix it to a sling.

Estimated Total Burden Hours: 19,833.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0063). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is

available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2010 (72 FR 55355).

Signed at Washington, DC on May 5, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–11457 Filed 5–10–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The board meeting will be held on Thursday, May 19, 2011, 1 p.m.–5:30 p.m., ET, and Friday, May 20, 2011, 9 a.m.–5:30 p.m., ET.

PLACE: The board meeting will occur at the Access Board Conference Room, 1331 F Street, NW., Suite 800, Washington, DC.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The agenda for the board meeting includes a review of the agency's budget and fiscal year obligations, strategic plan implementation, a public comment session, and other items, to be determined. The meeting on Thursday will be conducted in a closed session to discuss internal personnel rules and practices, pursuant to paragraph (c)(2) of the Sunshine Act, and in accordance with a determination made by the NCD Chairman. A public comment session will be held on Friday, May 20, from 1 p.m. until 1:30 p.m. Individuals interested in making public comments may do so in-person, by phone, or by providing written comments by e-mail, fax, or mail. The toll-free call-in number is 1–888–972–9933, and the passcode is "NCD Meeting." Written comments on disability-related issues of concern or interest may be mailed to NCD's office at 1331 F Street, NW., Suite 850, Washington, DC 20004; faxed to the NCD office at (202) 272–2022; or may also be e-mailed to *ncd@ncd.gov* at any time.

PORTIONS OPEN TO THE PUBLIC: The meeting on Friday, May 20, 9 a.m.–5:30 p.m. will be open to the public.

PORTIONS CLOSED TO THE PUBLIC: The meeting on Thursday, May 19, 1 p.m.–5:30 p.m. will be closed to the public.

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: Those who plan to attend and require accommodations should notify NCD as soon as possible to allow time to make arrangements.

Dated: May 9, 2011.

Aaron Bishop,

Executive Director.

[FR Doc. 2011–11677 Filed 5–9–11; 4:15 pm]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The NSF will publish periodic summaries of the proposed projects.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by July 11, 2011, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Graduate Students and Postdoctorates in Science and Engineering.

OMB Approval Number: 3145–0062.

Expiration Date of Current Approval: October 31, 2011.

Type of Request: Intent to seek approval to revise an information collection for three years.

1. Abstract

The Survey of Graduate Students and Postdoctorates in Science and Engineering (GSS) is sponsored by the National Science Foundation and the National Institutes of Health. The GSS originated in 1966 and has been conducted annually since 1972. The GSS is a census of all departments in science, engineering and health fields within academic institutions with post-baccalaureate programs in the United States. The total number of respondents surveyed in 2009, the last year for which complete response rate data are available, was 13,187 departments (reporting units) located in 703 schools at 575 degree-granting institutions. The GSS is the only national survey that collects information on the characteristics of graduate enrollment for specific science, engineering and health disciplines at the department level. It collects information on race/ethnicity, citizenship, gender, sources of support, mechanisms of support, and enrollment status for graduate students; information on postdoctorates by citizenship, gender, sources of support, doctorate type and origins. It also collects information on other doctorate-holding non-faculty researchers.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The GSS is designed to comply with these mandates by providing information on the characteristics of academic graduate

enrollment and postdoctoral components in science, engineering and health fields.

The GSS (along with other academic sector surveys from both NSF and the National Center of Education Statistics) is one of the inputs into the WebCASPAR data system. Among other uses, this NSF on-line database is used by NSF to review changing enrollment levels to assess the effects of NSF initiatives, to track student support patterns and to analyze participation in S&E fields by targeted groups for all disciplines or for selected disciplines and for selected groups of institutions.

The Foundation also uses the GSS information to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators.* A public use file is also made available on the world-wide Web.

Data are obtained primarily by Web survey (with paper worksheets made available upon request) and starts each fall in mid-October. The data are solicited under the authority of the National Science Foundation Act of 1950, as amended. All information will be used for statistical purposes only. Participation in the survey is voluntary.

2. Expected Respondents

The GSS is census of all eligible academic institutions in the U.S. with post-baccalaureate programs in science, engineering and health fields and their related departments. The response rate is calculated on the number of departments that respond to the survey.

3. Estimate of Burden

The initial GSS data request is sent to the designated respondent (School Coordinator) at each academic institution in the fall. The School Coordinator may complete or delegate all or part of the Part I listing of eligible units (departments, programs, research centers and health care facilities) and Part II data. In all cases, the School Coordinator is responsible for the Part I data collection. Usually, the School Coordinator delegates the Part II collection to unit respondents. The amount of time it takes to provide the information on Part I and Part II varies dramatically and depends to a large degree on the extent to which the school's records are centrally stored and computerized.

The 2010 GSS asked the unit respondents to provide an estimate of the time spent in filling out the GSS. The average burden for completing the GSS was 2.78 hours per reporting unit. In keeping with prior experience, we estimate that the per unit burden will decrease slightly each year as the respondents become familiar with the question items in the survey, thus estimate a burden of 2.7 hours per reporting unit in 2011. We anticipate that the number of units in 2011 cycle will include the units in 2010, plus approximately 3% increase in units. In addition, an estimated 500 new units will be added to the survey frame as a result of expansion study in 2011. The estimated burden for each cycle of GSS is about 40,000 hours assuming the same response rates as 2009 (99.3% for the schools and the units). The total estimated respondent burden of the GSS would be 120,000 hours over the 3-year clearance period.

Dated: May 5, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–11474 Filed 5–10–11; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64393; File No. SR–EDGA–2011–14]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

May 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2011, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to offer a reduced rate from $0.0023 per share to $0.0022 per share for Flag D executions (as noted in proposed footnote 14 of the fee schedule) provided that the Member routes an average daily volume ("ADV") of more than 30,000,000 shares per day to NYSE using the RDOT or RDOX routing strategies, as defined in Rules 11.9(b)(3)(h) and (i).

The H flag represents non-displayed executions. The Exchange proposes to append the reference to footnote 2 on Flag H so that a reduced rate (of $0.0010 per share) would be offered provided that the Member adds greater than 1,000,000 shares hidden on a daily basis (yielding Flag H), measured monthly or posts greater than 8,000,000 shares on a daily basis, measured monthly (yielding Flags B,V, Y, 3 or 4). Members not meeting either minimum will be charged $0.0030 per share.

For customer internalization (*i.e.,* same MPID),[4] currently there is no charge nor rebate. This was because when the Exchange launched in July 2010 the rebate for removing liquidity ($0.0002 per share) was offset by the fee for adding liquidity ($0.0002 per share). This situation yields Flag "E" on both sides of an execution. During the Pre-Opening and Post-Closing sessions,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] This occurs when two orders presented to the Exchange from the same Member (*i.e.,* MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another. Members are advised to consult Rule 12.2 respecting fictitious trading.

there are also no charges nor rebates, but this situation yields Flag "5" per side of an execution (adding liquidity/removing liquidity). The Exchange is now proposing to charge $0.0001 per share per side of an execution (for adding liquidity and for removing liquidity) for Flags E and 5 instead of the standard or tiered rebate/removal rates. Therefore, Members would incur a total internalization cost of $0.0002 per share for both sides of an execution for customer internalization.

Currently, orders routed to EDGX Mid-Point Match ("MPM") using the IOCM routing strategy,[5] as defined in Rule 11.9(b)(3)(q),[6] are assessed a fee of $0.0010 per share and yield flag "MT." The Exchange is proposing to increase this fee to $0.0012 per share.

Finally, the Exchange is proposing to make a technical correction to the fee schedule to replace the term "order type" with "routing strategy" throughout the fee schedule in order to conform to language in Rule 11.9(b)(3). These amendments will appear in the text for Flags K, L, P, Q, T, Z, 2, 8, 9, BY, CL, MT, RT, RX, SW, and footnote 8.

EDGA Exchange proposes to implement these amendments to the Exchange fee schedule on May 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed reduced rate of $0.0022 per share for Flag D executions provided that the Member routes an average daily volume ("ADV") of more than 30,000,000 shares per day to NYSE using the RDOT or RDOX routing strategies represents an equitable allocation of reasonable dues, fees, and other charges. When EDGA routes to NYSE and removes liquidity, NYSE charges EDGA $0.0023 per share. If a member uses EDGA to route to NYSE, EDGA provides a $0.0001 discount per share provided that the conditions of the volume threshold are met. The Exchange believes that this discounted rate would incentivize Members to first route through EDGA to reach NYSE and would thereby increase liquidity on EDGA. This type of rate is also similar to EDGA's rate for removing liquidity from LavaFlow (Flag M). The standard removal rate of $0.0029 per share is reduced to $0.0023 per share for orders routed to LavaFlow that achieve certain volume thresholds, as EDGA Members are able to share in potential volume tier savings realized by EDGA when routing to LavaFlow.[9] This type of rate is also similar to other rates that EDGA charges, such as "one-under" pricing for routing to Nasdaq using the INET order type and is consistent with the processing of similar routing strategies by EDGA's competitors.[10]

The rate is also equitable in that it is designed to incentivize Members to use the RDOT or RDOX routing strategies to increase volume on EDGA. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of reduced fees. The increased liquidity also benefits all investors by deepening EDGA's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based discounts such as the reduced execution fee proposed here have been widely adopted in the cash equities markets and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed discounted rate is non-discriminatory in that it applies uniformly to all Members.

The Exchange believes that the proposed reduced rate for Flag H executions of $0.0010 per share, as described in footnote 2, is an equitable allocation of reasonable dues, fees, and other charges. The reduced rate of $0.0010[11] provided that a volume threshold is satisfied is designed to incentivize Members to use non-displayed orders to increase volume on EDGA.

Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of reduced fees. The increased liquidity also benefits all investors by deepening EDGA's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based discounts such as the reduced execution fee proposed herein have been widely adopted in the cash equities markets and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed fee is non-discriminatory in that it applies uniformly to all Members.

The Exchange believes that the increased fee for customer internalization of $0.0001 per share per side of an execution for both Flags E (regular trading session) and 5 (pre and post market) represents an equitable allocation of reasonable dues, fees, and other charges as it is designed to introduce a nominal and reasonable fee for members who inadvertently match with one another, thereby discouraging potential wash sales. The increased fee also allows the Exchange to offset its administrative, clearing, and other operating costs incurred in executing such trades. Finally, the fee is equitable in that it is in line with the EDGA fee structure which currently has a maker/taker spread of $0.0001 per share (the standard fee to add liquidity on EDGA is $0.00025 per share, while the standard rebate to remove liquidity is $0.00015 per share). EDGA also has a tiered rate for adding liquidity of $0.00005, which would make this spread −$0.0001 per share. As a result of the customer internalization charge, Members who internalized would be charged $0.0001 per side of an

[5] EDGX Rule 11.5(c)(7) defines a MPM order as an order with an instruction to execute it at the midpoint of the NBBO. A MPM order may be a Day Order, Fill-or-Kill Order, or IOC Order. The Exchange notes that members can send in a MPM order directly to EDGX without routing through the EDGA platform as an IOCM routing option.

[6] IOCM is a routing option under which an order checks the System for available shares and then is sent to EDGX as an immediate or cancel (IOC) MPM order.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See* footnote 6 of the EDGA fee schedule.

[10] *See* footnote 7 of the EDGA fee schedule. *See also* BATS BZX fee schedule: Discounted Destination Specific Routing ("One Under") to NYSE, NYSE ARCA and NASDAQ. *See* Securities Exchange Act Release No. 62858, 75 FR 55838 (September 14, 2010) (SR–BATS–2010–023) (modifying the BATS fee schedule in order to amend the fees for its BATS + NYSE Arca destination specific routing option to continue to offer a "one under" pricing model).

[11] If a member fails to reach such volume thresholds, the Member will pay $0.0030 per share for Flag H executions.

execution (total of $0.0002 per share) instead of capturing the maker/taker spread of −$0.0001 per share.

As mentioned above, when the Exchange launched in July 2010, this spread was zero (0). This increased fee per side of an execution ($0.0001 per side instead of free) thus brings the internalization fee in line with the current maker/taker spreads.[12] The Exchange believes that the proposed fee is non-discriminatory in that it applies uniformly to all Members.

The Exchange believes that the proposed increased fee to $0.0012 per share for the "MT" flag for routing to EDGX MPM using the IOCM routing strategy represents an equitable allocation of reasonable dues, fees, and other charges as such increased fee offsets the Exchange's administrative and other operational costs. The fee increase represents a pass through by EDGA to its members of EDGX's increased fee (from $0.0010 to $0.0012 per share) for removing liquidity from EDGX MPM, effective May 1, 2011. The $0.0012 per share is competitive and superior to comparable exchange standard removal rates of $0.0030 per share (Nasdaq), $0.0030 per share (NYSE Arca), $0.0023 per share (NYSE), and $0.0028 per share (BATS BZX). The fee is also equitable as it is competitive with other fees assessed for routing strategies that access low cost destinations, such as ROUZ, as defined in Rule 11.9(b)(3)(c)(v) (yields Flag Z, $0.0010 per share) and ROUD/ROUE, as defined in Rules 11.9(b)(3)(b) and 11.9(b)(3)(c)(i) (Flag T, $0.0012 per share). The Exchange believes that the proposed fee is non-discriminatory in that it applies uniformly to all Members.

The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[12] The Exchange will continue to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [13] and Rule 19b–4(f)(2) [14] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2011–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2011–14. 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,[15] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2011–14 and should be submitted on or before June 1, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11456 Filed 5–10–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 19b–4(f)(2).

[15] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com*, on the Commission's Web site at *http://www.sec.gov*, at EDGA, and at the Commission's Public Reference Room.

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver to the Nonmanufacturer Rule for GEN II and GEN III Image Intensifier Tubes.

SUMMARY: The U. S. Small Business Administration (SBA) is granting a class waiver of the Nonmanufacturer Rule for GEN II and GEN III Image Intensifier Tubes, Product Service Code (PSC) 5855, Night Vision Equipment under North American Industry Classification System (NAICS) code 333314 (Optical Instrument and Lens Manufacturing). The basis for the waiver is that no small business manufacturers are supplying this class of products to the Federal government. The effect of this waiver will be to allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses, Participants

in SBA's 8(a) Business Development (BD) Program, or Women-Owned Small Business (WOSB) concerns.

DATES: This waiver is effective May 26, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Garcia, Procurement Analyst, by telephone at (202) 205–6842; by Fax at (202) 481–1630; or by e-mail at amy.garcia@sba.gov.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal supply contracts set aside for small businesses, SDVO small businesses, Participants in the SBA's 8(a) BD Program, or WOSBs, provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c), 127.505. Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. 13 CFR 121.1202(c). The SBA defines "class of products" based on the Office of Management and Budget's NAICS.

The SBA received a request on August 13, 2010, to waive the Nonmanufacturer Rule for GEN II and GEN III Image Intensifier Tubes under Product Service Code (PSC) 5855, Night Vision Equipment, Emitted and Reflected Radiation, under North American Industry Classification System (NAICS) code 333314 (Optical Instrument and Lens Manufacturing).

On August 27, 2010, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for the above listed item. 75 FR 21427 (2010). SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In addition, SBA conducted market research using the Dynamic Small Business Search (DSBS) database and no small business manufacturers that participate in the Federal market were identified. Lastly, on September 16, 2010, SBA posted a Sources Sought notice on *http://www.fbo.gov* that it was soliciting comments and sources of small business manufacturers of this class of products.

In response to these notices, SBA received comments from fourteen (14) sources. One respondent, a large business, was identified as a manufacturer of GEN III image intensifier tubes. Thirteen (13) respondents were identified as small business suppliers, distributors, or integrators of GEN II and/or GEN III image intensifier tubes, night vision systems and/or related equipment. Of these respondents, three (3) sources requested that additional related items be considered for waiver: PVS–14, PVS–17, and AVS–9 night vision systems. However, SBA has identified, through market research, and as a result of findings in this case, that one or more small business manufacturers or component assemblers exist for PVS–14, PVS–17, and AVS–9 night vision systems, and, as such, these items do not qualify to be waived under the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c), 127.505. One (1) respondent claimed to be a small business manufacturer of GEN II image intensifier tubes. However, upon further investigation, the source does not qualify as a manufacturer under 13 CFR 121.406(b). Thus, no small business manufacturers of GEN II or GEN III image intensifier tubes that participate in the Federal market were identified.

Consequently, SBA has determined that there are no small business manufacturers of these classes of products, and is therefore granting the waiver of the Nonmanufacturer Rule for GEN II and GEN III Image Intensifier Tubes under PSC 5855, Night Vision Equipment, NAICS code 333314 (Optical Instrument and Lens Manufacturing).

Dated: April 29, 2011.

John W. Klein,

Director, Office of Government Contracting.

[FR Doc. 2011–11142 Filed 5–10–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7451]

30-Day Notice of Proposed Information Collection: Medical Examination Forms for Immigrant or Refugee Applicants

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Medical Examination for Immigrant or Refugee Applicant.
- *OMB Control Number:* 1405–0113.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services (CA/VO).
- *Form Number:* DS–2053, DS–2054, DS–3030, DS–3024, DS–3025, DS–3026.
- *Respondents:* Immigrant visa and refugee applicants.
- *Estimated Number of Respondents:* 630,000 per year.
- *Estimated Number of Responses:* 630,000 per year.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 630,000 hours annually.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to Obtain Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from May 11, 2011.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail:* *oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stefanie Claus of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW. L–603, Washington, DC 20522, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of proposed collection: INA Section 221(d) requires that prior to the

issuance of an immigrant visa the applicant undergo a physical and mental examination. The results of the medical examination are used to determine the alien's eligibility for such a visa under INA 212(a)(1). INA Section 412(b)(4)(B) requires that the United States Government "provide for the identification of refugees who have been determined to have medical conditions affecting the public health and requiring treatment." Form DS–2053, Medical Examination for Immigrant or Refugee Applicant (1991 Technical Instructions); Form DS–2054, Medical Examination for Immigrant or Refugee Applicant (2007 Technical Instructions); Form DS–3024, Chest X-Ray and Classification Worksheet (1991 Technical Instructions); Form DS–3030, Chest X-Ray and Classification Worksheet (2007 Technical Instructions); Form DS–3025, Vaccination Documentation Worksheet; Form DS–3026, Medical History and Physical Examination Worksheet, are designed to record the results of the medical examination. The panel physician performs the medical examination of the applicant and completes the forms. Medical exams may also be required occasionally for nonimmigrant visa applicants.

Methodology: The electronic medical forms will be submitted electronically to the Department. Doctors who submit the medical information electronically will no longer submit paper-based forms to the Department. It is the intention of the Department to discontinue the paper versions as this electronic submission option is made available to all panel physicians worldwide.

At posts that continue in the short term to use the paper version of the medical forms, panel physicians will keep copies of the form at their offices. The completed forms are then submitted in hard copy to the consular officer for processing.

Dated: April 27, 2011.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–11407 Filed 5–10–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 7454]

Determination Under the Supplemental Appropriations Act, 2010 (Pub. L. 111–212) Concerning the Government of Iraq's Support for the Iraq Police Program

Pursuant to the authority vested in the Secretary of State under the International Narcotics Control and Law Enforcement heading in the Supplemental Appropriations Act, 2010 (Pub. L. 111–212) ("the Act"), and the Department of State Delegation of Authority Number 245–1, I hereby determine that, with respect to the $200 million INCLE funds made available for implementation, management, security, communications, and other expenses related to the Iraqi police program, the Government of Iraq supports and is cooperating with such program.

This Determination shall be reported to Congress and published in the **Federal Register**.

Dated: December 28, 2010.

James B. Steinberg,

Deputy Secretary of State.

Editorial Note: This document was received in the Office of the Federal Register on May 6, 2011.

[FR Doc. 2011–11549 Filed 5–10–11; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF STATE

[Public Notice: 7453]

Determination To Transfer Title of Selected Aircraft to the Government of Mexico

Pursuant to section 484(a)(2)(A) of the Foreign Assistance Act of 1961, as amended ("the Act") and section 1–100(a)(1) of Executive Order No. 12163 (1979), as amended, I hereby determine that section 484(a)(1) of the Act (Which requires that the United States retain title to aircraft made available to foreign countries primarily for narcotics-related purposes) should not apply to three (3) Sikorsky UH–60M "Black Hawk" helicopters, because it is in the United States' national interest to transfer title.

This Determination, supported by the Memorandum of Justification, Section 484 analysis, and the aircraft inventory, shall be notified to the appropriate congressional committees.

Dated: March 2, 2011.

Thomas R. Nides,

Deputy Secretary of State.

[FR Doc. 2011–11550 Filed 5–10–11; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF STATE

[Public Notice: 7455]

Determination and Certification Under Section 490(b)(1)(A) of the Foreign Assistance Act Relating to the Largest Exporting and Importing Countries of Certain Precursor Chemicals

Pursuant to Section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended, I hereby determine and certify that the top five exporting and importing countries and territories of pseudoephedrine and ephedrine (Egypt, Germany, India, Indonesia, Nigeria, Thailand, Taiwan, Singapore, Switzerland, and the United Kingdom) have cooperated fully with the United States, or have taken adequate steps on their own, to achieve full compliance with the goals and objectives established by the United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances.

This Determination and Certification shall be published in the **Federal Register**, and copies shall be provided to the Congress together with the accompanying Memorandum of Justification.

Dated: March 11, 2011.

Thomas R. Nides,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2011–11548 Filed 5–10–11; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF STATE

[Public Notice: 7452]

Determination Pursuant to Section 451 of the Foreign Assistance Act Relating to Assistance for Individuals To Support Near East Regional Democracy

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended (the "Act") (22 U.S.C. section 2261) and section 1–100 of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use of $5,000,000 in FY 2010 Economic Support Funds in order to provide assistance for individuals in support of Near East Regional Democracy.

This Determination shall be reported to the Congress promptly and published in the **Federal Register**.

Dated: April 19, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–11547 Filed 5–10–11; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice: 7445]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII)

The Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) will convene on Thursday, June 2, 2011 at 10:30 a.m. and last until approximately 12:30 p.m. The meeting location is Room 1205 of the U.S. Department of State, Harry S Truman Building, 2201 C Street, NW., Washington, DC.

The Advisory Committee will recommend grant recipients for the FY 2011 competition of the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union in accordance with the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The agenda will include opening statements by the Chair and members of the committee, and, within the committee, discussion, approval and recommendation that the Department of State negotiate grant agreements with certain "national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the Independent States of the Former Soviet Union," based on the guidelines contained in the call for applications published in Grants.gov and GrantSolutions.gov on February 3, 2011. Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program in general.

This meeting will be open to the public; however attendance will be limited to the seating available. Entry into the Harry S Truman building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify the Title VIII Program Office at the U.S. Department of State on (202) 736–4661 by Thursday, May 26, providing the following information: Full Name, Date of Birth, Driver's License Number and Issuing State, Country of Citizenship, and any requirements for special accommodation. All attendees must use the 2201 C Street entrance and must arrive no later than 10 a.m. to pass through security before entering the building. Visitors who arrive without prior notification and without photo identification will not be admitted.

The identifying data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

Dated: April 25, 2011.

Susan Nelson,

Executive Director, Advisory Committee for Study of Eastern Europe and Eurasia (the Independent States of the Former Soviet Union).

[FR Doc. 2011–11244 Filed 5–10–11; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0362]

Medical Review Board Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (DOT).

ACTION: Notice of Medical Review Board (MRB) public meeting.

SUMMARY: The FMCSA announces that the Agency's Medical Review Board will hold a committee meeting on June 30, 2011. The meeting will provide the public an opportunity to observe and participate in MRB deliberations about its recommendations for changes to the Federal Motor Carrier Safety Regulation (FMCSR) medical standards, in accordance with the Federal Advisory Committee Act (FACA).

DATES: The MRB meeting will be held from 10 a.m.–4 p.m. on June 30, 2011. Please note the preliminary agenda for this meeting in the **SUPPLEMENTARY INFORMATION** section of this notice for specific information.

ADDRESSES: The meeting will take place at the Hilton-Alexandria Old Town, 1767 King Street, Alexandria, VA 22314. You may submit comments identified by DOT Docket Management System (DMS) Docket Number FMCSA–2011–0362 using any of the following methods:

- *Web Site: http://dmses.dot.gov/submit.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20003–3302.
- *Hand Delivery:* Room W12–140 on the plaza level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–W12–140 on the plaza level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the U.S. Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Elaine M. Papp, Division Chief, Medical Programs, 202–366–4001, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20003–3302. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Elaine M. Papp at 202–366–4001.

SUPPLEMENTARY INFORMATION: The preliminary agenda for the meeting includes:

10–10:15 a.m. Call to Order, Introduction and Agenda Review
10:15–1045 a.m. Updated Evidence Report Diabetes Mellitus
10:45–11:15 a.m. Preliminary Report on Cochlear Implants
11:15–11:45 a.m. Public Comment Period
11:45A–12:45 p.m. Break for Lunch
12:45–2 p.m. Update on 2007 Evidence Report on Sleep Apnea; Overview of 2007 Medical Expert Panel Opinions on Sleep Apnea
2–2:30 p.m. Review on Previous MRB recommendations on Sleep Apnea
2:30 –4 p.m. Public Comment Period

Breaks will be announced on meeting day and may be adjusted according to schedule changes, other meeting requirements.

Background

The Secretary of the Department of Transportation announced on November 2, 2010, the five medical experts who serve on the MRB. Section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59) requires the Secretary of Transportation with the advice of the MRB to "establish, review, and revise medical standards for operators of Commercial Motor Vehicles (CMVs) that will ensure that the physical condition of operators is adequate to enable them to operate the vehicles safely." FMCSA is planning revisions to the physical qualification regulations of CMV drivers, and the MRB will provide the necessary science-based guidance to establish realistic and responsible medical standards.

The MRB operates in accordance with the Federal Advisory Committee Act (FACA) as announced in the **Federal Register** (70 FR 57642, October 3, 2005). The MRB is charged initially with the review of all current FMCSA medical standards (49 CFR 391.41), as well as proposing new science-based standards and guidelines to ensure that drivers operating CMVs in interstate commerce, as defined in CFR 390.5, are physically capable of doing so.

Meeting Participation

Attendance is open to the interested public, including medical examiners, motor carriers, drivers, and representatives of medical and scientific associations. Written comments for this MRB meeting will also be accepted beginning on June 30, 2011 and continuing until July 15, 2011, and should include the docket number that is listed in the **ADDRESSES** section. During the MRB meeting (11:15–11:45 a.m. and 2:30–4 p.m.), oral comments may be limited depending on how many persons wish to comment; and will be accepted on a first come, first serve basis as requestors register at the meeting. The comments must directly address relevant medical and scientific issues on the MRB meeting agenda. For more information, please view the following Web site: *http://www.fmcsa.dot.gov/mrb.*

Issued on: May 5, 2011.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2011–11576 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0040]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt seventeen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are May 11, 2011. The exemptions expire on May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On March 29, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from seventeen individuals and requested comments from the public (76 FR 17478). The public comment period closed on April 28, 2011 and one comment was received.

FMCSA has evaluated the eligibility of the seventeen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The September 3, 2003 (68 FR 52441) **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These seventeen applicants have had ITDM over a range of 1 to 28 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 29, 2011, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it had reviewed the driving record for Edward D. Boyer and are in favor of granting him a Federal diabetes exemption.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the seventeen exemption applications, FMCSA exempts, Peter N. Amendola, Edward D. Boyer, Steven V. Callison, Douglas A. Carroll, Bradley J. Frazier, Tamara S. Folsom, Gerald W. Fryar, Richard P. Inott, Ernest Martinelli, Jonathan C. Morgan, Benjamin D. Phelps, Richard J. Rasch, Philip J. Regan, Paul E. Regelin, II, David R. Smith, Adam J. Stegenga and Donald D. Willard from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 5, 2011.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2011–11573 Filed 5–10–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen, Republic of.

Iraq is not included in this list, but its status with respect to future lists remains under review by the Department of the Treasury.

Dated: May 2, 2011.

Michael J. Caballero,

International Tax Counsel, Tax Policy.

[FR Doc. 2011–11307 Filed 5–10–11; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Identifying Information Associated With Persons Whose Property and Interests in Property Are Blocked Pursuant to Executive Order 13572 of April 29, 2011, "Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria"

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing additional identifying information associated with the three individuals and two entities listed in the Annex to Executive Order 13572 of April 29, 2011, "Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria," whose property and interests in property are therefore blocked.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance

Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW. (Treasury Annex), Washington, DC 20220, *Tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *Tel.:* 202/622–0077.

Background

On April 29, 2011, the President issued Executive Order 13572, "Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria," (the "Order") pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President expanded the scope of the national emergency declared in Executive Order 13338 of May 11, 2004.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to satisfy certain criteria set forth in the Order.

The Annex to the Order lists three individuals and two entities whose property and interests in property are blocked pursuant to the Order. OFAC is publishing additional identifying information associated with those individuals and entities. As noted in the listings below, the property and interests in property of one of those entities also are blocked pursuant to other OFAC sanctions programs.

The listings for those individuals and entities on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. AL-ASAD, Mahir (a.k.a. ASSAD, Mahar; a.k.a. ASSAD, Maher); DOB 1968; Lieutenant Colonel; *Position:* Brigade Commander in the Syrian Army's 4th Armored Division (individual) [SYRIA.]
2. MAMLUK, Ali (a.k.a. MAMLUK, 'Ali); DOB 1947; POB Amara, Damascus, Syria; Major General; *Position:* Director, General Intelligence Directorate (individual) [SYRIA.]
3. NAJIB, Atif (a.k.a. NAJEEB, Atef; a.k.a. NAJIB, Atef); POB Jablah, Syria; Brigadier General; *Position:* Former head of the Syrian Political Security Directorate for Dar'a Province (individual) [SYRIA.]

Entities

1. ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE (a.k.a. PASDARAN-E ENGHELAB-E ISLAMI (PASDARAN); a.k.a. SEPAH-E QODS (JERUSALEM FORCE)) [SDGT] [SYRIA] [IRGC.]
2. SYRIAN GENERAL INTELLIGENCE DIRECTORATE (a.k.a. IDERAT AL-AMN AL-'AMM), Syria [SYRIA.]

Dated: May 4, 2011.

Adam Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–11556 Filed 5–10–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Request for Service Corporation Activity

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before June 10, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, *Attention:* Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by 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 comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 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.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov,* or on (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Request for Service Corporation Activity.

OMB Number: 1550–0013.

Form Numbers: 1566 and 1562.

Description: The information will be used by OTS to ensure that the principles of safety and soundness are adhered to in the issuance of securities. It was determined that all supervisory concerns would be satisfied if the information previously reported is available for inspection by OTS examiners.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 19.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 9.5 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: May 4, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–11492 Filed 5–10–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Notice and Request for Comment

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before June 10, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, *Attention:* Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by 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 comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 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.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov,* or on (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Branch Offices.

OMB Number: 1550–0006.

Form Numbers: 1450 and 1558.

Description: OTS analyzes each branch application or notice to ensure that there are no supervisory objections and that it meets all regulatory requirements. The application forms are also reviewed for adequacy of answers to items and completeness in all material aspects.

Type of Review: Revisions to a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 131.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 153 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: May 4, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–11493 Filed 5–10–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Proposed Information Collection (Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims)); 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 the notice. This notice solicits comments on information needed to determine whether a claimant served in the Commonwealth Army of the Philippines or in recognized guerrilla organizations.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0094" in any correspondence. During the comment period, comments may be viewed online through FDMS.

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: Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims), VA Form 21–4169.

OMB Control Number: 2900–0094.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4169 is used to collect certain applicants' service information, place of residence, proof of service, and whether the applicant was a member of pro-Japanese, pro-German, or anti-American Filipino organizations. VA uses the information collected to determine the applicant's eligibility for benefits based on Commonwealth Army of the Philippines or recognized guerrilla services.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11464 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0029]

Proposed Information Collection (Offer To Purchase and Contract of Sale) 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 the notice. This notice solicits comments on the information needed to acquire VA property.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0029" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

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. 3501–21), 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. Offer to Purchase and Contract of Sale, VA Form 26–6705.

b. Credit Statement of Prospective Purchaser, VA Form 26–6705b.

c. Addendum to Offer to Purchase and Contract of Sale, VA Form 26–6705d.

OMB Control Number: 2900–0029.

Type of Review: Extension of a currently approved collection.

Abstracts

a. VA Form 26–6705 is completed by private sector sales broker to submit an offer to purchase VA-acquired property on behalf of a prospective buyer. VA Form 26–6705 becomes a contract of sale if VA accepts the offer to purchase. It serves as a receipt for the prospective buyer for his/her earnest money deposit, describes the terms of sale, and eliminates the need for separate transmittal of a purchase offer.

b. VA Form 26–6705b is used as a credit application to determine the prospective buyer creditworthiness in instances when the prospective buyer seeks VA vendee financing. In such sales, the offer to purchase will not be accepted until the buyer's income and credit history have been verified and a loan analysis has been completed.

c. VA Form 26–6705d is used in the state of Virginia. The form requires the buyer to be informed of the State's law at or prior to closing the transaction.

Affected Public: Individuals or households.

Estimated Annual Burden

a. VA Form 26–6705—10,000 hours.
b. VA Form 26–6705b—7,333 hours.
c. VA Form 26–6705d—125 hours.

Estimated Average Burden per Respondent

a. VA Form 26–6705—20 minutes.
b. VA Form 26–6705b—20 minutes.
c. VA Form 26–6705d—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents

a. VA Form 26–6705—30,000.
b. VA Form 26–6705b—22,000.
c. VA Form 26–6705d—1,500.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11471 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0052]

Proposed Information Collection (Report of Medical Examination for Disability Evaluation); 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 the notice. This notice solicits comments for information needed from claimants prior to undergoing a VA medical examination for disability benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0052" in any correspondence. During the comment period, comments may be viewed online through FDMS.

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 Medical Examination for Disability Evaluation, VA Form 21–2545.

OMB Control Number: 2900–0052.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–2545 is completed by claimants prior to undergoing a VA examination for disability benefits. The examining physician also completes the form to record the findings of such examination. An examination is required where the reasonable probability of a valid claim is indicated in any claims for disability compensation or pension, including claims for benefits based on the need of a veteran, surviving spouse, or parent for regular aid and attendance, and for benefits based on a child's' incapacity of self-support. VA uses the data to determine the level of disability.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 180,000.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11462 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0463]

Proposed Information Collection (Notice of Waiver of VA Compensation or Pension To Receive Military Pay and Allowances) 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 the notice. This notice solicits comments for information needed to waive disability benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0463" in any correspondence. During the comment period, comments may be viewed online through FDMS.

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: Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances, VA Form 21–8951 and VA Form 21–8951–2.

OMB Control Number: 2900–0463.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who wish to waive VA disability benefits in order to receive active or inactive duty training pay are required to complete VA Forms 21–8951 and 21–8951–2. Active and inactive duty training pay cannot be paid concurrently with VA disability compensation or pension benefits. Claimants who elect to keep training pay must waive VA benefits for the number of days equal to the number of days in which they received training pay.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 21,000.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11469 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Agency Information Collection (Financial Statement) Activity Under OMB Review

AGENCY: Veterans Benefits 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 Benefits Administration (VBA), Department of Veterans Affairs, will submit 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; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0047" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records 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. 2900–0047."

SUPPLEMENTARY INFORMATION:

Title: Financial Statement, VA Form 26–6807.

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 26–6807 is used to determine release of liability and substitution of entitlement cases. VA may release original veteran obligors from personal liability arising from the original guaranty of their home loan, or the making of a direct loan, provided the purchasers/assumers meet the creditworthiness requirements. The data is also used to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted guaranteed, insured, or portfolio loan, and to determine homeowners eligibility for aid under the Homeowners Assistance Program, which provides assistance by reducing losses incident to the disposal of homes when military installations at which the homeowners were employed or serving are ordered closed.

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, 2011, at page 8848.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,500 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 6,000.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11467 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0711]

Agency Information Collection Activity (VBA Loan Guaranty Service Lender Satisfaction Survey) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit 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 it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0711" in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail: *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0711."

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: Veterans Benefits Administration (VBA) Loan Guaranty Service Lender Satisfaction Survey.

OMB Control Number: 2900–0711.

Type of Review: Revision of a currently approved collection.

Abstract: The survey will be used to gather information from lenders about VA Loan Guaranty Program. The information collected will allow the VA to determine lenders' satisfaction with the VA's processes and to make improvements to the program to better serve the needs of eligible veterans.

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, 2011, at page 8846.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 69 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 786.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11465 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0075]

Proposed Information Collection (Statement in Support of Claim); 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 the notice. This notice solicits comments on information needed to ensure statements submitted by or on behalf of a claimant are true and correct.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0075" in any correspondence. During the comment period, comments may be viewed online through FDMS.

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: Statement in Support of Claim, VA Form 21–4138.

OMB Control Number: 2900–0075.

Type of Review: Extension of a currently approved collection.

Abstract: Statements submitted by or on behalf of a claimant must contain a certification by the respondent that the information provided to VA is true and correct in support of various types of benefit claims processed by VA. VA Form 21–4138 is to used collect the statement in support of such claims.

Affected Public: Individuals or households.

Estimated Annual Burden: 188,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 752,000.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11463 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Proposed Information Collection (Eligibility Verification Reports); 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 the notice. This notice solicits comments on information needed to determine and verify entitlement to income-based benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0101" in any correspondence. During the comment period, comments may be viewed online through FDMS.

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: Eligibility Verification Reports (EVR).

a. Eligibility Verification Report Instructions, VA Form 21–0510.

b. Old Law and Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S–1.

c. Old Law and Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V–1.

d. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513–1.

e. DIC Parent's Eligibility Verification Report, VA Forms 21–0514 and 21–0514–1.

f. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Forms 21–0516 and 21–0516–1.

g. Improved Pension Eligibility Verification Report (Veteran With Children), VA Forms 21–0517 and 21–0517–1.

h. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Forms 21–0518 and 21–0518–1.

i. Improved Pension Eligibility Verification Report (Child or Children), VA Forms 21–0519C and 21–0519C–1.

j. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Forms 21–0519S and 21–0519S–1.

OMB Control Number: 2900–0101.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses Eligibility Verification Reports (EVR) forms to verify a claimant's continued entitlement to benefits. Claimants who applied for or receives Improved Pension or Parents' Dependency and Indemnity Compensation must promptly notify VA in writing of any changes in entitlement factors. EVRs are required annually by beneficiaries whose social security number (SSN) or whose spouse's SSN is not verified, or who has income other than Social Security. Recipients of Old Law and Section 306 Pension are no longer required to submit annual EVRs unless there is a change in their income.

Affected Public: Individuals or households.

Estimated Annual Burden: 113,075 hours. The annual burden for VA Forms 21–0512S–1, 21–0512V–1, 21–0513–1, 21–0514, 21–0514–1, 21–0516, 21–0516–1, 21–0518, 21–0518–1, 21–0519C, and 21–0519C–1 is 98,775 and 14,300 for VA Forms 21–0517, 21–0517–1, 21–0519S, and 21–0519S–1.

Estimated Average Burden per Respondent: The estimated burden respondent for VA Forms 21–0512S–1, 21–0512V–1, 21–0513–1, 21–0514, 21–0514–1, 21–0516, 21–0516–1, 21–0518, 21–0518–1, 21–0519C, and 21–0519C–1 is 30 minutes and 40 minutes for VA Forms 21–0517, 21–0517–1, 21–0519S, and 21–0519S–1.

Frequency of Response: Annually.

Estimated Number of Respondents: 219,000. The number of respondents for VA Forms 21–0512S–1, 21–0512V–1, 21–0513–1, 21–0514, 21–0514–1, 21–0516, 21–0516–1, 21–0518, 21–0518–1, 21–0519C, and 21–0519C–1 is 197,550 and 21,450 for VA Forms 21–0517, 21–0517–1, 21–0519S, and 21–0519S–1.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11461 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0513)]

Agency Information Collection Activity (Veteran Suicide Prevention Online Quantitative Surveys) 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. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit 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 it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (VA Form 10–0513)" in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail: *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–New (VA Form 10–0513)."

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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. Veterans Online Survey, VA Form 10–0513.

b. Veterans Family Online Survey, VA Form 10–0513a.

c. Veterans Primary Care Provider Online Survey, VA Form 10–0513b.

OMB Control Number: 2900–New (VA Form 10–0513).

Type of Review: New collection.

Abstract: VA's top priority is the prevention of Veterans suicide. It is imperative to reach these at-risk populations with proactive and trustworthy communications and focused and effective outreach activities. As a part of this outreach, VA will collect information from Veterans, primary care providers and families of veterans. Data collected on the surveys will be used to better understand Veterans and their families' awareness of VA's suicide prevention and mental health support services. In addition, the surveys will help gauge how Veterans view the need for and willingness to accept help when in crises or contemplating suicide.

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 18, 2011, at page 9637.

Affected Public: Individuals and Households.

Estimated Annual Burden

a. Veterans Online Survey, VA Form 10–0513—300 hours.

b. Veterans Family Online Survey, VA Form 10–0513a—300 hours.

c. Veterans Primary Care Provider Online Survey, VA Form 10–0513b—300 hours.

Estimated Average Burden per Respondent

a. Veterans Online Survey, VA Form 10–0513—30 mins.

b. Veterans Family Online Survey, VA Form 10–0513a—30 mins.

c. Veterans Primary Care Provider Online Survey, VA Form 10–0513b—30 mins.

Frequency of Response: Annually.

Estimated Number of Respondents

a. Veterans Online Survey, VA Form 10–0513—600.

b. Veterans Family Online Survey, VA Form 10–0513a—600.

c. Veterans Primary Care Provider Online Survey, VA Form 10–0513b—600.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11460 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0661]

Proposed Information Collection (Forms for Grants to States for Construction and Acquisition of State Home Facilities) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), 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 revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to apply for a state home construction grant.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Cynthia Harvey Pryor, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *cynthia.harvey-pryor@va.gov*. Please refer to "2900–0661" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Forms for Grants to States for Construction and Acquisition of State Home Facilities, VA Forms 10–0388–1, 10–0388–2, 10–0388–3, 10–0388–4, 10–0388–5, 10–0388–6, 10–0388–7, 10–0388–8, 10–0388–9, 10–0388–10, 10–0388–12, 10–0388–13.

OMB Control Number: 2900–0661.

Type of Review: Revision of a currently approved collection.

Abstract: State governments complete VA Forms 10–0388–1, 10–0388–2, 10–0388–3, 10–0388–4, 10–0388–5, 10–0388–6, 10–0388–7, 10–0388–8, 10–0388–9, 10–0388–10, 10–0388–12, 10–0388–13, to apply for State Home Construction Grant Program and to certify compliance with VA requirements. VA uses this information, along with other documents submitted by States to determine the feasibility of the projects for VA participation, to determine eligibility for a grant award.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden per Respondent: 24 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11459 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0405]

Proposed Information Collection (REPS Annual Eligibility Report) 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 the notice. This notice solicits comments for information needed to confirm a claimant's continued entitlement to Restored Entitlement Program for Survivors (REPS) benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0405" in any correspondence. During the comment period, comments may be viewed online through FDMS.

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: REPS Annual Eligibility Report, (Under the Provisions of Section 156, Pub. L. 97–377), VA Form 21–8941.

OMB Control Number: 2900–0405.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8941 is completed annually by claimants who have earned income that is at or near the limit of earned income. The REPS program pays benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. VA uses the information collected to determine a claimant's continued entitlement to REPS benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,200.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11458 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0079]

Proposed Information Collection (Employment Questionnaire) 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 currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine continued entitlement to benefits based on unemployment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0079" in any correspondence. During the comment period, comments may be viewed online through FDMS.

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: Employment Questionnaire, VA Forms 21–4140 and 21–4140–1.

OMB Control Number: 2900–0079.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who are under the age of 60 and receiving individual unemployability compensation at 100 percent rate are required to complete VA Forms 21–4140 and 21–4140–1 certifying that they are still unable to secure or follow a substantially gainful occupation because of a service connected-disability. VA will use the information collected to determine the claimant's continued entitlement to individual unemployability benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,833 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 130,000.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11466 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0511)]

Agency Information Collection (Cooperative Studies Program (CSP): Site Survey and Meeting Evaluation) Under OMB Review

AGENCY: Veterans Benefits 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 Benefits Administration (VBA), Department of Veterans Affairs, will submit 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; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human

Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (VA Form 10–0511)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–New (VA Form 10–0511)."

SUPPLEMENTARY INFORMATION:

Titles:

a. Cooperative Studies Program (CSP) Site Survey, VA Form 10–0511.
b. Cooperative Studies Program (CSP) Meeting Evaluation, VA Form 10–0511a.

OMB Control Number: OMB Control No. 2900–New.

Type of Review: New Collection.

Abstracts:

a. The data collected on VA Form 10–0511 will be used to assist in evaluating the level of customer service within the CSP Coordinating Centers.
b. VA Form 10–0511a will be used to evaluate the effectiveness of the CSP in-person meetings and to identify ways to improve future meetings.

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 18, 2011, at pages 9637–9638.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Cooperative Studies Program (CSP) Site Survey, VA Form 10–0511—83 hours.
b. Cooperative Studies Program (CSP) Meeting Evaluation, VA Form 10–0511a—83 hours.

Frequency of Response: Annually.

Estimated Average Burden per Respondent:

a. Cooperative Studies Program (CSP) Site Survey, VA Form 10–0511—10 minutes.
b. Cooperative Studies Program (CSP) Meeting Evaluation, VA Form 10–0511a–10 minutes.

Estimated Annual Responses:

a. Cooperative Studies Program (CSP) Site Survey, VA Form 10–0511– 500.
b. Cooperative Studies Program (CSP) Meeting Evaluation, VA Form 10–0511a—500.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11468 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0658]

Agency Information Collection Activity (Lenders Staff Appraisal Reviewer (SAR) Application) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), 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.

DATES: Comments must be submitted on or before June 10, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0658" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0658."

Title: Lenders Staff Appraisal Reviewer (SAR) Application, VA Form 26–0785.

OMB Control Number: 2900–0658.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–0785 is completed by lenders to nominate employees for approval as approved Staff Appraisal Reviewer (SAR). Once approved, SARs will have the authority to review real estate appraisals and to issue notices of values on behalf of VA. VA uses the information collected to perform oversight of work delegated to lenders responsible for making guaranteed VA backed loans.

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, 2011, at pages 8847–8848.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 83 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: May 5, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–11470 Filed 5–10–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on Tuesday, June 21, 2011, at the Saint Regis Hotel, 923 16th Street, NW., Washington, DC from 8:30 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are

invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Robert Watkins, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation and Pension Service, Regulation Staff (211D), 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail at *Robert.Watkins2@va.gov*. Any member of the public wishing to attend the meeting or seeking additional information should contact Dr. Corina Negrescu at (202) 461–9752.

Dated: May 5, 2011.

By Direction of the Secretary.

William F. Russo,

Director of Regulations Management, Office of the General Counsel.

[FR Doc. 2011–11473 Filed 5–10–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on May 26, 2011, in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8:30 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of disabled Veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussions on VHA's transformational initiatives; VA Benchmark/Aspire Data; a discussion on Quality; an update on Academic Affiliations; implementation of Caregiver Legislation; and an update on VHA's budget outlook.

No time will allocated for receiving oral presentations from the public. However, members of the public may submit written statements for review by the Committee to Ms. Juanita Leslie, Department of Veterans Affairs, Office of Administrative Operations (10B2), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *j.t.leslie@va.gov*. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Leslie at (202) 461–7019.

Dated: May 5, 2011.

By Direction of the Secretary.

William F. Russo,

Director of Regulations Management, Office of the General Counsel.

[FR Doc. 2011–11472 Filed 5–10–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Federal Reserve System

12 CFR Part 226

Regulation Z; Truth in Lending; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1417]

RIN 7100–AD75

Regulation Z; Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is publishing for public comment a proposed rule amending Regulation Z (Truth in Lending) to implement amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act). Regulation Z currently prohibits a creditor from making a higher-priced mortgage loan without regard to the consumer's ability to repay the loan. The proposal would implement statutory changes made by the Dodd-Frank Act that expand the scope of the ability-to-repay requirement to cover any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan). In addition, the proposal would establish standards for complying with the ability-to-repay requirement, including by making a "qualified mortgage." The proposal also implements the Act's limits on prepayment penalties. Finally, the proposal would require creditors to retain evidence of compliance with this rule for three years after a loan is consummated. General rulemaking authority for TILA is scheduled to transfer to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011. Accordingly, this rulemaking will become a proposal of the CFPB and will not be finalized by the Board.

DATES: Comments on this proposed rule must be received on or before July 22, 2011. All comment letters will be transferred to the Consumer Financial Protection Bureau.

ADDRESSES: You may submit comments, identified by Docket No. R–1417 and RIN No. 7100–AD75, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Jamie Z. Goodson, Catherine Henderson, or Priscilla Walton-Fein, Attorneys; Paul Mondor, Lorna Neill, Nikita M. Pastor, or Maureen C. Yap, Senior Attorneys; or Brent Lattin, 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. Summary of the Proposed Rule

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) amends the Truth in Lending Act (TILA) to prohibit creditors from making mortgage loans without regard to the consumer's repayment ability. Public Law 111–203 § 1411, 124 Stat. 1376, 2142 (to be codified at 15 U.S.C. 1639c). The Act's underwriting requirements are substantially similar but not identical to the ability-to-repay requirements adopted by the Board for higher-priced mortgage loans in July 2008 under the Home Ownership and Equity Protection Act. 73 FR 44522, Jul. 30, 2008 ("2008 HOEPA Final Rule"). General rulemaking authority for TILA is scheduled to transfer to the Consumer Financial Protection Bureau (CFPB) in July 2011. Accordingly, this rulemaking will become a proposal of the CFPB and will not be finalized by the Board.

Consistent with the Act, the proposal applies the ability-to-repay requirements to any consumer credit transaction secured by a dwelling, except an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan. Thus, unlike the Board's 2008 HOEPA Final Rule, the proposal is not limited to higher-priced mortgage loans or loans secured by the consumer's principal dwelling. The Act prohibits a creditor from making a mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, including any mortgage-related obligations (such as property taxes).

Consistent with the Act, the proposal provides four options for complying with the ability-to-repay requirement. First, a creditor can meet the general ability-to-repay standard by originating a mortgage loan for which:

- The creditor considers and verifies the following eight underwriting factors in determining repayment ability: (1) Current or reasonably expected income or assets; (2) current employment status; (3) the monthly payment on the mortgage; (4) the monthly payment on any simultaneous loan; (5) the monthly payment for mortgage-related obligations; (6) current debt obligations; (7) the monthly debt-to-income ratio, or residual income; and (8) credit history; and
- The mortgage payment calculation is based on the fully indexed rate.

Second, a creditor can refinance a "non-standard mortgage" into a "standard mortgage." This is based on a statutory provision that is meant to provide flexibility for streamlined refinancings, which are no- or low-documentation transactions designed to quickly refinance a consumer out of a risky mortgage into a more stable product. Under this option, the creditor does not have to verify the consumer's income or assets. The proposal defines a "standard mortgage" as a mortgage loan that, among other things, does not contain negative amortization, interest-only payments, or balloon payments; and has limited points and fees.

Third, a creditor can originate a "qualified mortgage," which provides special protection from liability for creditors who make "qualified mortgages." It is unclear whether that protection is intended to be a safe harbor or a rebuttable presumption of compliance with the repayment ability requirement. Therefore, the Board is proposing two alternative definitions of a "qualified mortgage."

Alternative 1 operates as a legal safe harbor and defines a "qualified mortgage" as a mortgage for which:

(a) The loan does not contain negative amortization, interest-only payments, or balloon payments, or a loan term exceeding 30 years;

(b) The total points and fees do not exceed 3% of the total loan amount;

(c) The borrower's income or assets are verified and documented; and

(d) The underwriting of the mortgage (1) is based on the maximum interest rate in the first five years, (2) uses a payment schedule that fully amortizes the loan over the loan term, and (3) takes into account any mortgage-related obligations.

Alternative 2 provides a rebuttable presumption of compliance and defines a "qualified mortgage" as including the criteria listed under Alternative 1 as well as the following additional underwriting requirements from the ability-to-repay standard: (1) The consumer's employment status, (2) the monthly payment for any simultaneous loan, (3) the consumer's current debt obligations, (4) the total debt-to-income ratio or residual income, and (5) the consumer's credit history.

Finally, a small creditor operating predominantly in rural or underserved areas can originate a balloon-payment qualified mortgage. This standard is evidently meant to accommodate community banks that originate balloon loans to hedge against interest rate risk. Under this option, a small creditor can make a balloon-payment qualified mortgage if the loan term is five years or more, and the payment calculation is based on the scheduled periodic payments, excluding the balloon payment.

The proposal also implements the Dodd-Frank Act's limits on prepayment penalties, lengthens the time creditors must retain records that evidence compliance with the ability-to-repay and prepayment penalty provisions, and prohibits evasion of the rule by structuring a closed-end extension of credit as an open-end plan. The Dodd-Frank Act contains other consumer protections for mortgages, which will be implemented in subsequent rulemakings.

II. Background

Over the years, concerns have been raised about creditors originating mortgage loans without regard to the consumer's ability to repay the loan. Beginning in about 2006, these concerns were heightened as mortgage delinquencies and foreclosures rates increased dramatically, caused in part by the loosening of underwriting standards. *See* 73 FR 44524, Jul. 30, 2008. Following is background information, including a brief summary of the legislative and regulatory responses to this issue, which culminated in the enactment of the Dodd-Frank Act on July 21, 2010.

A. TILA and Regulation Z

In 1968, Congress enacted TILA, 15 U.S.C. 1601 *et seq.,* based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the purposes of TILA is to promote the informed use of consumer credit by requiring disclosures about its costs and terms. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. TILA directs the Board to prescribe regulations to carry out the purposes of the law, and specifically authorizes the Board, among other things, to issue regulations that contain such additional requirements, classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for all or any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with TILA, or prevent circumvention or evasion. 15 U.S.C. 1604(a). TILA is implemented by the Board's Regulation Z, 12 CFR part 226. An Official Staff Commentary interprets the requirements of the regulation and provides guidance to creditors in applying the rules to specific transactions. *See* 12 CFR part 226, Supp. I.

B. The Home Ownership and Equity Protection Act (HOEPA) and HOEPA Rules

In response to evidence of abusive practices in the home-equity lending market, Congress amended TILA by enacting the Home Ownership and Equity Protection Act (HOEPA) in 1994. Public Law 103–325, 108 Stat. 2160. HOEPA defines a class of "high-cost mortgages," which are generally closed-end home-equity loans (excluding home-purchase loans) with annual percentage rates (APRs) or total points and fees exceeding prescribed thresholds.[1] HOEPA created special substantive protections for high-cost mortgages, including prohibiting a creditor from engaging in a pattern or practice of extending a high-cost mortgage to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment. TILA Section 129(h); 15 U.S.C. 1639(h). In addition to the disclosures and limitations specified in the statute, TILA Section 129, as added by HOEPA, expanded the Board's rulemaking authority. TILA Section 129(*l*)(2)(A) authorizes the Board to prohibit acts or practices the Board finds to be unfair and deceptive in connection with mortgage loans. 15 U.S.C. 1639(*l*)(2)(A). TILA Section 129(*l*)(2)(B) authorizes the Board to prohibit acts or practices in connection with the refinancing of mortgage loans that the board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower. 15 U.S.C. 1639(*l*)(2)(B).

In addition, HOEPA created three special remedies for a violation of its provisions. First, a consumer who brings a timely action against a creditor for a violation of rules issued under TILA Section 129 may be able to recover special statutory damages equal to the sum of all finance charges and fees paid by the consumer (often referred to as "HOEPA damages"), unless the creditor demonstrates that the failure to comply is not material. TILA Section 130(a); 15 U.S.C. 1640(a). This recovery is in addition to actual damages; statutory damages in an individual action or class action, up to a prescribed threshold; and court costs and attorney fees that would be available for violations of other TILA provisions. Second, if a creditor assigns a high-cost mortgage to another person, the consumer may be able to obtain from the assignee all of the foregoing damages. TILA Section 131(d); 15 U.S.C. 1641(d). For all other loans, TILA Section 131(e), 15 U.S.C. 1641(e), limits the liability of assignees for violations of Regulation Z to disclosure violations that are apparent on the face of the disclosure statement required by TILA. Finally, a consumer has a right to rescind a transaction for up to three years after consummation when the mortgage contains a provision prohibited by a rule adopted under the authority of TILA Section 129(*l*)(2). TILA Section 125 and 129(j); 15 U.S.C. 1635 and 1639(j). Any consumer who has the right to rescind a transaction may rescind the transaction as against any assignee. TILA Section 131(c); 15 U.S.C. 1641(c). The right of rescission does not extend, however, to home purchase loans, construction loans, or certain refinancings with the same

[1] Mortgages covered by the HOEPA amendments have been referred to as "HOEPA loans," "Section 32 loans," or "high-cost mortgages." The Dodd-Frank Act now refers to these loans as "high-cost mortgages." *See* the Dodd-Frank Act § 1431; TILA Section 103(aa). For simplicity and consistency, this proposal will use the term "high-cost mortgages" to refer to mortgages covered by the HOEPA amendments.

creditor. TILA Section 125(e); 15 U.S.C. 1635(e).

In 1995, the Board implemented the HOEPA amendments at § 226.31, 226.32, and 226.33 of Regulation Z. 60 FR 15463, March 24, 1995. In particular, § 226.32(e)(1) implemented TILA Section 129(h) to prohibit a creditor from extending a high-cost mortgage based on the consumer's collateral if, considering the consumer's current and expected income, current obligations, and employment status, the consumer would be unable to make the scheduled payments. In 2001, the Board amended these regulations to expand HOEPA's protections to more loans by revising the APR threshold, and points and fees definition. 66 FR 65604, Dec. 20, 2001. In addition, the ability-to-repay provisions in the regulation were revised to provide for a presumption of a violation of the rule if the creditor engages in a pattern or practice of making high-cost mortgages without verifying and documenting the consumers' repayment ability.

C. 2006 and 2007 Interagency Supervisory Guidance

In December 2005, the Board and the other Federal banking agencies responded to concerns about the rapid growth of nontraditional mortgages in the previous two years by proposing supervisory guidance. Nontraditional mortgages are mortgages that allow the borrower to defer repayment of principal and sometimes interest. The guidance advised institutions of the need to reduce "risk layering" practices with respect to these products, such as failing to document income or lending nearly the full appraised value of the home. The final guidance issued in September 2006 specifically advised lenders that layering risks in nontraditional mortgage loans to subprime borrowers may significantly increase risks to borrowers as well as institutions. Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609, Oct. 4, 2006 ("2006 Nontraditional Mortgage Guidance").

The Board and the other Federal banking agencies addressed concerns about the subprime market in March 2007 with proposed supervisory guidance addressing the heightened risks to consumers and institutions of adjustable-rate mortgages with two- or three-year "teaser" rates followed by substantial increases in the rate and payment. The guidance, finalized in June of 2007, set out the standards institutions should follow to ensure borrowers in the subprime market obtain loans they can afford to repay. Among other steps, the guidance advised lenders to (1) use the fully-indexed rate and fully-amortizing payment when qualifying borrowers for loans with adjustable rates and potentially non-amortizing payments; (2) limit stated income and reduced documentation loans to cases where mitigating factors clearly minimize the need for full documentation of income; and (3) provide that prepayment penalty clauses expire a reasonable period before reset, typically at least 60 days. Statement on Subprime Mortgage Lending, 72 FR 37569, Jul. 10, 2007 ("2007 Subprime Mortgage Statement").[2] The Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR") issued parallel statements for state supervisors to use with state-supervised entities, and many states adopted the statements.

D. 2008 HOEPA Final Rule

In 2006 and 2007, the Board held a series of national hearings on consumer protection issues in the mortgage market. During those hearings, consumer advocates and government officials expressed a number of concerns, and urged the Board to prohibit or restrict certain underwriting practices, such as "stated income" or "low documentation" loans, and certain product features, such as prepayment penalties. *See* 73 FR 44527, Jul. 30, 2008. The Board was also urged to adopt regulations under HOEPA, because, unlike the Interagency Supervisory Guidance, the regulations would apply to all creditors and would be enforceable by consumers through civil actions.

In response to these hearings, in July of 2008, the Board adopted final rules pursuant to the Board's authority in TILA Section 129(*l*)(2)(A). 73 FR 44522, Jul. 30, 2008 ("2008 HOEPA Final Rule"). The Board's 2008 HOEPA Final Rule defined a new class of "higher-priced mortgage loans," . Under the 2008 HOEPA Final Rule, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the average prime offer rate (APOR) for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for loans secured by a first lien on the dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on the dwelling. Section 226.35(a)(1). The definition of a "higher-priced mortgage loan" includes those loans that are defined as "high-cost mortgages."

Among other things, the Board's 2008 HOEPA Final Rule revised the ability-to-repay requirements for high-cost mortgages, and extended these requirements to higher-priced mortgage loans. Sections 226.34(a)(4), 226.35(b)(1). Specifically, the rule:

- Prohibits a creditor from extending a higher-priced mortgage loan based on the collateral and without regard to the consumer's repayment ability.
- Prohibits a creditor from relying on income or assets to assess repayment ability unless the creditor verifies such amounts using third-party documents that provide reasonably reliable evidence of the consumer's income and assets.

In addition, the Board's 2008 Final Rule provides certain restrictions on prepayment penalties for high-cost mortgages and higher-priced mortgage loans. Sections 226.32(d), 226.35(b)(2).

E. The Dodd-Frank Act

In 2007, Congress held hearings focused on rising subprime foreclosure rates and the extent to which lending practices contributed to them. *See* 73 FR 44528, Jul. 30, 2008. Consumer advocates testified that certain lending terms or practices contributed to the foreclosures, including a failure to consider the consumer's ability to repay, low- or no-documentation loans, hybrid adjustable-rate mortgages, and prepayment penalties. Industry representatives, on the other hand, testified that adopting substantive restrictions on subprime loan terms would risk reducing access to credit for some borrowers. In response to these hearings, the House of Representatives passed the Mortgage Reform and Anti-Predatory Lending Act in 2007 and 2009. H.R. 3915, 110th Cong. (2007); H.R. 1728, 111th Cong. (2009). Both bills would have amended TILA to provide consumer protections for mortgages, including ability-to-repay requirements, but neither bill was passed by the Senate.

Then, on July 21, 2010, the Dodd-Frank Act was signed into law. Public Law 111–203, 124 Stat. 1376 (2010). Title XIV of the Dodd-Frank Act contains the Mortgage Reform and Anti-Predatory Lending Act.[3] Sections 1411,

[2] The 2006 Nontraditional Mortgage Guidance and the 2007 Subprime Mortgage Statement will hereinafter collectively be referred to as the "Interagency Supervisory Guidance."

[3] Although S. Rpt. No. 111–176 generally contains the legislative history for the Dodd-Frank Act, it does not contain the legislative history for the Mortgage Reform and Anti-Predatory Lending Act. Therefore, the Board has relied on the legislative history for the 2007 and 2009 House bills for guidance in interpreting the statute. *See* H. Rpt. No. 110–441 for H.R. 3915 (2007), and H. Rpt. No. 111–194 for H.R. 1728 (2009).

1412, and 1414 of the Dodd-Frank Act create new TILA Section 129C, which, among other things, establishes new ability-to-repay requirements and new limits on prepayment penalties. Public Law 111–203, § 1411, 1412, 1414, 124 Stat. 1376, 2142–53 (to be codified at 15 U.S.C. 1639c). The Dodd-Frank Act states that Congress created new TILA Section 129C upon a finding that "economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers." Dodd-Frank Act Section 1402; TILA Section 129B(a)(1). The Dodd-Frank Act further states that the purpose of TILA Section 129C is to "assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans." Dodd-Frank Act Section 1402; TILA Section 129B(a)(2).

Specifically, TILA Section 129C:

- Expands coverage of the ability-to-repay requirements to any consumer credit transaction secured by a dwelling, except an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan.
- Prohibits a creditor from making a mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the loan according to its terms, and all applicable taxes, insurance, and assessments.
- Provides a presumption of compliance with the ability-to-repay requirements if the mortgage loan is a "qualified mortgage," which does not contain certain risky features and limits points and fees on the loan.
- Prohibits prepayment penalties unless the mortgage is a prime, fixed-rate qualified mortgage, and the amount of the prepayment penalty is limited.

The Dodd-Frank Act creates special remedies for violations of TILA Section 129C. Section 1416 of the Dodd-Frank Act provides that a consumer who brings a timely action against a creditor for a violation of TILA Section 129C(a) (the ability-to-repay requirements) may be able to recover special statutory damages equal to the sum of all finance charges and fees paid by the consumer (often referred to as "HOEPA damages"), unless the creditor demonstrates that the failure to comply is not material. TILA Section 130(a). This recovery is in addition to actual damages; statutory damages in an individual action or class action, up to a prescribed threshold; and court costs and attorney fees that would be available for violations of other TILA provisions. In addition, the statute of limitations for an action for a violation of TILA Section 129C is three years from the date of the occurrence of the violation (as compared to one year for other TILA violations). TILA Section 130(e). Moreover, Section 1413 of the Dodd-Frank Act provides that a consumer may assert a violation of TILA Section 129C(a) as a defense to foreclosure by recoupment or set off. TILA Section 130(k). There is no time limit on the use of this defense.

F. Other Recent Board Actions

In addition to the 2008 HOEPA Final Rule, the Board has recently published several proposed or final rules for mortgages that are referenced in or relevant to this proposal.

2009 Closed-End Mortgage Proposal. In August 2009, the Board issued two proposals to amend Regulation Z: One for closed-end mortgages and one for home equity lines of credit ("HELOCs"). For closed-end mortgages, the August 2009 proposal would revise the disclosure requirements to highlight potentially risky features, such as adjustable rates and negative amortization, and address other issues, such as the timing of disclosures. *See* 74 FR 43232, Aug. 26, 2009 ("2009 Closed-End Mortgage Proposal"). For HELOCs, the August 2009 proposal would revise the disclosure requirements and address other issues, such as account terminations. 74 FR 43428, Aug. 26, 2009 ("2009 HELOC Proposal"). Public comments for both proposals were due by December 24, 2009.

2010 Mortgage Proposal. In September 2010, the Board issued a proposal that would revise Regulation Z with respect to rescission, refinancing, reverse mortgages, and the refund of certain fees. *See* 75 FR 58539, Sept. 24, 2010 ("2010 Mortgage Proposal"). Public comments for this proposal were due by December 23, 2010. On February 1, 2011, the Board issued a press release stating that it does not expect to finalize the 2009 Closed-End Mortgage Proposal, 2009 HELOC Proposal, or the 2010 Mortgage Proposal prior to the transfer of authority for such rulemakings to the Consumer Financial Protection Bureau in July 2011.

2010 Loan Originator Compensation Rule. In September 2010, the Board adopted a final rule on loan originator compensation to prohibit compensation to mortgage brokers and loan officers (collectively, "loan originators") that is based on a loan's interest rate or other terms. The final rule also prohibits loan originators from steering consumers to loans that are not in the consumers' interest to increase the loan originator's compensation. 75 FR 58509, Sept. 24, 2010 ("2010 Loan Originator Compensation Rule"). This rule became effective April 6, 2011.

2010 MDIA Interim Final Rule. In May 2009, the Board adopted final rules implementing the amendments to TILA under the Mortgage Disclosure Improvement Act of 2008 ("MDIA").[4] Among other things, the MDIA and the final rules require early, transaction-specific disclosures for mortgage loans secured by a dwelling, and requires waiting periods between the time when disclosures are given and consummation of the transaction. These rules became effective July 30, 2009, as required by the statute. *See* 74 FR 23289, May 19, 2009. The MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change, along with a statement that there is no guarantee that the consumer will be able to refinance the transaction in the future. Under the statute, these provisions of the MDIA became effective on January 30, 2011. On September 24, 2010, the Board published an interim rule to implement these requirements. *See* 75 FR 58470, Sept. 24, 2010. In particular, the rule provided definitions for a "balloon payment," "adjustable-rate mortgage," "step-rate mortgage," "fixed-rate mortgage," "interest-only loan," "negative amortization loan," and the "fully indexed rate." *See* § 226.18(s)(5) and (s)(7). Subsequently, the Board issued an interim rule to make certain clarifying changes. *See* 75 FR 81836, Dec. 29, 2010. The term "2010 MDIA Interim Final Rule" is used to refer to the September 2010 final rule as revised by the December 2010 final rule.

2011 Escrow Proposal and Final Rule. In March 2011, the Board issued a proposal to implement Sections 1461 and 1462 of the Dodd-Frank Act, which create new TILA Section 129D and provide certain escrow requirements for higher-priced mortgage loans. *See* 76 FR 11599, March 2, 2011 ("2011 Escrow Proposal"). In particular, the proposal would revise the definition of a "higher-priced mortgage loan," and create an exemption from the escrow requirement for any loan extended by a creditor that makes most of its first-lien higher-priced mortgage loans in counties designated by the Board as "rural or underserved," has annual originations of 100 or fewer

[4] The MDIA is contained in Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008, Public Law 110–289, enacted on July 30, 2008. The MDIA was later amended by the Emergency Economic Stabilization Act of 2008, Public Law 110–343, enacted on October 3, 2008.

first-lien mortgage loans, and does not escrow for any mortgage transaction it services.

In March 2011, the Board also issued a final rule that implements a provision of the Dodd-Frank Act that increases the APR threshold used to determine whether a mortgage lender is required to establish an escrow account for property taxes and insurance for first-lien, "jumbo" mortgage loans. *See* 76 FR 11319, March 2, 2011 ("2011 Jumbo Loan Escrow Final Rule"). Jumbo loans are loans exceeding the conforming loan-size limit for purchase by Freddie Mac, as specified by the legislation.

2011 Risk Retention Proposal. On March 31, 2011, the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the U.S. Department of Housing and Urban Development, and the Federal Housing Finance Agency ("Agencies") issued a proposal to implement Section 941 of the Dodd-Frank Act, which adds a new Section 15G to the Securities Exchange Act of 1934. 15 U.S.C. 78o–11. As required by the Act, the proposal generally requires the sponsor of an asset-backed security to retain not less than five percent of the credit risk of the assets collateralizing the security. The Act and the proposal include a variety of exemptions, including an exemption for an asset-backed security that is collateralized exclusively by "qualified residential mortgages." The Act requires the Agencies to define the term "qualified residential mortgage" taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default. The Act further provides that the definition of a "qualified residential mortgage" can be "no broader than" the definition of a "qualified mortgage" under TILA Section 129C(b)(2). The 2011 Risk Retention Proposal implements these provisions of the Act. Public comments for this proposal are due by June 10, 2011.

G. Development of This Proposal

In developing this proposal, the Board reviewed the laws, regulations, proposals, and legislative history described above as well as state ability-to-repay laws. The Board also conducted extensive outreach with consumer advocates, industry representatives, and Federal and state regulators, and examined underwriting rules and guidelines for the Federal Housing Administration, the U.S. Department of Veterans' Affairs, Fannie Mae, Freddie Mac, the Home Affordable Modification Program, and private creditors. Finally, the Board conducted independent analyses regarding the effect of various underwriting procedures and loan features on loan performance.

III. Legal Authority

TILA Section 105(a) mandates that the Board prescribe regulations to carry out the purposes of the Act. 15 U.S.C. 1604(a). In addition, TILA, as amended by the Dodd-Frank Act, specifically authorizes the Board to:

- Issue regulations that contain such additional requirements, classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for all or 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. TILA Section 105(a); 15 U.S.C. 1604(a).

- By regulation, prohibit or condition terms, acts or practices relating to residential mortgage loans that the Board finds to be abusive, unfair, deceptive, or predatory; necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of the ability-to-repay requirements; necessary or proper to effectuate the purposes of the ability-to-repay requirements, to prevent circumvention or evasion thereof, or to facilitate compliance; or are not in the interest of the borrower. TILA Section 129B(e); 15 U.S.C. 1639b(e).

- Prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of the ability-to-repay requirements; or necessary and appropriate to effectuate the purposes of the ability-to-repay requirements, to prevent circumvention or evasion thereof, or to facilitate compliance. TILA Section 129C(b)(3)(B)(i); 15 U.S.C. 1639c(b)(3)(B)(i).

TILA, as amended by the Dodd-Frank Act, states that it is the purpose of the ability-to-repay requirements to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans. TILA Section 129B(a)(2); 15 U.S.C. 1639b(a)(2).

IV. Discussion of the Proposed Rule

A. Scope of Coverage

Consistent with the Dodd-Frank Act, the proposal applies to any dwelling-secured consumer credit transaction, including vacation homes and home equity loans. The proposal does not apply to open-end credit plans, timeshare plans, reverse mortgages, or temporary loans with terms of 12 months or less. The Act essentially codifies the ability-to-repay requirements of the Board's 2008 HOEPA Final Rule and expands the scope to the covered transactions described above.

B. Ability-to-Repay Requirements

Consistent with the Dodd-Frank Act, the proposal provides that a creditor may not make a covered mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, including any mortgage-related obligations (such as property taxes). TILA Section 129C; 15 U.S.C. 1639C. The Act and the proposal provide four options for complying with the ability-to-repay requirement. Specifically, a creditor can:

- Originate a covered transaction under the general ability-to-repay standard;
- Refinance a "non-standard mortgage" into a "standard mortgage";
- Originate a "qualified mortgage," which provides a presumption of compliance with the rule; or
- Originate a balloon-payment qualified mortgage, which provides a presumption of compliance with the rule.

Each of these methods is discussed below, with a description of: (1) Limits on the loan features or term, (2) limits on points and fees, (3) underwriting requirements, and (4) payment calculations.

General Ability-to-Repay Standard

Limits on loan features, term, and points and fees. Under the general ability-to-repay standards, there are no limits on the loan's features, term, or points and fees, but the creditor must follow certain underwriting requirements and payment calculations.

Underwriting requirements. Consistent with the Dodd-Frank Act, the proposal requires the creditor to consider and verify the following eight underwriting factors:

- Current or reasonably expected income or assets;
- Current employment status;

- The monthly payment on the covered transaction;
- The monthly payment on any simultaneous loan;
- The monthly payment for mortgage-related obligations;
- Current debt obligations;
- The monthly debt-to-income ratio, or residual income; and
- Credit history.

The proposal permits the creditor to consider and verify these underwriting factors based on widely accepted underwriting standards.

The proposal is generally consistent with the Act except in one respect. The Act does not require the creditor to consider simultaneous loans that are home equity lines of credit ("HELOCs"), but the Board is using its adjustment and exception authority and discretionary regulatory authority to include HELOCs within the definition of simultaneous loans. The Board believes that such inclusion would help ensure the consumer's ability to repay the loan. Data and outreach indicated that the origination of a simultaneous HELOC markedly increases the rate of default. In addition, this approach is consistent with the Board's 2008 HOEPA Final Rule.

Payment calculations. Under the general ability-to-repay standard, the Dodd-Frank Act does not ban mortgage features, but instead requires the creditor to underwrite the mortgage payment according to certain assumptions and calculations. Specifically, consistent with the Act, the proposal requires creditors to calculate the mortgage payment using: (1) The fully indexed rate; and (2) monthly, substantially equal payments that amortize the loan amount over the loan term. In addition, the Board is using its adjustment and exception authority and discretionary regulatory authority to require the creditor to underwrite the payment based on the introductory interest rate if it is greater than the fully indexed rate. Some transactions use a premium initial rate that is higher than the fully indexed rate. The Board believes this approach would help ensure the consumer's ability to repay the loan and prevent circumvention or evasion.

The Act and proposal also provide special payment calculations for interest-only loans, negative amortization loans, and balloon loans. In particular, the requirements for balloon loans depend on whether the loan is "higher-priced" [5] or not. Consistent with the Act, the proposal requires a creditor to underwrite a higher-priced loan with a balloon payment by considering the consumer's ability to make the balloon payment (without refinancing). As a practical matter, this would mean that a creditor would not be able to make a higher-priced balloon loan unless the consumer had substantial documented assets or income.

The Act permits a creditor to underwrite a balloon loan that is not higher-priced in accordance with regulations prescribed by the Board. The proposal requires creditors to underwrite a balloon loan using the maximum payment scheduled during the first five years after consummation. This approach would not capture the balloon payment for a balloon loan with a term of five years or more. The Board believes five years is the appropriate time horizon in order to ensure consumers have a reasonable ability to repay the loan, and to preserve credit choice and availability. Moreover, the five year time horizon is consistent with other provisions in the Act and the proposal, which require underwriting based on the first five years after consummation (for qualified mortgages and the refinancing of a non-standard mortgage) or which require a minimum term of five years (for balloon-payment qualified mortgages made by certain creditors).

Refinancing of a Non-Standard Mortgage

The Dodd-Frank Act provides an exception to the ability-to-repay standard's underwriting requirements if: (1) The same creditor is refinancing a "hybrid mortgage" into a "standard mortgage," (2) the consumer's monthly payment is reduced through the refinancing, and (3) the consumer has not been delinquent on any payment on the existing hybrid mortgage. This provision appears to be intended to provide flexibility for streamlined refinancings, which are no- or low-documentation loans designed to quickly refinance a consumer in a risky mortgage into a more stable product. Streamlined refinancings have substantially increased in recent years to accommodate consumers at risk of default.

Definitions—loan features, term, and points and fees. Although the Act uses the term "hybrid mortgage," the proposal uses the term "non-standard mortgage," defined as (1) an adjustable-rate mortgage with an introductory fixed interest rate for a period of years, (2) an interest-only loan, and (3) a negative amortization loan. The Board believes that this definition is consistent with the legislative history, which indicates that Congress was generally concerned with loans that provide for "payment shock" through significantly higher payments over the life of the loan.

The proposal defines the term "standard mortgage" as a covered transaction which, among other things, does not contain negative amortization, interest-only payments, or balloon payments; and limits the points and fees.

Underwriting requirements. If the conditions described above are met, the Act states that the creditor may give concerns about preventing a likely default a "higher priority as an acceptable underwriting practice." The Board interprets this provision to provide an exception from the general ability-to-repay requirements for income and asset verification. The Board believes that this approach is consistent with the statute and would preserve access to streamlined refinancings.

Payment calculations. The proposal provides specific payment calculations for purposes of determining whether the refinancing reduces the consumer's monthly mortgage payment, and for determining whether the consumer has the ability to repay the standard mortgage. The calculation for the non-standard mortgage would reflect the highest payment that would occur as of the date of the expiration of the period during which introductory-rate payments, interest-only payments, or negatively amortizing payments are permitted. For a standard mortgage, the calculation would be based on: (1) The maximum interest rate that may apply during the first five years after consummation, and (2) monthly, substantially equal payments that amortize the loan amount over the loan term.

Safe Harbor or Presumption of Compliance for a Qualified Mortgage

Under the Board's 2008 HOEPA Final Rule, a creditor may obtain a presumption of compliance with the repayment ability requirement if it follows the required procedures, such as verifying the consumer's income or assets, and additional optional procedures, such as assessing the consumer's debt-to-income ratio. However, the 2008 HOEPA Final Rule makes clear that even if the creditor follows the required and optional criteria, the creditor has only obtained a *presumption* of compliance with the repayment ability requirement. The consumer can still rebut or overcome

[5] The Act provides separate underwriting requirements for balloon loans depending on whether the loan's APR exceeds the APOR by 1.5 percent for a first-lien loan or by 3.5 percent for a subordinate-lien loan.

that presumption by showing that, despite following the required and optional procedures, the creditor nonetheless disregarded the consumer's ability to repay the loan. For example, the consumer could present evidence that although the creditor assessed the consumer's debt-to-income ratio, that ratio was very high with little residual income. This evidence may be sufficient to overcome the presumption of compliance and demonstrate that the creditor extended credit without regard to the consumer's ability to repay the loan.

The Dodd-Frank Act provides special protection from liability for creditors who make "qualified mortgages," but it is unclear whether that protection is intended to be a safe harbor or a rebuttable presumption of compliance with the repayment ability requirement. The Act states that a creditor or assignee "may presume" that a loan has met the repayment ability requirement if the loan is a "qualified mortgage." This might suggest that originating a qualified mortgage only provides a presumption of compliance, which the consumer can rebut by providing evidence that the creditor did not, in fact, make a good faith and reasonable determination of the consumer's ability to repay the loan.

However, the Act does not state that a creditor that makes a "qualified mortgage" must comply with all of the underwriting criteria of the general ability-to-repay standard. Specifically, the Act defines a "qualified mortgage" as a covered transaction for which:

- The loan does not contain negative amortization, interest-only payments, or balloon payments;
- The term does not exceed 30 years;
- The points and fees generally do not exceed three percent of the total loan amount;
- The income or assets are considered and verified;
- The total debt-to-income ratio or residual income complies with any guideline or regulation prescribed by the Board; and
- The underwriting: (1) Is based on the maximum rate during the first five years, (2) uses a payment schedule that fully amortizes the loan over the loan term, and (3) takes into account all mortgage-related obligations.

The definition of a "qualified mortgage" does not require the creditor to consider and verify the following underwriting requirements that are part of the general ability-to-repay standard: (1) The consumer's employment status, (2) the payment of any simultaneous loans of which the creditor knows or has reason to know, (3) the consumer's current obligations, and (4) the consumer's credit history. Thus, if the "qualified mortgage" definition is deemed to be a safe harbor, the consumer could not allege the creditor violated the repayment ability requirement by failing to consider and verify employment status, simultaneous loans, current obligations, or credit history. Under this approach, originating a "qualified mortgage" would be an alternative to complying with the general ability-to-repay standard and would operate as a safe harbor. Thus, if a creditor satisfied the qualified mortgage criteria, the consumer could not assert that the creditor had violated the ability-to-repay provisions. The consumer could only show that the creditor did not comply with one of the qualified mortgage safe harbor criteria.

There are sound policy reasons for interpreting a "qualified mortgage" as providing either a safe harbor or a presumption of compliance. Interpreting a "qualified mortgage" as a safe harbor would provide creditors with an incentive to make qualified mortgages. That is, in exchange for limiting loan fees and features, the creditor's regulatory burden and exposure to liability would be reduced. Consumers may benefit by being provided with mortgage loans that do not have certain risky features or high costs. However, the drawback to this approach is that a creditor could not be challenged for failing to underwrite a loan based on the consumer's employment status, simultaneous loans, current debt obligations, or credit history, or for generally not making a reasonable and good faith determination of the consumer's ability to repay the loan.

Interpreting a "qualified mortgage" as providing a rebuttable presumption of compliance would better ensure that creditors consider a consumer's ability to repay the loan. Creditors would have to make individualized determinations that the consumer had the ability to repay the loan based on all of the underwriting factors listed in the general ability-to-repay standard. This approach would require the creditor to comply with all of the ability-to-repay standards, and preserve the consumer's ability to use these standards in a defense to foreclosure or other legal action. In addition, a consumer could assert that, despite complying with the criteria for a qualified mortgage and the ability-to-repay standard, the creditor did not make a reasonable and good faith determination of the consumer's ability to repay the loan. However, the drawback of this approach is that it provides little legal certainty for the creditor, and thus, little incentive to make a "qualified mortgage," which limits loan fees and features.

Because of the statutory ambiguity and these competing concerns, the Board is proposing two alternative definitions of a "qualified mortgage." Alternative 1 defines a "qualified mortgage" based on the criteria listed in the Act, and the definition operates as a legal safe harbor and alternative to complying with the general ability-to-repay standard. Alternative 1 does not define a "qualified mortgage" to include a requirement to consider the consumer's debt-to-income ratio or residual income. Because of the discretion inherent in making these calculations, such a requirement would not provide certainty that the loan is a qualified mortgage.

Alternative 2 defines a "qualified mortgage" to include the requirements listed in the Act as well as the other underwriting requirements that are in the general ability-to-repay standard (*i.e.,* employment status, simultaneous loans, current debt obligations, debt-to-income ratio, and credit history). The definition provides a presumption of compliance that could be rebutted by the consumer.

Limits on points and fees. The Dodd-Frank Act defines a "qualified mortgage" as a loan for which, among other things, the total points and fees do not exceed three percent of the total loan amount. In addition, the Act requires the Board to prescribe rules adjusting this threshold for "smaller loans" and to "consider the potential impact of such rules on rural areas and other areas where home values are lower." If the threshold were not adjusted for smaller loans, then creditors might not be able to recover their fixed costs for originating the loan. This could deter some creditors from originating smaller loans, thus reducing access to credit.

The Board is proposing two alternatives for implementing the limits on points and fees for qualified mortgages. Alternative A is based on certain tiers of loan amounts (*e.g.,* a points and fees threshold of 3.5 percent of the total loan amount for a loan amount greater than or equal to $60,000 but less than $75,000). Alternative A is designed to be an easier calculation for creditors, but may result in some anomalies (*e.g.,* a points and fees threshold of $2,250 for a $75,000 loan, but a points and fees threshold of $2,450 for a $70,000 loan). Alternative B is designed to remedy these anomalies by providing a more precise sliding scale, but may be cumbersome for some creditors. The proposal solicits comment on these approaches.

Definition of "points and fees." Generally, a qualified mortgage cannot have points and fees that exceed three percent of the total loan amount. Consistent with the Act, the proposal revises Regulation Z to define "points and fees" to now include: (1) Certain mortgage insurance premiums in excess of the amount payable under Federal Housing Administration provisions; (2) all compensation paid directly or indirectly by a consumer or creditor to a loan originator; and (3) the prepayment penalty on the covered transaction, or on the existing loan if it is refinanced by the same creditor. The proposal also provides exceptions to the calculation of points and fees for: (1) Any bona fide third party charge not retained by the creditor, loan originator, or an affiliate of either, and (2) certain bona fide discount points.

Underwriting requirements. As discussed above, it is not clear whether the Act intends the definition of a "qualified mortgage" to be a somewhat narrowly-defined safe harbor or a more broadly-defined presumption of compliance. For this reason, the Board is proposing two alternative definitions with respect to the underwriting requirements. Under Alternative 1, the underwriting requirements for a qualified mortgage are limited to requiring a creditor to consider and verify the consumer's current or reasonably expected income or assets. Under Alternative 2, the definition of a qualified mortgage requires a creditor to consider and verify all of the underwriting factors required under the general ability-to-repay standard, namely: (1) The currently or reasonably expected income, (2) the employment status, (3) the monthly payment on any simultaneous loan, (4) the current debt obligations, (5) the monthly debt-to-income ratio or residual income, and (6) the credit history.

Payment calculations. Consistent with the Dodd-Frank Act, the proposal defines a qualified mortgage to require the creditor to calculate the mortgage payment using the periodic payment of principal and interest based on the maximum interest rate that may apply during the first five years after consummation.

Balloon-Payment Qualified Mortgages Made by Certain Creditors

The Board is exercising the authority provided under the Dodd-Frank Act to provide an exception to the definition of a "qualified mortgage" for a balloon-payment loan made by a creditor that meets the criteria set forth in the Act. Based on outreach, it appears that some community banks make short-term balloon loans as a means of hedging against interest rate risk, and that the community banks typically hold these loans in portfolio. The Board believes Congress enacted this exception to ensure access to credit in rural and underserved areas where consumers may be able to obtain credit only from such community banks offering these balloon-payment loans. This exception is similar to the exemption from the escrow requirements provided in another section of the Dodd-Frank Act.

The proposal provides an exception for a creditor that meets the following four criteria, with some alternatives:

(1) *Operates in predominantly rural or underserved areas.* The creditor, during the preceding calendar year, must have extended more than 50% of its total covered transactions that provide for balloon payments in one or more counties designated by the Board as "rural" or "underserved."

(2) *Total annual covered transactions.* Under Alternative 1, the creditor, together with all affiliates, extended covered transactions of some dollar amount or less during the preceding calendar year. Under Alternative 2, the creditor, together with all affiliates, extended some number of covered transactions or fewer during the preceding calendar year. The proposal solicits comment on an appropriate dollar amount or number of transactions.

(3) *Balloon loans in portfolio.* Under Alternative 1, the creditor must not sell any balloon-payment loans on or after the effective date of the final rule. Under Alternative 2, the creditor must not have sold any balloon-payment loans during the preceding and current calendar year.

(4) *Asset size.* The creditor must meet an asset size threshold set annually by the Board, which for calendar year 2011 would be $2 billion.

Limits on loan features. The Dodd-Frank Act generally provides that a balloon-payment qualified mortgage contains the same limits on loan features and the loan term as a qualified mortgage, except for allowing the balloon payment. In addition, the Board is using its adjustment and exception authority and discretionary regulatory authority to add a requirement that the loan term be five years or longer. The Board believes that this requirement would help ensure the consumer's ability to repay the loan by providing more time for the consumer to build equity.

Points and fees and underwriting requirements. Consistent with the Dodd-Frank Act, the proposal requires that a balloon-payment qualified mortgage provide for the same limits on points and fees and underwriting requirements as a qualified mortgage.

Payment calculations. Consistent with the Dodd-Frank Act, the proposal provides that a creditor may underwrite a balloon-payment qualified mortgage using all of the scheduled payments, except the balloon payment.

Other Protections

Limits on prepayment penalties. Consistent with the Dodd-Frank Act, the proposal provides that a covered transaction may not include a prepayment penalty unless the transaction: (1) Has an APR that cannot increase after consummation (*i.e.,* a fixed-rate or step-rate mortgage), (2) is a qualified mortgage, and (3) is not a higher-priced mortgage loan. The proposal further provides, consistent with the Act, that the prepayment penalty may not exceed three percent of the outstanding loan balance during the first year after consummation, two percent during the second year after consummation, and one percent during the third year after consummation. Prepayment penalties are not permitted after the end of the third year after consummation. Finally, pursuant to the Act, the proposal requires a creditor offering a consumer a loan with a prepayment penalty to also offer that consumer a loan without a prepayment penalty.

Expansion of record retention rules. Currently, Regulation Z requires creditors to retain evidence of compliance for two years after disclosures must be made or action must be taken. The Dodd-Frank Act extends the statute of limitations for civil liability for a violation of the prepayment penalty provisions or ability-to-repay provisions (including the qualified mortgage provisions) to three years after the date of a violation. The proposal revises Regulation Z to lengthen the record retention requirement to three years after consummation for consistency with the Dodd-Frank Act.

Prohibition on evasion through open-end credit. Currently, Regulation Z prohibits a creditor from structuring a closed-end loan as an open-end plan to evade the requirements for higher-priced mortgage loans. The Board is using its adjustment and exception authority and discretionary regulatory authority to include a similar provision in this proposal in order to prevent circumvention or evasion.

V. Section-by-Section Analysis

Section 226.25 Record Retention

25(a) General Rule

Currently, § 226.25(a) requires that creditors retain evidence of compliance with Regulation Z for two years after disclosures must be made or action must be taken. Section 226.25(a) also clarifies that administrative agencies responsible for enforcing Regulation Z may require creditors under their jurisdictions to retain records for a longer period, if necessary to carry out their enforcement responsibilities under TILA Section 108. 15 U.S.C. 1607. Under TILA Section 130(e), the statute of limitations for civil liability for a violation of TILA is one year after the date a violation occurs. 15 U.S.C. 1640.

The proposal would implement the requirement to consider a consumer's repayment ability under TILA Section 129C(a), alternative requirements for "qualified mortgages" under TILA Section 129C(b), and prepayment penalty requirements under TILA Section 129C(c) in proposed § 226.43, as discussed in detail below. Section 1416 of the Dodd-Frank Act extends the statute of limitations for civil liability for a violation of TILA Section 129C, among other provisions, to three years after the date a violation occurs. Accordingly, the Board proposes to revise § 226.25(a) to require that creditors retain records that evidence compliance with proposed § 226.43 for at least three years after consummation. Although creditors will take action required under proposed § 226.43 (underwriting covered transactions and offering consumers the option of a covered transaction without a prepayment penalty) before a transaction is consummated, the Board believes calculating the record retention period from the time of consummation would facilitate compliance by establishing a clear time period for record retention. The proposal to extend the required period for retention of evidence of compliance with § 226.43 would not affect the record retention period for other requirements under Regulation Z. Increasing the period creditors must retain records evidencing compliance with § 226.43 from two to three years would increase creditors' compliance burden. The Board believes many creditors will retain such records for at least three years, even in the absence of a change to record retention requirements, due to the extension of the statute of limitations for civil liability.

Currently, comment 25(a)–2 clarifies that in general creditors need retain only enough information to reconstruct the required disclosures or other records. The Board proposes a new comment 25(a)–6 that clarifies that if a creditor must verify and document information used in underwriting a transaction subject to proposed § 226.43, the creditor should retain evidence sufficient to demonstrate compliance with the documentation requirements of § 226.25(a). Proposed comment 25(a)–6 also clarifies that creditors need not retain actual paper copies of the documentation used to underwrite a transaction, but they should be able to reproduce those records accurately, for example, by retaining a reproduction of a consumer's Internal Revenue Service Form W–2 rather than merely the income information on the form. The Board also proposes to revise comment 25(a)–2 to remove obsolete references to particular documentation methods and to reflect that in some cases creditors must be able to reproduce (not merely reconstruct) records.

Proposed comment 25(a)–7 provides guidance regarding retention of records evidencing compliance with the requirement to offer a consumer an alternative covered transaction without a prepayment penalty, discussed below in the section-by-section analyses of proposed § 226.43(g)(3) through (5). Proposed comment 25(a)–7 clarifies that creditors must retain records that document compliance with that requirement if a transaction subject to proposed § 226.43 is consummated with a prepayment penalty, but need not retain such records if a covered transaction is consummated without a prepayment penalty or a covered transaction is not consummated. *See* proposed § 226.43(g)(6). The Board believes the requirement to offer a transaction without a prepayment penalty under TILA Section 129C(c)(4) is intended to ensure that consumers can voluntarily choose an alternative covered transaction with a prepayment penalty. The Board therefore believes it is unnecessary for creditors to document compliance with the offer requirement when a consumer does not choose a transaction with a prepayment penalty, or if the covered transaction is not consummated.

As discussed in detail below in the section-by-section analysis of proposed § 226.43(g)(4), if the creditor offers a covered transaction with a prepayment penalty through a mortgage broker, the creditor must present the mortgage broker an alternative covered transaction without a prepayment penalty. Also, the creditor must provide, by agreement, for the mortgage broker to present the consumer that transaction or an alternative covered transaction without a prepayment penalty offered by another creditor that has a lower interest rate or a lower total dollar amount of origination points or fees and discount points. Proposed comment 25(a)–7 clarifies that, to evidence compliance with proposed § 226.43(g)(4), the creditor should retain a record of (1) the alternative covered transaction without a prepayment penalty presented to the mortgage broker pursuant to proposed § 226.43(g)(4)(i), such as a rate sheet, and (2) the agreement with the mortgage broker required by proposed § 226.34(g)(4)(ii).

Section 226.32 Requirements for Certain Closed-End Home Mortgages

Introduction

The Board proposes to revise the definition of "points and fees" in § 226.32(b)(1) to incorporate amendments to this definition under the Dodd-Frank Act.[6] Formerly, the definition of "points and fees" in both TILA and Regulation Z applied only for determining whether a home mortgage is a "high-cost mortgage" under TILA. *See* TILA Section 103(aa)(4), 15 U.S.C. 1602(aa)(4); § 226.32. As discussed earlier, however, the Dodd-Frank Act amended TILA to create a new type of mortgage—a "qualified mortgage"—to which certain limits on the points and fees that may be charged apply.[7] Under the new TILA amendments, the term "points and fees" for qualified mortgages has the same meaning as "points and fees" for high-cost mortgages.

The Board proposes amendments to the definition of "points and fees" to implement the limitation on points and fees for qualified mortgages. The Board is not currently proposing regulations to implement the Dodd-Frank Act's amendments to TILA's high-cost mortgage rules generally.[8] For example, the Board is not proposing at this time to implement revisions to the points and fees thresholds for high-cost mortgages that exclude from the threshold

[6] Public Law 111–203, 124 Stat. 1376, Title XIV, § 1431.

[7] *Id.* § 1412; TILA Section 129C(b)(2)(A)(vii), (b)(2)(C)(i); 15 U.S.C. 1639c(b)(2)(A)(vii), (b)(2)(C)(i).

[8] *Id.* § 1431–1433. The Dodd-Frank Act defines a high-cost mortgage to include a mortgage for which "the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed—(I) in the case of a transaction for $20,000 or more, 5 percent of the total transaction amount; or (II) in the case of a transaction for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (or such other dollar amount as the Board shall prescribe by regulation." *Id.* § 1431(a); TILA Section 103(aa)(1)(A)(ii); 15 U.S.C. 1602(aa)(1)(A)(ii).

calculation "bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator" and that permit creditors to exclude certain "bona fide discount points."[9] By contrast, identical provisions in the Dodd-Frank Act defining the points and fees threshold for qualified mortgages are proposed to be implemented in new § 226.43(e)(3), discussed below.[10]

32(a) Coverage

32(a)(1) Calculation of the "Total Loan Amount"

TILA Section 129C(b)(2)(A)(vii) defines a "qualified mortgage" as a mortgage for which, among other things, "the total points and fees [] payable in connection with the loan do not exceed 3 percent of the *total loan amount*" (emphasis added).[11] Therefore, for purposes of implementing the qualified mortgage provisions, the Board proposes to retain existing comment 32(a)(1)(ii)–1 explaining the meaning of the term "total loan amount," with the minor revisions discussed below.

First, the proposal revises the "total loan amount" calculation under current comment 32(a)(1)(ii)–1 to account for charges added to TILA's definition of points and fees by the Dodd-Frank Act (proposed to be implemented under revisions to § 226.32(b)(1), discussed below). Under Regulation Z, the "total loan amount" is calculated to ensure that the allowable points and fees is a percentage of the amount of credit extended to the consumer, without taking into account the financed points and fees themselves. Specifically, under current comment 32(a)(1)(ii)–1, the "total loan amount" is calculated by "taking the amount financed, as determined according to § 226.18(b), and deducting any cost listed in § 226.32(b)(1)(iii) and § 226.32(b)(1)(iv) that is both included as points and fees under § 226.32(b)(1) and financed by the creditor." Section 226.32(b)(1)(iii) and (b)(1)(iv) pertain to "real estate-related fees" listed in § 226.4(c)(7) and premiums or other charges for credit insurance or debt cancellation coverage, respectively.

The Board proposes to revise this comment to cross-reference additional financed points and fees described in proposed § 226.32(b)(1)(vi) as well. This addition would require a creditor also to deduct from the amount financed any prepayment penalties that are "incurred by the consumer if the mortgage loan refinances a previous loan made or currently held by the creditor refinancing the loan or an affiliate of the creditor"—to the extent that the prepayment penalties are financed by the creditor into the new loan. *See* proposed § 226.32(b)(1)(vi), implementing TILA Section 103(aa)(4)(F). In this way, the three percent limit on points and fees for qualified mortgages will be based on the amount of credit extended to the borrower without taking into account the financed points and fees themselves.

The proposal also revises one of the commentary's examples of the "total loan amount" calculation. Specifically, the Board proposes to revise the example of a $500 single premium for optional "credit life insurance" used in comment 32(b)(1)(i)–1.iv to be a $500 single premium for optional "credit unemployment insurance." This change is proposed because, under the Dodd-Frank Act, single-premium credit insurance—including credit life insurance—is prohibited in covered transactions except for certain limited types of credit unemployment insurance.[12] *See* TILA Section 129C(d); 15 U.S.C. 1639c(d).

Alternative calculation of "total loan amount" based on the "principal loan amount." As noted, currently the "total loan amount" is calculated by taking the "amount financed" (as determined under § 226.18(b)) and deducting any cost listed in § 226.32(b)(1)(iii) and § 226.32(b)(1)(iv) that is both included as points and fees under § 226.32(b)(1) and financed by the creditor. The Board requests comment on whether to streamline the calculation to better ensure that the "total loan amount" includes all credit extended other than financed points and fees.

Specifically, the Board solicits comment on whether to revise the calculation of "total loan amount" to be the following: "principal loan amount" (as defined in § 226.18(b) and accompanying commentary), minus charges that are points and fees under § 226.32(b)(1) and are financed by the creditor. The purpose of using the "principal loan amount" instead of the "amount financed" would be to streamline the calculation to facilitate compliance and to ensure that no charges other than financed points and fees are excluded from the "total loan amount." In general, the revised calculation would yield a larger "total loan amount" to which the percentage points and fees thresholds would have to be applied than would the proposed (and existing) "total loan amount" calculation, because only financed points and fees and no other financed amounts would be excluded. Thus, creditors in some cases would be able to charge more points and fees on the same loan than under the proposed (and existing) rule.

To illustrate, under the proposed (and current) rule, the "total loan amount" for a loan with a "principal loan amount" of $100,000 and a $3,000 upfront mortgage insurance premium is $97,000. This is because the "amount financed," from which the "total loan amount" is derived, excludes prepaid finance charges. The $3,000 upfront mortgage origination charge meets the definition of a prepaid finance charge (*see* § 226.2(a)(23)) and thus would be excluded from the "principal loan amount" to derive the "amount financed." The "total loan amount" is the "amount financed" ($97,000) minus any points and fees listed in § 226.32(b)(1)(iii) or (b)(1)(iv) that are financed. In this example, there are no charges under § 226.32(b)(1)(iii) or (b)(1)(iv), so the "total loan amount" is $97,000. The allowable points and fees under the qualified mortgage test in this example is three percent of $97,000 or $2,910.

If the "total loan amount" is derived simply by subtracting from the "principal loan amount" all points and fees that are financed, however, a different result occurs. In the example above, assume that the allowable upfront mortgage insurance premium

[9] Public Law 111–203, 124 Stat. 1376, Title XIV, § 1431(a) and (d); TILA Section 103(aa)(1) and (dd); 15 U.S.C. 1602(aa)(1) and (dd).

[10] Public Law 111–203, 124 Stat. 1376, Title XIV, § 1412; TILA Section 129C(b)(2)(C); 15 U.S.C. 1639c(b)(2)(C). Thus, if the rule on qualified mortgages is finalized prior to the rule on high-cost mortgages, the calculation of the points and fees threshold for each type of mortgage would be different, but the baseline definition of "points and fees" would be the same.

[11] Similarly, prior to being revised by the Dodd-Frank Act, TILA Section 103(aa)(1)(B) defined a high-cost mortgage to include a mortgage for which "the total points and fees payable by the consumer at or before closing will exceed the greater of (i) eight percent of the *total loan amount;* or (ii) $400" (emphasis added). Regulation Z currently defines a high-cost mortgage to include a loan for which the total points and fees payable by the consumer at or before closing exceed a certain percentage of the "total loan amount" or a dollar amount adjusted annually for inflation. *See* § 226.32(a)(1)(ii). Commentary to § 226.32(a)(1)(ii) explains the term "total loan amount." *See* comment 32(a)(1)(ii)–1. Section 1431 of the Dodd-Frank Act now defines a high-cost mortgage to include a mortgage for which the points and fees do not exceed a certain percentage of the "total transaction amount," rather than using the term "total loan amount." TILA Section 103(aa)(1)(A)(ii). The Dodd-Frank Act does not define the term "total transaction amount." However, as discussed above, the Board is not at this time proposing to revise the definition of high-cost mortgage in § 226.32 to implement Dodd-Frank Act amendments to TILA's high-cost mortgage provisions.

[12] Public Law 111–203, 124 Stat. 1376, Title XIV, § 1414. The Board is not at this time proposing to implement the restrictions on single-premium credit insurance under the Dodd-Frank Act.

for FHA loans is $2,000. Under proposed § 226.32(b)(1)(i)(B) (discussed in detail below), only the $1,000 difference between the $3,000 upfront private mortgage insurance premium and the $2,000 amount that would be allowable for an FHA loan must be counted as points and fees. To determine the "total loan amount," the creditor would subtract $1,000 from the "principal loan amount" ($100,000), resulting in $99,000. The allowable points and fees under the qualified mortgage test in this example is three percent of $99,000 or $2,970.

The Board requests comment on the proposed revisions to the comment explaining how to calculate the "total loan amount," including whether additional guidance is needed.

32(b) Definitions

32(b)(1)

The proposed rule would revise existing elements of Regulation Z's definition of "points and fees" (see proposed § 226.32(b)(1)(i)–(iv)) and add certain items not previously included in "points and fees" but now mandated by statute to be included (see proposed § 226.32(b)(1)(v) and (vi)). These changes are discussed in turn below.

32(b)(1)(i) Finance Charge

Current § 226.32(b)(1)(i) requires that "points and fees" include "all items required to be disclosed under § 226.4(a) and 226.4(b)"—the provisions that define the term "finance charge" —"except interest or the time-price differential." Proposed § 226.32(b)(1)(i) would revise the current provision to include in points and fees "all items considered to be a finance charge under § 226.4(a) and 226.4(b), *except*—

- Interest or the time-price differential; and
- Any premium or charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss to the extent that the premium or charge is assessed—
  - in connection with any Federal or state agency program;
  - not in excess of the amount payable under policies in effect at the time of origination under Section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)) (*i.e.,* for Federal Housing Administration (FHA) loans), provided that the premium or charge is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; or
  - payable after the loan closing.

See proposed § 226.32(b)(1)(i)(A)-(C).

The Board proposes to revise the existing phrase, "all items *required to be disclosed* under § 226.4(a) and 226.4(b)" to read, "all items *considered to be a finance charge* under § 226.4(a) and 226.4(b)" in part because § 226.4 itself does not require disclosure of the finance charge (see instead, for example, § 226.18(d)).

The Board also proposes to revise comment 32(b)(1)(i)–1. Existing comment 32(b)(1)(i)–1 states that § 226.32(b)(1)(i) includes in the total "points and fees" items defined as finance charges under § 226.4(a) and 226.4(b). The comment explains that items excluded from the finance charge under other provisions of § 226.4 are not included in the total "points and fees" under § 226.32(b)(1)(i), but may be included in "points and fees" under § 226.32(b)(1)(ii) and 226.32(b)(1)(iii). The Board proposes to revise this comment to state that items excluded from the finance charge under other provision of § 226.4 may be included in "points and fee" under § 226.32(b)(1)(ii) through 226.32(b)(1)(vi). This change is proposed to reflect the additional items added to the definition of "points and fees" by the Dodd-Frank Act and to correct the previous omission of § 226.32(b)(1)(iv).

In addition, the Board proposes to incorporate into this comment an example of how this rule operates. Thus, the proposed comment notes that a fee imposed by the creditor for an appraisal performed by an employee of the creditor meets the definition of "finance charge" under § 226.4(a) as "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." However, § 226.4(c)(7) expressly provides that appraisal fees are not finance charges. Therefore, under the general rule regarding the finance charges that must be counted as points and fees, a fee imposed by the creditor for an appraisal performed by an employee of the creditor would not be counted in points and fees. Section 226.32(b)(1)(iii), however, expressly includes in points and fees items listed in § 226.4(c)(7) (including appraisal fees) if the creditor receives compensation in connection with the charge. A creditor would receive compensation for an appraisal performed by its own employee. Thus, the appraisal fee in this example must be included in the calculation of points and fees. Comment 32(b)(1)(i)–1 is also proposed to be updated to include cross-references that correspond to provisions added to the definition of "points and fees" by the Dodd-Frank Act (*see* proposed § 226.32(b)(1)(v) and (b)(1)(vi)).

32(b)(1)(i)(B) Mortgage Insurance

Proposed § 226.32(b)(1)(i)(B) adds a new provision to the current definition of "points and fees" regarding charges for mortgage insurance and similar products. As stated above, under this provision, points and fees would include all items considered to be a finance charge under § 226.4(a) and 226.4(b) except mortgage insurance premiums or mortgage guarantee charges or fees to the extent that the premium or charge is—

- assessed in connection with any Federal or state agency program;
- not in excess of the amount payable under FHA mortgage insurance policies (provided that the premium or charge is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan); or
- payable after the loan closing.

This provision implements TILA Section 103(aa)(1)(C), which specifies how "mortgage insurance" should be treated in the statutory definition of points and fees under TILA Section 103(aa)(4).

Exclusion of government insurance premiums and guaranty fees. The Board proposes to incorporate the new statutory exclusion from points and fees of "any premium provided by an agency of the Federal Government or an agency of a State," with revisions. TILA Section 103(aa)(1)(C)(i). Specifically, the proposal excludes "any premium or charge for any guaranty or insurance" under a Federal or state government program. *See* proposed § 226.32(b)(1)(i)(B)(*1*). Proposed comment 32(b)(1)(i)–2 explains that, under § 226.32(b)(1)(i)(B)(*1*) and (*3*), upfront mortgage insurance premiums or guaranty fees in connection with a Federal or state agency program are not "points and fees," even though they are finance charges under § 226.4(a) and (b). The comment provides the following example: If a consumer is required to pay a $2,000 mortgage insurance premium before or at closing for a loan insured by the U.S. Federal Housing Administration, the $2,000 must be treated as a finance charge but need not be counted in "points and fees."

The Board interprets the statute to exclude from points and fees not only upfront mortgage insurance premiums under government programs but also charges for mortgage guaranties under government programs, which typically are assessed upfront as well. The proposed exclusion from points and fees of both mortgage insurance premiums and guaranty fees under government

programs is also supported by the Board's authority under TILA Section 105(a) to make adjustments to facilitate compliance with TILA and to effectuate the purposes of TILA. 15 U.S.C. 1604(a). The exclusion is further supported by the Board's authority under TILA Section 129B(e) to condition terms, acts or practices relating to residential mortgage loans that the Board finds necessary or proper to effectuate the purposes of TILA. 15 U.S.C. 1639b(e). The purposes of TILA include "assur[ing] that consumers are offered and receive residential mortgage loan on terms that reasonably reflect their ability to repay the loans." TILA Section 129B(a)(2); 15 U.S.C. 1629b(a)(2).

Representatives of both the U.S. Department of Veterans Affairs (VA) and the U.S. Department of Agriculture (USDA) expressed concerns to Board staff that the statute, which excludes only "premiums" under government programs, could be read to mean that upfront charges for guaranties offered under loan programs of these agencies and any state agencies must be counted in "points and fees." The Board understands that this interpretation of the statute could disrupt these loan guaranty programs, jeopardizing an important home mortgage credit resource for many consumers. According to VA representatives, for example, if VA "funding fees" for the VA mortgage loan guaranty are included in points and fees, for example, VA loans might exceed high-cost mortgage thresholds and likely would exceed the points and fees cap for a qualified mortgage.[13] In sum, the Board believes that the proposal is necessary to ensure consumer's access to credit through state and Federal government programs.

The Board requests comment on the proposal to exclude from "points and fees" upfront premiums as well as charges for any insurance or guaranty under a Federal or state government program.

Inclusion of upfront private mortgage insurance. Proposed § 226.32(b)(1)(i)(B)(*2*) excludes from points and fees any premium or charge for any guaranty or insurance protecting the creditor against the consumer's default or other credit loss to the extent the premium or charge does not exceed the amount payable under policies in effect at the time of origination under Section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)) (*i.e.,* for Federal Housing Administration (FHA) loans). Upfront private mortgage insurance charges may only be excluded from points and fees, however, if the premium or charge is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan. Proposed § 226.32(b)(1)(i)(B)(*3*) excludes from points and fees any premium or charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss to the extent that the premium or charge is payable after the loan closing.

Comment 32(b)(1)(i)–3 explains that, under proposed § 226.32(b)(1)(i)(B)(*2*) and (*3*), upfront private mortgage insurance premiums are not "points and fees," even though they are finance charges under § 226.4(a) and (b)—but only to the extent that the premium amount does not exceed the amount payable under policies in effect at the time of origination under Section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)). In addition, upfront private mortgage insurance premiums are excluded from "points and fees" only if they are required to be refunded on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan. This comment provides the following example: Assume that a $3,000 upfront private mortgage insurance premium charged on a covered transaction is required to be refunded on a pro rata basis and automatically issued upon notification of the satisfaction of the underlying mortgage loan. Assume also that the maximum upfront premium allowable under the National Housing Act is $2,000. In this case, the creditor could exclude $2,000 from "points and fees" but would have to include in points and fees the remaining $1,000, because this is the amount that exceeds the allowable premium under the National Housing Act. However, if the $3,000 upfront private mortgage insurance premium were not required to be refunded on a pro rata basis and automatically issued upon notification of the satisfaction of the underlying mortgage loan, the entire $3,000 premium must be included in "points and fees."

Proposed comment 32(b)(1)(i)–4 explains that upfront private mortgage insurance premiums that do not qualify for an exclusion from "points and fees" under § 226.32(b)(1)(i)(B)(*2*) must be included in "points and fees" whether paid before or at closing, in cash or financed, and whether the insurance is optional or required. This comment further explains that these charges are also included whether the amount represents the entire premium or an initial payment. This proposed comment is consistent with existing comment 32(b)(1)(iv)–1 regarding the treatment of credit insurance premiums.

TILA's new mortgage insurance provision could plausibly be interpreted to apply to the definition of points and fees solely for purposes of high-cost mortgages and not for qualified mortgages. In this regard, the Board notes that the statutory provision mandating a three percent cap on points and fees for qualified mortgages specifically cross-references TILA Section 103(aa)(4) for the definition of "points and fees" applicable to qualified mortgages. The provision on mortgage insurance, however, does not appear in TILA Section 103(aa)(4), but appears rather as part of the general definition of a high-cost mortgage. *See* TILA Section 103(aa)(1). The Board also notes that certain provisions in the Dodd-Frank Act's high-cost mortgage section regarding points and fees are repeated in the qualified mortgage section on points and fees. For example, both the high-cost mortgage provisions and the qualified mortgage provisions expressly exclude from points and fees "bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator." TILA Sections 103(aa)(1)(A)(ii) (for high-cost mortgages), 129C(b)(2)(C)(i) (for qualified mortgages). The mortgage insurance provision, however, does not separately appear in the qualified mortgage section.

Nonetheless, the Board believes that the better interpretation of the statute is that the mortgage insurance provision in TILA Section 103(aa)(1)(C) applies to the meaning of points and fees for both high-cost mortgages and qualified mortgages. The statute's structure reasonably supports this view: By its plain language, the mortgage insurance provision prescribes how points and fees should be computed "for purposes of paragraph (4)"—namely, for purposes of TILA Section 103(aa)(4). The mortgage insurance provision contains no caveat limiting its application solely to the points and fees calculation for high-cost mortgages. The cross-reference in the qualified mortgage provisions to TILA Section 103(aa)(4) appropriately can be read to include provisions that expressly prescribe how points and fees should be calculated under TILA Section 103(aa)(4), wherever located.

[13] The statute authorizes certain agencies, including the VA and USDA, to prescribe rules defining the loans under their programs that are qualified mortgages; until those rules take effect, however, it appears that even loans under government programs will be subject to the general ability-to-repay requirements and the criteria for qualified mortgages. *See* TILA Section 129C(b)(3)(ii).

Applying the mortgage insurance provision to the meaning of points and fees for both high-cost mortgages and qualified mortgages is also supported by the Board's authority under TILA Section 105(a) to make adjustments to facilitate compliance with TILA 15 U.S.C. 1604(a). The exclusion is further supported by the Board's authority under TILA Section 129B(e) to condition terms, acts or practices relating to residential mortgage loans that the Board finds necessary or proper to effectuate the purposes of TILA. 15 U.S.C. 1639b(e). The purposes of TILA include "assur[ing] that consumers are offered and receive residential mortgage loan on terms that reasonably reflect their ability to repay the loans." TILA Section 129B(a)(2); 15 U.S.C. 1629b(a)(2).

From a practical standpoint, the Board is concerned about the increased risk of confusion and compliance error if points and fees has two separate meanings in TILA—one for determining whether a loan is a high-cost mortgage and another for determining whether a loan is a qualified mortgage. The proposal is intended to facilitate compliance by applying the mortgage insurance provision to the meaning of points and fees for both high-cost mortgages and qualified mortgages.

In addition, the Board is concerned that market distortions could result due to different treatment of mortgage insurance in calculating points and fees for high-cost mortgages and qualified mortgages. As noted, "points and fees" for both high-cost mortgages and qualified mortgages generally excludes "bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator." TILA Sections 103(aa)(1)(A)(ii), 129C(b)(2)(C)(i). Under this general provision standing alone, premiums for upfront private mortgage insurance would be excluded from points and fees. However, as noted, the statute's specific provision on mortgage insurance (TILA Section 103(aa)(1)(C)) requires that any portion of upfront premiums for private mortgage insurance that exceeds amounts allowable for upfront insurance premiums in FHA mortgage loan transactions be counted in points and fees. It further provides that upfront private mortgage insurance premiums must be included in points and fees if they are not required to be refunded on a pro rata basis and the refund is not automatically issued upon notification of the satisfaction of the underlying mortgage loan.

Narrowly applying the mortgage insurance provision to the definition of points and fees only for high-cost mortgages would mean that any premium amount for upfront private mortgage insurance could be charged on qualified mortgages; in most cases, none of that amount would be subject to the cap on points and fees for qualified mortgages because it would be excluded as a "bona fide third party fee" that is not retained by the creditor, loan originator, or an affiliate of either. As a result, consumers of qualified mortgages could be vulnerable to paying excessive upfront private mortgage insurance costs. In the Board's view, this outcome would undercut Congress's clear intent to ensure that qualified mortgages are products with limited fees and more safe features.

32(b)(1)(ii) Loan Originator Compensation

The Board proposes revisions to § 226.32(b)(ii) to reflect statutory amendments under the Dodd-Frank Act. Current § 226.32(b)(ii) requires inclusion in points and fees of "all compensation paid to a mortgage broker." Proposed § 226.32(b)(ii) would implement a new statutory provision that requires inclusion in points and fees of "all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction." *See* TILA Section 103(aa)(4)(B), 15 U.S.C. 1602(aa)(4)(B). Consistent with the statute, the Board also proposes to exclude from points and fees compensation paid to certain persons. *See* proposed § 226.32(b)(2), discussed below.

Proposed § 226.32(b)(1)(ii) mirrors the statutory language, with two exceptions. First, the statute requires inclusion of "compensation paid directly or indirectly by a consumer or creditor to a mortgage originator *from any source.* * * *" The proposed rule does not include the phrase "from any source" because the provision expressly covers compensation paid "directly or indirectly" to the loan originator, which would have the same effect. The Board requests comment on whether any reason exists to include the phrase "from any source" to describe loan originator compensation for purposes of implementing TILA Section 103(aa)(4)(B).

Second, the proposal uses the term "loan originator" as defined in § 226.36(a)(1),[14] not the term "mortgage originator" under Section 1401 of the Dodd-Frank Act.[15] *See* TILA Section 103(cc)(2); 15 U.S.C. 1602(cc)(2). The term "loan originator" is used for consistency with existing Regulation Z provisions under § 226.36. The Board believes that the term "loan originator," as defined in § 226.36(a)(1), is appropriately used in proposed § 226.32(b)(1)(ii) because the meaning of "loan originator" under § 226.36(a)(1) and the statutory definition of "mortgage originator" are consistent in several key respects, discussed below.

In addition, new § 226.32(b)(2) would account for the distinctions between the Dodd-Frank Act's definition of "mortgage originator" and the definition of "loan originator" under § 226.36(a)(1). Proposed § 226.32(b)(2) exempts from points and fees compensation paid to certain persons expressly excluded from the statutory definition of "mortgage originator." *See* section-by-section analysis of § 226.32(b)(2), below. Use of the term "loan originator" in proposed § 226.32(b)(1)(ii).

Loan originator functions. The Dodd-Frank Act defines the term "mortgage originator" to mean "any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—(i) takes a residential mortgage loan application; (ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or (iii) offers or negotiates terms of a residential mortgage loan . * * *" TILA Section 103(cc)(2)(A). The statute further defines "assists a consumer in obtaining or applying to obtain a residential mortgage loan" to mean, "among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan."

The definition of "loan originator" in § 226.36 includes all of the activities listed in the statute as part of the definition of "mortgage originator," with one exception. Unlike the statutory definition of "mortgage originator," however, Regulation Z's definition of "loan originator" does not include "any

[14] Section 226.36(a)(1) defines the term "loan originator" to mean, "with respect to a particular transaction, a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of credit for another person. The term 'loan originator' includes an employee of the creditor if the employee meets this definition. The term 'loan originator' includes the creditor only if the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, including drawing on a *bona fide* warehouse line of credit, or out of deposits held by the creditor." Section 226.36(a)(1).

[15] Public Law 111–203, 124 Stat. 1376, Title XIV, § 1401.

person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the activities" described above. TILA Section 103(cc)(2)(B); 15 U.S.C. 1602(cc)(2)(B). The Board does not believe that adding this element of the definition of "mortgage originator" to Regulation Z's definition of "loan originator" is necessary at this time because § 226.36 and the proposed definition of "points and fees" are concerned solely with loan originators that receive compensation for performing defined origination functions. A person who solely represents to the public that he is able to offer or negotiate mortgage terms for a consumer has not yet received compensation for that function; thus, there is no compensation to account for in calculating "points and fees" for a particular transaction.

The Board solicits comment on the proposal not to include in the definition of "loan originator" a "person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide" the services of a loan originator.

Administrative tasks. The Board also believes that the definition of "loan originator" in § 226.32(a)(1) is consistent with the Dodd-Frank Act's definition of "mortgage originator" in that both exclude persons that perform solely administrative or clerical tasks. Specifically, the statute excludes any person who does not perform the tasks in the paragraph above and "who performs purely administrative or clerical tasks on behalf of a person who [performs those tasks]." TILA Section 103(cc)(2)(B); 15 U.S.C. 1602(cc)(2)(B). Similarly, Regulation Z's current definition of "loan originator" excludes "managers, administrative staff, and similar individuals who are employed by a creditor or loan originator but do not arrange, negotiate, or otherwise obtain an extension of credit for a consumer, and whose compensation is not based on whether any particular loan is originated." Comment 36(a)(1)–4.

Seller financing. In addition, the existing definition of "loan originator" in § 226.36(a)(1) is consistent with the statutory definition of "mortgage originator" in that both exclude persons and entities that provide seller financing for properties that they own. *See* TILA Section 103(cc)(2)(E); 15 U.S.C. 1602(cc)(2)(E). Under the definition of "loan originator" in § 226.36(a)(1), these persons would be "creditors"—but they are not "creditors" that use table funding. As noted below, creditors that use table funding are "loan originators" under § 226.36. However, all other "creditors" are not "loan originators." *See* 75 FR 58509, 58510 (Sept. 24, 2010).

Creditors in table-funded transactions. Both the existing definition of "loan originator" in § 226.36(a)(1) and the statutory definition of "mortgage originator" exclude the creditor, except for the creditor in a table-funded transaction. *See* TILA Section 103(cc)(2)(F); 15 U.S.C. 1602(cc)(2)(F); *see also* comment 36(a)–1.i. Both also include employees of a creditor, individual brokers and mortgage brokerage firms, including entities that close loans in their own names that are table funded by a third party.

Secondary market transactions. Finally, neither the definition of "loan originator" in § 226.36(a)(1) nor the statutory definition of "mortgage originator" includes entities that earn compensation on the sale of loans by creditors to secondary market purchasers—transactions to which consumers are not a direct party. *See generally* TILA Section 103(cc)(2); 15 U.S.C. 1602(cc)(2).

Comments 32(b)(1)(ii)–1, –2, and –3. Proposed comments 32(b)(1)(ii)–1, –2, and –3 provide guidance on the types of loan originator compensation [16] included in "points and fees." Existing comment 32(b)(1)(ii)–1 would be revised to clarify that compensation paid by either a consumer or a creditor to a loan originator, as defined in § 226.32(a)(1), is included in "points and fees." No other substantive changes are intended.

New comment 32(b)(1)(ii)–2.i would clarify that, in determining "points and fees," loan originator compensation includes the dollar value of compensation paid to a loan originator for a covered transaction, such as a bonus, commission, yield spread premium, award of merchandise, services, trips, or similar prizes, or hourly pay for the actual number of hours worked on a particular transaction. The proposed comment would further clarify that compensation paid to a loan originator for a covered transaction must be included in the "points and fees" calculation for that transaction whenever paid, whether at or before closing or anytime after closing, as long as that compensation amount can be determined at the time of closing. Thus, loan originator compensation for a covered transaction includes compensation that will be paid as part of a periodic bonus, commission, or gift if a portion of the dollar value of the bonus, commission, or gift can be attributed to that transaction.

Proposed comment 32(b)(1)(ii)–2.i then provides three examples of compensation paid to a loan originator that must be included in the points and fees calculation. The first example assumes that, according to a creditor's compensation policies, the creditor awards its loan officers a bonus every year based on the number of loan applications taken by the loan officer that result in consummated transactions during that year, and that each consummated transaction increases the bonus by $100. In this case, the $100 bonus must be counted in the amount of loan originator compensation that the creditor includes in "points and fees."

The second example assumes that, according to a creditor's compensation policies, the creditor awards its loan officers a bonus every year based on the dollar value of consummated transactions originated by the loan officer during that year. Also assumed is that, for each transaction of up to $100,000, the creditor awards its loan officers a bonus of $100; for each transaction of more than $100,000 up to $250,000, the creditor awards its loan officers $200; and for each transaction of more than $250,000, the creditor awards its loan officers $300. In this case, for a mortgage transaction of $300,000, the $300 bonus is loan originator compensation that must be included in "points and fees."

The third example assumes that, according to a creditor's compensation policies, the creditor awards its loan officers a bonus every year based on the number of consummated transactions originated by the loan officer during that year. Also assumed is that for the first 10 transactions originated by the loan officer in a given year, no bonus is awarded; for the next 10 transactions originated by the loan officer up to 20, a bonus of $100 per transaction is awarded; and for each transaction originated after the first 20, a bonus of $200 per transaction is awarded. In this case, for the first 10 transactions originated by a loan officer during a given year, no amount of loan originator compensation need be included in "points and fees." For any mortgage transaction made after the first 10, up to

[16] Loan originator compensation would, of course, need to be consistent with the Interagency Guidance on Sound Incentive Compensation Policies. 75 FR 36395, June 25, 2010.

the 20th transaction, $100 must be included in "points and fees." For any mortgage transaction made after the first 20, $200 must be included in "points and fees."

Proposed comment 32(b)(1)(ii)–2.ii clarifies that, in determining "points and fees," loan originator compensation excludes compensation that cannot be attributed to a transaction at the time of origination, including, for example:

- Compensation based on the performance of the loan originator's loans.
- Compensation based on the overall quality of a loan originator's loan files.
- The base salary of a loan originator who is also the employee of the creditor, not accounting for any bonuses, commissions, pay raises, or other financial awards based solely on a particular transaction or the number or amount of covered transactions originated by the loan originator.

Proposed comment 32(b)(1)(ii)–3 explains that loan originator compensation includes amounts the loan originator retains and is not dependent on the label or name of any fee imposed in connection with the transaction. For example, if a loan originator imposes a "processing fee" and retains the fee, the fee is loan originator compensation under paragraph 32(b)(1)(ii) whether the originator expends the fee to process the consumer's application or uses it for other expenses, such as overhead. The proposed comment is consistent with comment 36(d)(1)–1.ii for loan originator compensation.

The Board requests comment on the proposal regarding the types of loan originator compensation that must be included in points and fees, including the appropriateness of specific examples given in the commentary.

32(b)(1)(iii) Real Estate-Related Fees

Consistent with the statute, the Board proposes no changes to existing § 226.32(b)(1)(iii), which includes in points and fees "all items listed in § 226.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor." During outreach, creditor representatives raised concerns about the inclusion in points and fees of real estate-related fees paid to an affiliate of the creditor, such as an affiliated title company. These fees have historically been included in points and fees for high-cost mortgages under both TILA and Regulation Z, but the points and fees threshold for qualified mortgages is much lower than for the high-cost mortgage threshold. Thus, creditors that use affiliated settlement service providers such as title companies are concerned that they will have difficulty making loans that meet the qualified mortgage points and fees threshold.

The Board is not proposing an exemption for fees paid to creditor-affiliated settlement services providers. The Board notes that Congress appears to have rejected excluding from points and fees real estate-related fees where a creditor would receive indirect compensation as a result of obtaining distributions of profits from an affiliated entity based on the creditor's ownership interest in compliance with RESPA.[17] The Board requests comment on the proposal *not* to exclude from the points and fees calculation for qualified mortgages fees paid to creditor-affiliated settlement services providers. The Board invites commenters favoring this exclusion to explain why excluding these fees from the points and fees calculation would be consistent with the purposes of the statute.

Payable at or before closing. The Dodd-Frank Act removed the phrase "payable at or before closing" from the high-cost mortgage points and fees test in TILA Section 103(aa)(1)(B). *See* TILA Section 103(aa)(1)(A)(ii). The phrase "payable at or before closing" is also not in TILA's provisions on the points and fees cap for qualified mortgages. *See* TILA Section 129C(b)(2)(A)(vii), (b)(2)(C). Thus, with a few exceptions, any item listed in the "points and fees" definition under § 226.32(b)(1) must be counted toward the limits on points and fees for both high-cost mortgages and qualified mortgages, even if it is payable after loan closing. The exceptions are mortgage insurance premiums and charges for credit insurance and debt cancellation and suspension coverage. The statute expressly states that these premiums and charges are included in points and fees only if payable at or before closing. *See* TILA Section 103(aa)(1)(C) (for mortgage insurance) and TILA Section 103(aa)(4)(D) (for credit insurance and debt cancellation and suspension coverage). The statute does not so limit § 226.4(c)(7) charges, possibly because these charges could reasonably be viewed as charges that by definition are only payable at or before closing.[18]

Nonetheless, regarding the mortgage loan transaction costs that are deemed points and fees, the Board requests comment on whether any other types of fees should be included in points and fees only if they are "payable at or before closing." The Board is concerned that some fees that occur after closing, such as fees to modify a loan, might be deemed to be points and fees. If so, calculating the points and fees to determine whether a transaction is a qualified mortgage may be difficult because the amount of future fees (*e.g.,* loan modification fees) cannot be known prior to closing. Creditors might be exposed to excessive litigation risk if consumers were able at any point during the life of a mortgage to argue that the points and fees for the loan exceed the qualified mortgage limits due to fees imposed after loan closing. Creditors therefore might be discouraged from making qualified mortgages, which would thwart Congress's goal of increasing incentives for creditors to make more stable, affordable loans.

32(b)(1)(iv) Credit Insurance and Debt Cancellation or Suspension Coverage

The Board proposes to revise § 226.32(b)(1)(iv) to reflect statutory changes under the Dodd-Frank Act. *See* TILA Section 103(aa)(4)(D). Specifically, proposed § 226.32(b)(1)(iv) includes in points and fees "[p]remiums or other charges payable at or before closing of the mortgage loan for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-

[17] *See* Mortgage Reform and Anti-Predatory Lending Act, H. Rep. 111–94, p. 121 (May 4, 2009). An earlier version of the Dodd-Frank Act would have amended the statutory provision implemented by § 226.32(b)(1)(iii) to read as follows (added language italicized):

* * * [P]oints and fees shall include—

* * *

(C) each of the charges listed in section 106(e) (except an escrow for future payment of taxes), unless—

(i) the charge is reasonable;

(ii) the creditor receives no direct or indirect compensation, *except where applied to the charges set forth in section 106(e)(1) where a creditor may receive indirect compensation solely as a result of obtaining distributions of profits from an affiliated entity based on its ownership interest in compliance with section 8(c)(4) of the Real Estate Settlement Procedures Act of 1974;* and

(iii) the charge is paid to a third party unaffiliated with the creditor.

See id.

[18] Section 226.4(c)(7) implements TILA Section 106(e), which states: "The following items, *when charged in connection with any extension of credit secured by an interest in real property,* shall not be included in the computation of the finance charge with respect to that transaction: (1) Fees or premiums for title examination, title insurance, or similar purposes. (2) Fees for preparation of loan-related documents. (3) Escrows for future payments of taxes and insurance. (4) Fees for notarizing deeds and other documents. (5) Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing. (6) Credit reports" (emphasis added). 15 U.S.C. 1605(e).

income insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract." Except for non-substantive changes in the ordering of the items listed, this provision mirrors the statutory language.

TILA's new points and fees provision regarding charges for credit insurance and debt cancellation and suspension coverage adds certain types of credit insurance-related products to the existing list of credit insurance products for which payments at or before closing must be considered points and fees in existing § 226.32(b)(1)(iv). Accordingly, proposed revisions to § 226.32(b)(1)(iv) add to the list of products the following new items: Credit disability, credit unemployment, or credit property insurance and debt suspension coverage. (Other life, accident, health, or loss-of-income insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract are included in the existing provision.) In a separate provision, however, the Dodd-Frank Act bans single-premium credit insurance and debt protection products of all the types listed above, except for credit unemployment insurance meeting certain conditions. *See* TILA Section 129C(d); 15 U.S.C. 1639c(d). The Board notes that the practical result of these combined amendments is that only single-premium credit unemployment insurance meeting certain conditions is permitted; therefore only single-premium credit unemployment insurance will be included in points and fees.[19]

The proposal revises current comment 32(b)(1)(iv)–1 to clarify that upfront charges for debt cancellation or suspension agreements or contracts are expressly included in points and fees. Another proposed revision clarifies that upfront credit insurance premiums and debt cancellation or suspension charges must be included in "points and fees" regardless of whether the insurance or coverage is optional or voluntary. The proposal adds new comment 32(b)(1)(iv)–2 to clarify that "credit property insurance" includes insurance against loss of or damage to personal property, such as a houseboat or manufactured home. The comment states that "credit property insurance" as used in § 226.32(b)(1)(iv) covers the creditor's security interest in the property. The comment explains that "credit property insurance" does not include homeowners insurance, which, unlike "credit property insurance," typically covers not only the dwelling but its contents, and designates the consumer, not the creditor, as the beneficiary.

The Board requests comment on the proposal to implement the statutory provision that includes upfront premiums and charges for credit insurance and debt cancellation and suspension coverage in the definition of "points and fees."

32(b)(1)(v) Prepayment Penalties That May be Charged on the Loan

Proposed § 226.32(b)(1)(v) includes in points and fees "the maximum prepayment penalty, as defined in § 226.43(b)(10), that may be charged or collected under the terms of the mortgage loan." This provision implements TILA Section 103(aa)(4)(E) and incorporates the statutory language, with the exception of minor non-substantive changes, such as that the proposed regulatory provision cross-references proposed § 226.43(b)(10) for the definition of "prepayment penalty." *See* section-by-section analysis of § 226.43(b)(10), below.

32(b)(1)(vi) Total Prepayment Penalties Incurred in a Refinance

Proposed § 226.32(b)(1)(vi) includes in points and fees "the total prepayment penalty, as defined in § 226.43(b)(10), incurred by the consumer if the mortgage loan is refinanced by the current holder of the existing mortgage loan, a servicer acting on behalf of the current holder, or an affiliate of either." This provision implements TILA Section 103(aa)(4)(F), which includes in points and fees prepayment penalties incurred by a consumer "if the mortgage loan refinances a previous loan made or currently held by the creditor refinancing the loan or an affiliate of the creditor." *See* 15 U.S.C. 1602(aa)(4)(F).

The Board believes that this statutory provision is intended in part to curtail the practice of "loan flipping," which involves a creditor refinancing an existing loan for financial gain due to prepayment penalties and other fees that a consumer must pay to refinance the loan—regardless of whether the refinance is beneficial to the consumer. The Board uses the phrases "current holder of the existing mortgage loan" and "servicer acting on behalf of the current holder" to describe the parties that refinance a loan subject to this provision because, as a practical matter, these are the entities that would refinance the loan and directly or indirectly gain from associated prepayment penalties. The Board also uses the phrase "an affiliate of the current holder" to describe a third party that refinances a loan subject to this provision to be consistent with the statute, which, as noted, applies to prepayment penalties incurred in connection with refinances by "the creditor * * * or an affiliate of the creditor."

The proposed regulatory provision also cross-references proposed § 226.43(b)(10) for the definition of "prepayment penalty." *See* section-by-section analysis of § 226.43(b)(10), below.

The Board requests comment on the proposal to incorporate into the definition of "points and fees" the prepayment penalty provisions of TILA Section 103(aa)(4)(E) and (F) and solicits comment in particular on whether additional guidance is needed to facilitate compliance with these provisions.

32(b)(2) Exclusion From "Points and Fees" of Compensation Paid to Certain Persons

The Board proposes new § 226.32(b)(2) to reflect statutory amendments under the Dodd-Frank Act. Current § 226.32(b)(2), defining "affiliate," is proposed to be re-numbered as § 226.32(b)(3). Proposed § 226.32(b)(2) is intended to exempt from "points and fees" compensation paid to certain persons expressly excluded from the meaning of "mortgage originator" under the Dodd-Frank Act.

Employees of retailers of manufactured homes. Specifically, proposed § 226.32(b)(2)(i) excludes from "points and fees" compensation paid to "an employee of a retailer of manufactured homes who does not take a residential mortgage loan application, offer or negotiate terms of a residential mortgage loan, or advise a consumer on loan terms (including rates, fees, and other costs) but who, for compensation or other monetary gain, or in expectation of compensation or other monetary gain, assists a consumer in obtaining or applying to obtain a residential mortgage loan." This proposed exemption is necessary to implement the revised definition of "points and fees" under TILA Section 103(aa)(4)(B) (quoted above), because the statutory definition of "mortgage originator" excludes "an employee of a retailer of manufactured homes" who, for compensation or other monetary gain, or in expectation of compensation or other monetary gain, prepares residential mortgage loan packages or collects information on behalf of a

[19] Public Law 111–203, 124 Stat. 1376, Title XIV, § 1414. The Board is not at this time proposing to implement the restrictions on single-premium credit insurance under the Dodd-Frank Act.

consumer with regard to a residential mortgage loan.[20]

Real estate brokers. Proposed § 226.32(b)(2)(ii) excludes from "points and fees" compensation paid to "a person that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless such person is compensated by a creditor or loan originator, as defined in § 226.36(a)(1), or by any agent of the creditor or loan originator." This proposed exemption is necessary to implement the revised definition of "points and fees" under TILA Section 103(aa)(4)(B), because the statutory definition of "mortgage originator" contains a nearly identical exclusion.[21]

Proposed § 226.32(b)(2)(ii) uses the term "person" rather than the phrase "person or entity" used in the statute because "person" is defined in Regulation Z to mean "a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit." Section 226.2(a)(22). The proposed regulation uses the term "loan originator" as defined in § 226.36(a)(1) rather than the terms "mortgage broker, or other mortgage originator" because the term "loan originator" under § 226.36(a)(1) includes a mortgage broker and is consistent with the statutory definition of "mortgage originator" in respects relevant to this provision. *See* section-by-section analysis of § 226.32(b)(1)(ii) for a discussion of consistencies between the meaning of "loan originator" in § 226.36(a)(1) and "mortgage originator" in the Dodd-Frank Act.

The term "loan originator" in § 226.36(a)(1) applies only to parties who arrange, negotiate, or obtain an extension of mortgage credit for a consumer in return for compensation or other monetary gain. Thus, a "loan originator" would not include a person engaged only in real estate brokerage activities. *See* 75 FR 58509, 58510 (Sept. 24, 2010). However, the exemption for real estate brokers from the meaning of "mortgage originator" is more precise in the Dodd-Frank Act. First, for the compensation of a real estate broker to be exempt, the broker must be licensed or registered under state law. In addition, the Dodd-Frank Act does not exclude real estate brokers from the definition of "mortgage originator" if they are compensated by the "lender, mortgage broker, or other mortgage originator" or an agent of any of these parties.

Servicers. Proposed § 226.32(b)(2)(ii) excludes from "points and fees" compensation paid to "a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a covered transaction for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind." This proposed exemption is necessary to implement the revised definition of "points and fees" under TILA Section 103(aa)(4)(B), because the statutory definition of "mortgage originator" excludes this compensation. TILA Section 103(cc)(2)(G).

The term "loan originator" (as defined in § 226.36(a)(1)), which is used in proposed § 226.32(b)(1)(ii) to describe the persons whose compensation must be counted in points and fees, does not apply to a loan servicer when the servicer modifies an existing loan on behalf of the current owner of the loan. *See* TILA Section 103(cc)(2)(G); 15 U.S.C. 1602(cc)(2)(G). *See also* comment 36(a)–1.iii. However, a "loan originator" under existing § 226.36(a)(1) includes a servicer who refinances a mortgage. *See* comment 36(a)–1.iii. A "refinancing" under § 226.36(a)(1) is defined as the satisfaction and replacement of an existing obligation subject to TILA by a new obligation by the same consumer. *See* § 226.20(a) and accompanying commentary.

By contrast, the exclusion for servicers under the statutory definition of "mortgage originator" appears to be broader than the definition of "loan originator" under existing § 226.36(a)(1). First, the exclusion expressly applies to "a servicer or servicer employees, agents and contractors." Second, the exclusion applies not only when these persons offer or negotiate terms of residential mortgage loan for purposes of modifying a loan, but also for purposes of "replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind." TILA Section 103(cc)(2)(G).

The Board requests comment on the proposed exemptions from the definition of "points and fees" for compensation paid to certain persons not considered "mortgage originators" under the Dodd-Frank Act.

32(b)(3) Definition of "Affiliate"

Current § 226.32(b)(2) defining the term "affiliate" is re-numbered as § 226.32(b)(3) to accommodate the new proposed § 226.32(b)(2) regarding compensation for the purposes of points and fees. No substantive change is intended.

Section 226.34 Prohibited Acts or Practices in Connection With Credit Subject to § 226.32

34(a) Prohibited Acts or Practices for Loans Subject to § 226.32

34(a)(4) Repayment Ability

Currently, Regulation Z prohibits creditors making high-cost loans from extending credit without regard to a consumer's ability to repay. *See* § 226.34(a)(4). As discussed in greater detail in the section-by-section analysis to § 226.43 below, the Dodd-Frank Act now requires creditors to consider a consumer's ability to repay prior to making any residential mortgage loan, as defined in TILA Section 103(cc)(5). Proposed § 226.43 would implement this requirement and render unnecessary § 226.34(a)(4). The Board therefore proposes to remove § 226.34(a)(4) and its accompanying commentary. For ease of reading, the Board is not reprinting § 226.34(a)(4) and its accompanying commentary in this proposed rule.

Section 226.35 Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans

Currently, § 226.35 prohibits certain acts or practices in connection with higher-priced mortgage loans. Section 226.35(a) provides the coverage test for

[20] Specifically, the statute excludes from the definition of "mortgage originator" "any person who is * * * (ii) an employee of a retailer of manufactured homes who is not described in clause (i) [takes a residential mortgage loan application] or (iii) [offers or negotiates terms of a residential mortgage loan] of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs)." TILA Section 103(cc)(2)(A)(i), (cc)(2)(A)(iii) and (cc)(2)(A)(C); 15 U.S.C. 1602(cc)(2)(A) and (C). Thus, an employee of a retailer of manufactured homes is not considered a "mortgage originator" even if that person "for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain * * * assists a consumer in obtaining or applying for a residential mortgage loan." TILA Section 103(cc)(2)(A)(ii). The statute further defines "assists a consumer in obtaining or applying for a residential mortgage loan" to mean "among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan." TILA Section 103(cc)(4).

[21] The statutory definition of "mortgage originator" excludes "a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator." TILA Section 103(cc)(2)(D).

higher-priced mortgage loans. Section 226.35(b)(1) contains the ability to repay requirement for higher-priced mortgage loans. Section 226.35(b)(2) sets forth restrictions on prepayment penalties for higher-priced mortgage loans. Section 226.35(b)(3) contains escrow rules for higher-priced mortgage loans. Section 226.35(b)(4) prohibits evasion of the higher-priced mortgage loan protections by structuring a transaction as open-end credit.

The proposed changes to Regulation Z in the 2011 Escrow Proposal and this proposal would render all of current § 226.35 unnecessary. The 2011 Escrow Proposal would adopt in proposed § 226.45(a) the coverage test for higher-priced mortgage loans in 226.35(a); would revise and adopt in § 226.45(b) the escrow requirements in § 226.35(b)(3); and would adopt in proposed § 226.45(d) the prohibition of evasion of the higher-priced mortgage loan protections by structuring a transaction as open-end credit, now in § 226.35(b)(4). This proposal, as discussed below, would supersede in § 226.43(a)–(f) the ability to repay requirement in § 226.35(b)(1), and would supersede in § 226.43(g) the prepayment penalty rules in § 226.34(b)(2). Accordingly, the Board proposes to remove and reserve § 226.35 and its accompanying commentary. For ease of reading, the Board is not reprinting § 226.35 and its accompanying commentary in this proposed rule.

Section 226.43 Minimum Standards for Transactions Secured by a Dwelling

TILA Sections 129C(a), (b), and (c) establish, for residential mortgage loans: (1) A requirement to consider a consumer's repayment ability; (2) alternative requirements for "qualified mortgages"; and (3) limits on prepayment penalties, respectively. The Board proposes to implement TILA Section 129C(a) through (c) in new § 226.43, as discussed in detail below.

43(a) Scope

Background

Section 1411 of the Dodd-Frank Act adds a new TILA Section 129C that requires creditors to determine a consumer's ability to repay a "residential mortgage loan." Section 1401 of the Act adds a new TILA Section 103(cc) that defines "residential mortgage loan" to mean, with some exceptions, any consumer credit transaction secured by a mortgage, deed of trust, or other equivalent consensual security interest on "a dwelling or on residential real property that includes a dwelling." TILA Section 103(v) defines "dwelling" to mean a residential structure or mobile home which contains one- to four-family housing units, or individual units of condominiums or cooperatives. Thus, a "residential mortgage loan" is a dwelling-secured consumer credit transaction, which can include: (1) A home purchase, refinancing, or home equity loan; (2) a loan secured by a first lien or a subordinate lien on a dwelling; (3) a loan secured by a dwelling that is a principal residence, second home, or vacation home (other than a timeshare residence); or (4) a loan secured by a one-to-four unit residence, condominium, cooperative, mobile home, or manufactured home.

However, the term "residential mortgage loan" does not include an open-end credit plan or an extension of credit relating to a timeshare plan, for purposes of the Act's repayment ability and prepayment penalty provisions under TILA Section 129C, among other provisions. *See* TILA Section 103(cc)(5); *see also* TILA Section 129C(i) (providing that timeshare transactions are not subject to TILA Section 129C). Further, the repayment ability provisions of TILA Section 129C(a) do not apply to reverse mortgages or temporary or "bridge" loans with a loan term of 12 months or less, including a loan to purchase a new dwelling where the consumer plans to sell another dwelling within 12 months. *See* TILA Section 129C(a)(8). The repayment ability provisions of TILA Section 129C(a) also do not apply to consumer credit transactions secured by vacant land and not by a dwelling.

The scope of the 2008 HOEPA Final Rule differs from the scope of TILA Section 129C in three respects. First, as discussed above, the 2008 HOEPA Final Rule applies only to loans designated "higher-priced mortgage loans" or "high-cost mortgages" based on their APR or points and fees. Section 226.34(a)(4), 226.35(b)(1). By contrast, TILA Sections 129C(a) through (c) apply regardless of the residential mortgage loan's cost. Second, the 2008 HOEPA Final Rule is limited to loans secured by the consumer's principal dwelling. Section 226.32(a)(1), 226.35(a)(1). Finally, the 2008 HOEPA Final Rule does not exempt transactions secured by a consumer's interest in a timeshare plan.

The Board's Proposal

Proposed § 226.43(a) describes the scope of the requirement to determine a consumer's ability to repay a residential mortgage loan. Proposed § 226.43(a)(1) and (2) provide that the repayment ability provisions under proposed § 226.43 apply to consumer credit transactions secured by a dwelling, as defined in § 226.2(a)(19), except for (1) a home equity line of credit (HELOC) subject to § 226.5b, and (2) a mortgage transaction secured by a consumer's interest in a timeshare plan, as defined in 11 U.S.C. 101(53(D)). The exemptions under proposed § 226.43(a)(1) and (2) implement the exclusions from the definition of "residential mortgage loan" under TILA Section 103(cc)(5). Proposed § 226.43(a)(3) provides that the following transactions are exempt from coverage by proposed § 226.43(c) through (f): (1) A reverse mortgage subject to § 226.33; and (2) a temporary or "bridge loan" with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling.

As discussed in detail below, proposed § 226.43(c) and (d) implement repayment ability provisions and special rules for refinancings of "non-standard" mortgages into "standard" mortgages under TILA Section 129C(a). TILA Section 129C(a)(8) specifically provides that reverse mortgages and temporary or "bridge" loans with a term of 12 months or less are not subject to TILA Section 129C(a). The Board also proposes to apply this exception for purposes of alternative requirements for "qualified mortgages" and balloon-payment qualified mortgages pursuant to TILA Section 129C(b). Although TILA Section 129C(b) does not specifically exempt reverse mortgages or temporary or "bridge" loans with a term of 12 months or less from coverage by the alternative requirements for qualified mortgages, the Board believes the alternative requirements for qualified mortgages are relevant only if a transaction is subject to the repayment ability requirements. Accordingly, proposed § 226.43(a)(3) provides that reverse mortgages and temporary or "bridge" loans with a term of 12 months or less are not subject to the alternative requirements for qualified mortgages and balloon-payment qualified mortgages, under proposed § 226.43(e) or (f). Such transactions nevertheless are subject to the prepayment penalty restrictions under proposed § 226.43(g), discussed in detail below.

"*Residential mortgage loan.*" Proposed § 226.43(a) clarifies that requirements under proposed § 226.43 apply to any consumer credit transaction secured by a dwelling, as defined in § 226.2(a)(19), with certain exceptions discussed above. Proposed § 226.43(a) does not use the term "residential mortgage loan,"

for two reasons. First, the usefulness of the defined term "residential mortgage loan" is limited, because the coverage of provisions applicable to "residential mortgage loans" varies under different TILA provisions. For example, TILA Section 103(cc) excludes transactions secured by a consumer's interest in a timeshare transaction from the definition of "residential mortgage loan" for purposes of some, but not all, TILA provisions, and the Dodd-Frank Act provides or authorizes other specific exemptions from coverage by requirements for "residential mortgage loans." [22] Specifying which transactions are subject to and exempt from coverage by proposed § 226.43 in a scope provision thus would facilitate compliance better than using the defined term "residential mortgage loan."

Second, the term "residential mortgage loan" could be confused with the similar term "residential mortgage transaction," which means a transaction in which a mortgage or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of the dwelling. *See* 15 U.S.C. 1602(w). The term "residential mortgage transaction," used in connection with rescission provisions under § 226.15 and 226.23, does not encompass such transactions as refinance transactions and home equity loans. Using the similar term "residential mortgage loan," which encompasses refinance transactions and home equity loans, could confuse creditors subject to proposed § 226.43.

Owner occupancy; consumer credit transaction. If a transaction is a dwelling-secured extension of consumer credit, proposed § 226.43 applies regardless of whether or not the consumer occupies the dwelling (unless an exception from coverage applies under proposed § 226.43(a)(1)-(3)). However, TILA and Regulation Z do not apply to credit extensions that are primarily for business purposes. 15 U.S.C. 1603(l); § 226.3(a)(1). Current guidance in comment 3(a)-2 clarifies the factors to be considered to determine whether a credit extension is business or consumer credit. Further, comment 3(a)-3 states that credit extended to acquire, improve, or maintain rental property that is not owner-occupied (that is, in which the owner does not expect to live for more than fourteen days during the coming year) is deemed to be for business purposes. Proposed comment 43(a)-1 clarifies that § 226.43 does not apply to an extension of credit primarily for a business, commercial, or agricultural purpose and cross-references the existing guidance on determining the primary purpose of an extension of credit in commentary on § 226.3.

Dwelling. TILA Section 129(cc) defines "residential mortgage loan" to mean a consumer credit transaction secured by a mortgage or equivalent consensual security interest "on a dwelling or on residential real property that includes a dwelling." Under TILA and Regulation Z, the term "dwelling" means a residential structure with one to four units, whether or not the structure is attached to real property, and includes a condominium or cooperative unit, mobile home, and trailer, if used as a residence. *See* 15 U.S.C. 1602(v); § 226.2(a)(19). To facilitate compliance by using consistent terminology throughout Regulation Z, the proposal uses the term "dwelling," as defined in § 226.2(a)(19), and not the phrase "residential real property that includes a dwelling." Proposed comment 43(a)-2 clarifies that, for purposes of § 226.43, the term "dwelling" includes any real property to which the residential structure is attached that also secures the covered transaction.

Renewable temporary or "bridge" loan. As discussed above, proposed § 226.43(a)(3)(ii) provides that a temporary or "bridge" loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months and a loan to finance the initial construction of a dwelling, is excluded from coverage by § 226.43(c) through (f). Proposed comment 43(a)-3 clarifies that, where a temporary or "bridge loan" is renewable, the loan term does not include any additional period of time that could result from a renewal provision. Proposed comment 43(a)-3 also provides an example where a construction loan has an initial loan term of 12 months but is renewable for another 12-month loan term. In that example, the loan is excluded from coverage by § 226.43(c) through (f), because the initial loan term is 12 months.

The Board recognizes the risk that determining coverage by ability-to-repay requirements for a renewable temporary or "bridge" loan with an initial loan term of 12 months or less based only on the initial loan term may allow circumvention of those requirements. The Board solicits comment on whether or not renewal loan terms should be considered under proposed § 226.43(a)(3)(ii). In particular, the Board requests comment on whether the proposed exclusion should be limited to certain types of temporary or "bridge" loans, such as loans to finance the initial construction of a dwelling, or should not apply for certain types of temporary or "bridge" loans, such as balloon-payment loans.

Interaction with RESPA. TILA Section 129C applies to dwelling-secured consumer credit transactions (other than those specifically excluded from coverage), even if they are not "federally related mortgage loans" subject to the Real Estate Settlement Procedures Act (RESPA). *See* 12 U.S.C. 2602(1); 24 CFR 3500.2(b), 3500.5. Consistent with TILA Section 129C, proposed § 226.43(a) applies broadly to consumer credit transactions secured by a dwelling (other than transactions excepted from coverage under § 226.43(a)(1)-(3)).

43(b) Definitions

Section § 226.43(b) provides several definitions for purposes of implementing the ability-to-repay, qualified mortgage, and prepayment penalty provisions under § 226.43(b) through (g), which implement TILA Sections 129C(a) through (c), as added by Sections 1411, 1412 and 1414 of the Dodd-Frank Act. These proposed defined terms are discussed in detail below.

43(b)(1) Covered Transaction

As discussed above in the section-by-section analysis of the scope provisions under proposed § 226.43(a), the Board proposes to apply § 226.43 to consumer credit transactions secured by a dwelling, other than (1) a HELOC; (2) a mortgage transaction secured by a consumer's interest in a timeshare plan; and (3) except for purposes of prepayment penalty requirements under proposed § 226.43(g), a reverse mortgage or a temporary or "bridge" loan with a loan term of 12 months or less. Accordingly, proposed § 226.43(b)(1) defines "covered transaction" to mean a consumer credit transaction that is secured by a dwelling, other than a transaction exempt from coverage under proposed § 226.43(a), for purposes of proposed § 226.43.

43(b)(2) Fully Amortizing Payment

TILA Section 129C(a)(3) requires, in part, that the creditor determine the consumer's ability to repay a loan "using a payment schedule that fully amortizes

[22] *See, e.g.,* TILA Section 129C(a)(8) (providing an exemption from repayment ability requirements for reverse mortgages and temporary or "bridge" loans with a term of 12 months or less); TILA Section 129D(d), (e) (authorizing an exemption from escrow requirements for certain creditors operating predominantly in rural or underserved areas and providing an exemption from escrow requirements for transactions secured by shares in a cooperative).

the loan over the term of the loan." TILA Section 129C(a)(6)(D) provides that for purposes of making the repayment ability determination required under TILA Section 129C(a), the creditor must calculate the payment on the mortgage obligation assuming the loan is repaid in "monthly amortizing payments for principal and interest over the entire term of the loan." The Board proposes to use the term "fully amortizing payment" to refer to periodic amortizing payments for principal and interest over the entire term of the loan, for simplicity.

Accordingly, consistent with statutory language, and with minor modifications for clarity, proposed § 226.43(b)(2) would define "fully amortizing payment" to mean a periodic payment of principal and interest that will fully repay the loan amount (as defined in proposed § 226.43(b)(5)) over the loan term (as defined in proposed § 226.43(b)(6)). This term appears primarily in proposed § 226.43(c)(5) and (d)(5), which provides, respectively, that (1) the creditor determine the consumer's ability to repay the covered transaction using the fully indexed rate or introductory rate, whichever is greater, and monthly, fully amortizing payments that are substantially equal; and (2) the creditor can refinance the consumer from a non-standard to standard mortgage if, among other things, the calculation of the payments for the non-standard and standard mortgage are based on monthly, fully amortizing payments that are substantially equal.

43(b)(3) Fully Indexed Rate

TILA Section 129C(a)(6)(D) requires that for purposes of making the repayment ability determination required under TILA Section 129C(a), the creditor must calculate the monthly payment on the mortgage obligation based on several assumptions, including that the monthly payment be calculated using the fully indexed rate at the time of loan closing, without considering the introductory rate. *See* TILA Section 129C(a)(6)(D)(iii). TILA Section 129C(a)(7) defines the term "fully indexed rate" as "the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates." The term "fully indexed rate" appears in proposed § 226.43(c)(5), which implements TILA Section 129C(a)(6)(iii) and provides the payment calculation rules for covered transactions. The term also appears in § 226.43(d)(5), which provides special rules for creditors that refinance a consumer from a non-standard mortgage to a standard mortgage. These proposed provisions are discussed below.

The Board proposes § 226.43(b)(3) to define the term "fully indexed rate" as "the interest rate calculated using the index or formula at the time of consummation and the maximum margin that can apply at any time during the loan term." This proposed definition is consistent with the statutory language of TILA Sections 129C(a)(6)(D)(iii) and 129C(a)(7), but revises certain statutory text to provide clarity.[23] First, for consistency with current Regulation Z and to facilitate compliance, the Board proposes to replace the phrases "at the time of the loan closing" in TILA Section 129C(a)(6)(D)(iii) and "at the time the loan is made" in TILA Section 129C(a)(7) with the phrase "at the time of consummation" for purposes of identifying the fully indexed rate. The Board interprets these statutory phrases to have the same meaning as the phrase "at the time of consummation." *See* current § 226.2(a)(7), defining the term "consummation" for purposes of Regulation Z requirements as "the time that a consumer becomes contractually obligated on a credit transaction."

Second, the Board interprets the reference to the margin that will apply "after the expiration of any introductory interest rates" as a reference to the maximum margin that can apply "at any time during the loan term," for simplicity and consistency with TILA Section 103(a), discussed above. Referencing the entire loan term as the relevant period of time during which the creditor must identify the maximum margin that can occur under the loan makes the phrase "after the expiration of any introductory interest rates" unnecessary.

Third, the Board clarifies that the creditor should use the "maximum" margin that can apply when determining the fully indexed rate. Accordingly, the creditor would be required to take into account the largest margin that could apply under the terms of the legal obligation. The approach of using the maximum margin that can apply at any time during the loan term is consistent with the statutory language contained in TILA Section 103(aa), as amended by Section 1431 of the Dodd-Frank Act, which defines a high-cost mortgage. This statutory provision provides that, for purposes of the definition of a "high-cost mortgage," for a mortgage with an interest rate that varies solely in accordance with an index, the annual percentage rate must be based on "the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the *maximum margin* permitted at any time during the loan agreement." Furthermore, although the Board is not aware of any loan products used today that possess more than one margin that may apply over the loan term, the Board proposes this clarification to address the possibility that creditors may create products that permit different margins to take effect at different points throughout the loan term. The Board solicits comment on this approach.

The proposed definition of "fully indexed rate" is also generally consistent with the definition of fully-indexed rate, as used in the MDIA Interim Final Rule,[24] and with the Federal banking agencies' use of the term "fully indexed rate" in the 2006 Nontraditional Mortgage Guidance and 2007 Subprime Mortgage Statement.

Proposed comment 43(b)(3)–1 notes that in some adjustable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. This comment would explain that, typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula at consummation (*i.e.,* a "discounted rate"); in some cases, this initial rate may be higher (*i.e.,* a "premium rate"). The comment would clarify that when determining the fully indexed rate where the initial interest rate is not determined using the index or formula for subsequent interest rate adjustments, the creditor must use the interest rate that would have applied had the creditor used such index or formula plus margin at the time of consummation. This comment would further clarify that this means, in determining the fully indexed rate, the creditor must *not* take into account any discounted or premium rate.

Proposed comment 43(b)(3)–1 provides an illustration of this principle. This comment first assumes an adjustable-rate transaction where the initial interest rate is not based on an index or formula, and is set at 5% for the first five years. The loan agreement provides that future interest rate

[23] *See* current 12 CFR § 226.17(c)(1) and comment 17(c)(1)–10, and 12 CFR § 226.18(s)(7)(vi), which identify the index in effect at consummation as the index value to be used in determining the fully indexed rate.

[24] *See* the 2010 MDIA Interim Final Rule, 75 FR 58470, 58484, Sept. 24, 2010, which defines fully indexed rate as "the interest rate calculated using the index value and margin"; *see also* 75 FR 81836, Dec. 29, 2010 (revising the MDIA Interim Final Rule.

adjustments will be calculated based on the London Interbank Offered Rate (LIBOR) plus a 3% margin. This comment explains that if the value of the LIBOR at consummation is 5%, the interest rate that would have been applied at consummation had the creditor based the initial rate on this index is 8% (5% plus 3% margin), and therefore, the fully indexed rate is 8%. To facilitate compliance, this comment would direct creditors to commentary that addresses payment calculations based on the greater of the fully indexed rate or "premium rate" for purposes of the repayment ability determination under § 226.43(c). *See* § 226.43(c)(5)(i) and comment 43(c)(5)(i)–2.

This proposed comment differs from guidance in current comment 17(c)(1)–10.i, which provides that in cases where the initial interest rate is not calculated using the index or formula for later rate adjustments, the creditor should disclose a composite annual percentage rate that reflects both the initial rate and the fully indexed rate. The Board believes the different approach taken in proposed comment 43(b)(3)–1 is required by the statutory language which specifies that, for purposes of determining the consumer's repayment ability, the fully indexed rate must be determined "without considering the introductory rate," and is the rate "that will apply after the expiration of any introductory interest rates." *See* TILA Sections 129C(a)(6)(D)(iii) and (7). Furthermore, the Board believes this approach is appropriate in the present case where the purpose of the statute is to determine whether the consumer can repay the loan according to its terms, including any potential increases in required payments. TILA Section 129B(a)(2); 15 U.S.C 1639b(a)(2).

The Board notes that the choice of which market index to use for later interest rate adjustments has become more germane for both creditors and consumers due to recent market developments. For example, in recent years consumers of adjustable-rate mortgages that are tied to a LIBOR index have paid more than they would have had their loans been tied to the U.S. Treasury index.[25] This divergence in index values is recent, and has not occurred historically. Given the increasing relevance of market indices, the Board solicits comment on whether loan products currently exist that base the interest rate on a specific index at consummation, but then base subsequent rate adjustments on a different index, and whether further guidance addressing how to calculate the fully indexed rate for such loan products is needed.

Proposed comment 43(b)(3)–2 further clarifies if the contract provides for a delay in the implementation of changes in an index value or formula, the creditor need not use that the index or formula in effect at consummation, and provides an illustrative example. This proposed comment is consistent with current guidance in Regulation Z regarding the use of the index value at the time of consummation where the contract provides for a delay. *See* comments 17(c)(1)–10.i and 18(s)(2)(iii)(C)–1, which addresses the fully indexed rate for purposes of disclosure requirements.

Proposed comment 43(b)(3)–3 explains that the creditor must determine the fully indexed rate without taking into account any periodic interest rate adjustment cap that may limit how quickly the fully indexed rate may be reached at any time during the loan term under the terms of the legal obligation. To illustrate, assume an adjustable-rate mortgage has an initial fixed rate of 5% for the first three years of the loan, after which the rate will adjust annually to a specified index plus a margin of 3%. The loan agreement provides for a 2% annual interest rate adjustment cap, and a lifetime maximum interest rate of 10%. The index value in effect at consummation is 4.5%. The fully indexed rate is 7.5% (4.5% plus 3%), regardless of the 2% annual interest rate adjustment cap that would limit when the fully indexed rate would take effect under the terms of the legal obligation.

The Board notes that guidance contained in proposed comment 43(b)(3)–3 also differs from guidance contained in current comment 17(c)(1)–10.iii, which addresses disclosure of the annual percentage rate on the TILA. Comment 17(c)(1)–10.iii states that when disclosing the annual percentage rate, creditors should give effect to periodic interest rate adjustment caps provided under the terms of the legal obligation (*i.e.,* to take into account any caps that would prevent the initial rate at the time of first adjustment from changing to the fully-indexed rate).

The Board believes the approach in proposed comment 43(b)(3)–3 is consistent with, and required by, the statutory language that states the fully indexed rate must be determined without considering any introductory rate and by using the margin that will apply after expiration of any introductory interest rates. *See* TILA Sections 129C(a)(6)(D)(iii) and (7). In addition, the Board notes the proposed definition of fully indexed rate, and its use in the proposed payment calculation rules, is designed to assess whether the consumer has the ability to repay the loan according to its terms. TILA Section 129B(a)(2); 15 U.S.C. 1639b(a)(2). This purpose differs from the principal purpose of disclosure requirements, which is to help ensure that consumers avoid the uninformed use of credit. TILA Section 102(a); 15 U.S.C. 1601(a). The Board believes disregarding the operation of adjustment caps in determining the payment for the covered transaction helps to ensure that the consumer can reasonably repay the loan once the interest rate adjusts. Furthermore, the guidance contained in proposed comment 43(b)(3)–3 is consistent with the Federal banking agencies' use of the term fully indexed rate in the 2006 Nontraditional Mortgage Guidance and 2007 Subprime Mortgage Statement.

Proposed comment 43(b)(3)–4 clarifies that when determining the fully indexed rate, a creditor may choose, in its sole discretion, to take into account the lifetime maximum interest rate provided under the terms of the legal obligation. This comment would explain, however, that where the creditor *chooses* to use the lifetime maximum interest rate, and the loan agreement provides a range for the maximum interest rate, the creditor *must* use the highest rate in that range as the maximum interest rate. To illustrate, assume an adjustable-rate mortgage has an initial fixed rate of 5% for the first three years of the loan, after which the rate will adjust annually to a specified index plus a margin of 3%. The loan agreement provides for a 2% annual interest rate adjustment cap, and a lifetime maximum interest rate of 7%. The index value in effect at consummation is 4.5%; the fully indexed rate is 7.5% (4.5% plus 3%). The creditor can choose to use the lifetime maximum interest rate of 7%, instead of the fully indexed rate of 7.5%, for purposes of this section.

The Board notes that the statutory construct of the payment calculation rules, and the requirement to calculate payments based on the fully indexed rate, apply to all loans that are subject to the ability-to-repay provisions, including loans that do not base the interest rate on an index and therefore, do not have a fully indexed rate. Specifically, the statute states that "[f]or purposes of making *any* determination under this *subsection,* a creditor shall calculate the monthly payment amount for principal and interest on *any*

[25] *See* Mark Schweitzer and Guhan Venkatu, *Adjustable-Rate Mortgages and the LIBOR Surprise,* at *http://www.clevelandfed.org/research/commentary/2009/012109.cfm.*

residential mortgage loan by assuming" several factors, including the fully indexed rate, as defined in the statute (emphasis added). *See* TILA Section 129C(a)(6)(D). The statutory definition of "residential mortgage loan" includes loans with variable-rate features that are not based on an index or formula, such as step-rate mortgages. *See* TILA Section 103(cc); *see also* proposed § 226.43(a), addressing the proposal's scope, and proposed § 226.43(b)(1), defining "covered transaction." However, because step-rate mortgages do not have a fully indexed rate, it is unclear what interest rate the creditor must assume when calculating payment amounts for purposes of determining the consumer's ability to repay the covered transaction.

As discussed above, the Board interprets the statutory requirement to use the "margin that can apply at any time after the expiration of any introductory interest rates" to mean that the creditor must use the "maximum margin that can apply at any time during the loan term" when determining the fully indexed rate. Accordingly, consistent with this approach, Board proposes to clarify in proposed comment 43(b)(3)–5 that where the interest rate offered in the loan is not based on, and does not vary with, an index or formula (*i.e.,* there is no fully indexed rate), the creditor must use the maximum interest rate that may apply at any time during the loan term. Proposed comment 43(b)(3)–5 provides illustrative examples for a step-rate and fixed-rate mortgage. This comment, for example, would assume a step-rate mortgage with an interest rate fixed at 6.5% for the first two years of the loan, 7% for the next three years, and 7.5% thereafter for the remainder of loan term. This comment would explain that, for purposes of determining the consumer's repayment ability, the creditor must use 7.5%, which is the maximum rate that may apply during the loan term. This comment would also provide an illustrative example for a fixed-rate mortgage.

The Board believes this approach is appropriate because the purpose of TILA Section 129C is to require creditors to assess whether the consumer can repay the loan according to its terms, including any potential increases in required payments. TILA Section 129B(a)(2), 15 U.S.C. 1639b(a)(2). Requiring creditors to use the maximum interest rate helps to ensure that consumers can repay the loan, without needing to refinance, for example. However, for the reasons discussed more fully below under proposed § 226.43(c)(5)(i), which discusses the general rule for payment calculations, the Board is equally concerned that by requiring creditors to use the maximum interest rate in a step-rate mortgage, the monthly payments used to determine the consumer's repayment ability will be overstated and may inappropriately restrict credit availability. For these reasons, the Board is soliciting comment on this approach, and whether the Board should exercise its authority under TILA Sections 105(a) and 129B(e) to provide an exception for step-rate mortgages. For example, should the Board require creditors to use the maximum interest rate that occurs in the first 5 or 10 years, or some other appropriate time horizon?

43(b)(4) Higher-Priced Covered Transaction

Proposed § 226.43(b)(4) defines "higher-priced covered transaction" to mean a covered transaction with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, or by 3.5 or more percentage points for a subordinate-lien covered transaction. The proposed definition of "higher-priced covered transaction" replicates the statutory language used in TILA Section 129C(a)(6)(D)(ii)(*I*) and (*II*), which grants the Board the authority to implement special payment calculation rules for a balloon loan that "has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction" by certain rate spreads. These rules appear in proposed § 226.43(c)(5)(ii)(A), and are discussed below.

The proposed definition of "higher-priced covered transaction" uses the term "average prime offer rate." To facilitate compliance and maintain consistency, the term "average prime offer rate" has the same meaning as in the Board's proposed § 226.45(a)(2)(ii). Proposed § 226.45(a)(2)(ii) defines "average prime offer rate" for purposes of determining the applicability of escrow requirements to "higher-priced mortgage loans" (as defined in proposed § 226.45(a)(1)), and states that the "average prime offer rate" means "an annual percentage rate that is derived from average interest rate, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Board publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Board uses to derive these rates." *See* 2011 Escrow Proposal, 76 FR 11598, Mar. 2, 2011, which implements new TILA Section 129D for escrow requirements. As discussed in the Board's 2011 Escrow Proposal, the proposed definition of "average prime offer rate" is identical to the definition of "average prime offer rate" in current § 226.35(a)(2), which the Board is proposing to remove, and consistent with the provisions of the Dodd-Frank Act, which generally codify the regulation's current definition of "average prime offer rate." *See* TILA Sections 129C(b)(2)(B) and 129D(b)(3).

However, the proposed definition of "higher-priced covered transaction" differs from the proposed definition of "higher-priced mortgage loan" included in the Board's 2011 Escrow Proposal in three respects: (1) To reflect statutory text, the proposed definition of "higher-priced covered transaction" would provide that the annual percentage rate, rather than the "transaction coverage rate," is the loan pricing metric to be used to determine whether a transaction is a higher-priced covered transaction; (2) consistent with the scope of the ability-to-repay provisions, "higher-priced covered transaction" would cover consumer credit transactions secured by a dwelling, and would not be limited to transactions secured by the consumer's principal dwelling; and (3) consistent with the statutory authority, the applicable thresholds in "higher-priced covered transaction" would not reflect the special, separate coverage threshold of 2.5 percentage points above the average prime offer rate for "jumbo" loans,[26] as provided for by the Board's 2011 Escrow Proposal and 2011 Jumbo Loan Escrow Final Rule. *See* 76 FR 11598, 11608–09, Mar. 2, 2011; 76 FR 11319, Mar. 2, 2011.[27] As a result of these differences, proposed commentary to "average prime offer rate" that clarifies the meaning of "comparable transaction" and "rate set" for purposes of higher-priced mortgage loans uses the

[26] A "jumbo" loan includes a loan whose original principal balance exceeds the current maximum loan balance for loans eligible for sale to Freddie Mac as of the date the transaction's rate is set. *See* TILA Section 129D(b)(3)(B), as enacted by Section 1461 of the Dodd-Frank Act; *see also* Board's March 2011 Jumbo Loan Escrow Final Rule, 76 FR 11319, 11324 (Mar. 2, 2011), which establishes the "jumbo" threshold in existing § 226.35(a)(1)(v).

[27] The Board's Jumbo Loan Escrow Final Rule added new § 226.35(a)(1)(v) to provide a separate, higher rate threshold for determining when the Board's escrow requirement applies to higher-priced mortgage loans that are "jumbo loans." The Board incorporated the identical provision regarding the "jumbo" threshold in its 2011 Escrow Proposal for the reasons stated therein, and in anticipation of the Board proposing to remove § 226.35 in its entirety, as discussed above. *See* proposed § 226.45(a)(1).

terms "transaction coverage rate," and refers to the consumer's principal dwelling. *See* proposed comments 45(a)(2)(ii)–2 and –3.[28]

To reduce the risk of confusion that may occur by cross-referencing to proposed commentary in the Board's 2011 Escrow Proposal that uses different terminology, the Board proposes commentary to proposed § 226.43(b)(4) to clarify the meaning of the terms "average prime offer rate," "comparable transaction" and "rate set," as those terms are used in the proposed definition of "higher-priced covered transaction."

Proposed comment 43(b)(4)–1 explains that the term "average prime offer rate" generally has the same meaning as in proposed § 226.45(a)(2)(ii), and would cross-reference proposed comments 45(a)(2)(ii)–1,–4, and –5, for further guidance on how to determine the average prime offer rate and for further explanation of the Board table. Proposed comment 43(b)(4)–2 states that the table of average prime offer rates published by the Board indicates how to identify the comparable transaction for a higher-priced covered transaction, as defined. Proposed comment 43(b)(4)–3 clarifies that a transaction's annual percentage rate is compared to the average prime offer rate as of the date the transaction's interest rate is set (or "locked") before consummation. This proposed comment also explains that sometimes a creditor sets the interest rate initially and then re-sets it at a different level before consummation, and clarify that in these cases, the creditor should use the last date the interest rate is set before consummation.

As discussed above, the Board is proposing to replace the term "annual percentage rate" with the "transaction coverage rate" for reasons stated in the Board's 2011 Escrow Proposal and 2010 Closed-End Proposal. *See* the Board's 2011 Escrow Proposal at 76 FR 11598, 11609, Mar. 2, 2011 and the Board's 2010 Closed-End Mortgage Proposal at 75 FR 58539, 58660–61, Sept. 24, 2010. As discussed more fully in these proposals, the Board recognized that the use of the annual percentage rate as the coverage metric for the higher-priced mortgage loan protections posed a risk of over inclusive coverage; the protections were intended to be limited to the subprime market. Specifically, the Board recognized that the term annual percentage rate would include a broader set of charges, causing the spread between the annual percentage rate and the average prime offer rate to widen.

Although the purpose differs, the Board similarly recognizes that the use of the term annual percentage rate in "higher-priced covered transaction" means that the scope of balloon loans that may exceed the applicable loan pricing thresholds will likely be greater. The Board is concerned that using an over inclusive metric to compare to the average prime offer rate may cover some prime loans and unnecessarily limit credit access to these loan products, contrary to statutory intent. For these reasons and also for consistency, the Board solicits comment on whether it should exercise its authority under Section TILA Sections 105(a) and 129B(e) to similarly replace "annual percentage rate" with "transaction coverage rate" as the loan pricing benchmark for higher-priced covered transactions. 15 U.S.C. 1604(a).

In addition, the Board notes that "jumbo" loans typically carry a premium interest rate to reflect the increased credit risk of such loans.[29] These loans are more likely to exceed the average prime offer rate coverage threshold and be considered higher-priced covered transactions under the thresholds established by TILA Section 129C(a)(6)(D)(ii). Accordingly, under this proposal creditors would have to underwrite such loans using the scheduled payments, including any balloon payment, regardless of the loan term. *See* proposed § 226.43(c)(5)(ii)(A)(*2*), discussed below. The Board is concerned that this approach may unnecessarily restrict credit access and choice in the "jumbo" balloon loan market. Thus, the Board also solicits comment on whether it should exercise its authority under TILA Sections 105(a) and 129B(e) to incorporate the special, separate coverage threshold of 2.5 percentage points in the proposed definition of "higher-priced covered transaction" to permit more "jumbo" balloon loans that have "prime" loan pricing to benefit from the special payment calculation rule set forth under proposed § 226.43(c)(5)(ii)(A)(*1*) for balloon loans. 15 U.S.C. 1604(a). *See* 76 FR 11598, 11608, Mar. 2 2011, which discusses the proposed "jumbo" threshold in relation to the proposed escrow requirements.

The Board similarly recognizes that loans secured by non-principal dwellings also generally carry a higher interest rate to reflect increased credit risk, regardless of loan size. As discussed above, the scope of this proposal extends to any dwelling-secured transaction, not just principal dwellings, and therefore second homes (*e.g.,* vacation homes) would be covered. A non-"jumbo" balloon loan for a vacation home, for example, would be subject to the same rate threshold that would apply to a non-"jumbo" loan secured by a principal dwelling. As a result, balloon loans secured by non-principal dwellings would be more likely to exceed the applicable rate threshold and be subject to the more stringent underwriting requirements discussed above. The Board is concerned that this approach may inappropriately restrict credit access in this market. Accordingly, the Board solicits comment, and supporting data, on whether it should exercise its authority under TILA Sections 105(a) and 129B(e) to incorporate a special, separate coverage threshold in the proposed definition of "higher-priced covered transaction" for loans secured by non-principal dwellings, and what rate threshold would be appropriate for such loans.

43(b)(5) Loan Amount

TILA Section 129C(a)(6)(D) requires that when the creditor makes the repayment ability determination under TILA Section 129C(a), it must calculate the monthly payment on the mortgage obligation based on several assumptions, including calculating the monthly payment assuming that "the loan proceeds are fully disbursed on the date of consummation of the loan." *See* TILA Section 129C(a)(6)(D)(i). This proposal replaces the phrase "loan proceeds are fully disbursed on the date of consummation of the loan" with the term "loan amount" for simplicity, and also to provide clarity.

Proposed § 226.43(b)(5) defines "loan amount" to mean the principal amount the consumer will borrow as reflected in the promissory note or loan contract. The Board believes that the loan contract or promissory note would accurately reflect all loan proceeds to be disbursed under the loan agreement to the consumer, including any proceeds the consumer uses to cover costs of the transaction. In addition, the term "loan amount" is generally used by industry and consumers to refer to the amount the consumer borrows and is obligated to repay under the loan agreement. The proposed term "loan amount" is consistent with the Board's 2009 Closed-End Mortgage Proposal, which proposed to define the term "loan amount" for purposes of disclosure. *See* 74 FR 43232, 43333, Aug. 26, 2009.

[28] 2011 Escrow Proposal, 76 FR 11598, 11626–11627, Mar. 2, 2011.

[29] *See, e.g.,* Shane M. Sherland, "The Jumbo-Conforming Spread: A Semiparametric Approach," Finance and Economics Discussion Series, Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board (2008–01).

The statute further requires that creditors assume that the loan amount is "fully disbursed on the date of consummation of the loan." *See* TILA Section 129C(a)(6)(D)(i). The Board recognizes that some loans do not disburse the entire loan amount to the consumer at consummation, but may, for example, provide for multiple disbursements up to an amount stated in the loan agreement. *See* current § 226.17(c)(6), discussing multiple-advance loans and comment 17(c)(6)–2 and –3, discussing construction-to-permanent financing loans. In these cases, the loan amount, as reflected in the promissory note or loan contract, does not accurately reflect the amount disbursed at consummation. Thus, to reflect the statutory requirement that the creditor assume the loan amount is fully disbursed at consummation, the Board would clarify that creditors must use the entire loan amount as reflected in the loan contract or promissory note, even where the loan amount is not fully disbursed at consummation. *See* proposed comment 43(b)(5)–1. This comment would provide an illustrative example. The example assumes the consumer enters into a loan agreement where the consumer is obligated to repay the creditor $200,000 over 15 years, but only $100,000 is disbursed at consummation and the remaining $100,000 will be disbursed during the year following consummation ($25,000 each quarter). This comment would explain that the creditor must use the loan amount of $200,000 even though the loan agreement provides that only $100,000 will be disbursed to the consumer at consummation. This comment would state that generally, creditors should rely on § 226.17(c)(6) and associated commentary regarding treatment of multiple-advance and construction loans that would be covered by this proposal (*i.e.,* loans with a term greater than 12 months). *See* proposed § 226.43(a)(3) discussing scope of coverage and term length. The Board solicits comment on whether further guidance regarding treatment of loans that provide for multiple disbursements, such as construction-to-permanent loans that are treated as as a single transaction, is needed.

The term "loan amount" appears in proposed § 226.43(b)(2), which defines "fully amortizing payment," and in proposed § 226.43(c)(5)(ii)(B), which implements the requirement under TILA Section 129C(a)(6)(D)(i) that the creditor assume that "the loan proceeds are fully disbursed on the date of consummation of the loan" when determining the consumer's ability to repay a loan. In addition, the term "loan amount" appears in proposed § 226.43(d)(5)(i)(C)(*2*) which implements TILA Section 129C(a)(6)(E) and provides the payment calculation for a non-standard mortgage with interest-only payments. The term "loan amount" also appears in proposed § 226.43(e)(2)(iv), which implements the requirement under TILA Sections 129C(b)(iv) and (v) that the creditor underwrite the loan using a periodic payment of principal and interest that will repay the loan to meet the definition of a qualified mortgage.

43(b)(6) Loan Term

TILA Section 129C(a)(3) requires that a creditor determine a consumer's repayment ability on a loan "using a payment schedule that fully amortizes the loan over the term of the loan." TILA Section 129C(a)(6)(D)(ii) also requires that for purposes of making the repayment ability determination under TILA Section 129C(a), the creditor calculate the monthly payment on the mortgage obligation assuming that the loan is repaid "over the entire term of the loan with no balloon payment." In addition, TILA Section 129C(b)(2)(A)(iv) and (v) require that a creditor underwrite the loan using "a payment schedule that fully amortizes the loan over the loan term" to meet the definition of a qualified mortgage. The Dodd-Frank Act does not define the term "loan term."

This proposal refers to the term of the loan as the "loan term," as defined, for simplicity. Proposed § 226.43(b)(6) provides that the "loan term" means the period of time to repay the obligation in full. This proposed definition is consistent with the proposed definition of "loan term" for disclosure purposes in the Board's 2009 Closed-End Mortgage Proposal. *See* 74 FR 43232, 43333, Aug. 26, 2009. This term primarily appears in proposed § 226.43(c)(5)(i), which implements TILA Section 129(a)(6)(D)(ii) and requires creditors to determine a consumer's ability to repay the loan based on fully amortizing payments. *See* proposed § 226.43(b)(2), which defines "fully amortizing payments" as periodic payments that will fully repay the loan amount over the loan term. "Loan term" also is used in proposed § 226.43(e)(2)(iv), which implements TILA Section 129C(b)(2)(iv) and (v) and requires creditors to underwrite the loan using the periodic payment of principal and interest that will repay the loan over the loan term to meet the definition of a qualified mortgage.

Proposed comment 43(b)(6)–1 clarifies that the loan term is the period of time it takes to repay the loan amount in full. For example, a loan with an initial discounted rate that is fixed for the first two years, and that adjusts periodically for the next 28 years has a loan term of 30 years, which is the amortization period on which the periodic amortizing payments are based.

43(b)(7) Maximum Loan Amount

Proposed § 226.43(b)(7) defines "maximum loan amount" to mean the loan amount plus any increase in principal balance that results from negative amortization (defined in current § 226.18(s)(7)(v)), based on the terms of the legal obligation assuming that: (1) The consumer makes only the minimum periodic payments for the maximum possible time, until the consumer must begin making fully amortizing payments; and (2) the maximum interest rate is reached at the earliest possible time. The term "maximum loan amount" implements, in part, TILA Section 129(a)(6)(C), which states that when making the payment calculation for loans with negative amortization, "a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision."

Loans with negative amortization typically permit consumers to make payments that cover only part of the interest accrued each month, and none of the principal. The unpaid but accrued interest is added to the principal balance, causing negative equity (*i.e.,* negative amortization). This accrued but unpaid interest can be significant if the loan terms do not provide for any periodic interest rate adjustment caps, thereby permitting the accrual interest rate to quickly escalate to the lifetime maximum interest rate. As a result of these loan features, consumers of loans with negative amortization are more likely to encounter payment shock once fully amortizing payments are required. For these reasons, the Board believes it is appropriate to interpret the phrase "*any* balance increase that may accrue" as requiring the creditor to account for the greatest potential increase in the principal balance that could occur under in a loan with negative amortization. *See* TILA Section 129(a)(6)(C). The Board also believes this interpretation is consistent with the overall statutory construct that requires creditors to determine whether the consumer is able to manage payments that may be required at any time during the loan term, especially where payments can escalate significantly in amount. The proposed definition of "maximum loan amount" is also consistent with the approach in the

MDIA Interim Final Rule,[30] which addresses disclosure requirements for negative amortization loans, and the 2006 Nontraditional Mortgage Guidance, which provides guidance to creditors regarding underwriting negative amortization loans.[31]

The term "maximum loan amount" is used in proposed § 226.43(c)(5)(ii)(C), which implements the statutory requirements under new TILA Section 129C(a)(6)(C) and (D) regarding payment calculations for negative amortization loans. *See* proposed § 226.43(c)(5)(ii)(C), which discusses more fully the scope of loans covered by the term "negative amortization loan," as defined in current § 226.18(s)(7)(v). The term also appears in proposed § 226.43(d), which addresses the exception to the repayment ability provision for the refinancing of a non-standard mortgage.

Proposed comment 43(b)(7)–1 clarifies that in determining the maximum loan amount, the creditor must assume that the consumer makes the minimum periodic payment permitted under the loan agreement for as long as possible, until the consumer must begin making fully amortizing payments, and that the interest rate rises as quickly as possible after consummation under the terms of the legal obligation. The proposed comment further clarifies that creditors must assume the consumer makes the minimum periodic payment until any negative amortization cap is reached or until the period permitting minimum periodic payments expires, whichever occurs first. This comment would cross-reference proposed § 226.43(b)(5) and § 226.18(s)(7)(v) for the meaning of the terms "loan amount" and "negative amortization loan," respectively.

Proposed comment 43(b)(7)–2 provides further guidance to creditors regarding the assumed interest rate to use when determining the maximum loan amount. This comment would explain that when calculating the maximum loan amount for an adjustable-rate mortgage that is a negative amortization loan, the creditor must assume that the interest rate will increase as rapidly as possible after consummation, taking into account any periodic interest rate adjustment caps provided in the loan agreement. This comment would further explain that for an adjustable-rate mortgage with a lifetime maximum interest rate but no periodic interest rate adjustment cap, the creditor must assume the interest rate increases to the maximum lifetime interest rate at the first adjustment.

Proposed comment 43(b)(7)–3 provides examples illustrating the application of the proposed definition of "maximum loan amount" for a negative amortization loan that is an adjustable-rate mortgage and for a fixed-rate, graduated payment mortgage. For example, proposed comment 43(b)(7)–3.i assumes an adjustable-rate mortgage in the amount of $200,000 with a 30-year loan term. The loan agreement provides that the consumer can make minimum monthly payments that cover only part of the interest accrued each month until the principal balance reaches 115% of its original balance (*i.e.,* a negative amortization cap of 115%) or for the first five years of the loan (60 monthly payments), whichever occurs first. The introductory interest rate at consummation is 1.5%. One month after consummation, the interest rate adjusts and will adjust monthly thereafter based on the specified index plus a margin of 3.5%. The maximum lifetime interest rate is 10.5%; there are no other periodic interest rate adjustment caps that limit how quickly the maximum lifetime rate may be reached. The minimum monthly payment for the first year is based on the initial interest rate of 1.5%. After that, the minimum monthly payment adjusts annually, but may increase by no more than 7.5% over the previous year's payment. The minimum monthly payment is $690 in the first year, $740 in the second year, and $798 in the first part of the third year. *See* proposed comment 43(b)(7)–3.i(*A*).

This comment then states that to determine the maximum loan amount, creditors should assume that the interest rate increases to the maximum lifetime interest rate of 10.5% at the first adjustment (*i.e.,* the second month) and accrues at that rate until the loan is recast. This proposed comment further assumes the consumer makes the minimum monthly payments as scheduled, which are capped at 7.5% from year-to-year. This comment would explain that as a result, the consumer's minimum monthly payments are less than the interest accrued each month, resulting in negative amortization (*i.e.,* the accrued but unpaid interest is added to the principal balance).

This comment concludes that on the basis of these assumptions (that the consumer makes the minimum monthly payments for as long as possible and that the maximum interest rate of 10.5% is reached at the first rate adjustment (*i.e.,* the second month)), the negative amortization cap of 115% is reached on the due date of the 27th monthly payment and the loan is recast. The maximum loan amount as of the due date of the 27th monthly payment is $229,243. *See* proposed comment 43(b)(7)–3.i(*B*).

43(b)(8) Mortgage-Related Obligations

The Board proposes to use the term "mortgage-related obligations" to refer to "all applicable taxes, insurance (including mortgage guarantee insurance), and assessments" for purposes of TILA Sections 129C(a)(1) through (3) and (b)(2)(A)(iv) and (v). TILA Sections 129C(a)(1) and (2) require that a creditor determine a consumer's ability to repay the loan "according to [the loan's] terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments." TILA Section 129C(a)(3) further states that the creditor must consider the consumer's debt-to-income ratio after allowing for "non-mortgage debt and mortgage-related obligations." In addition, TILA Sections 129C(b)(2)(A)(iv) and (v) provide that to meet the qualified mortgage standard, the creditor must underwrite the loan "tak[ing] into account all applicable taxes, insurance, and assessments[.]" The Dodd-Frank Act does not define the term "mortgage-related obligations." However, these statutory requirements are substantially similar to current § 226.34(a)(4) of the Board's 2008 HOEPA Final Rule, which requires the creditor to consider mortgage-related obligations when determining the consumer's repayment ability on a loan. Current § 226.34(a)(4)(i) defines "mortgage-related obligations" as expected property taxes, premiums for mortgage-related insurance required by the creditor as set forth in current § 226.35(b)(3)(i), and similar expenses, such as homeowners' association dues and condominium or cooperative fees. *See* comment 34(a)(4)(i)–1.

Proposed § 226.43(b)(8) defines the term "mortgage-related obligations" to mean property taxes; mortgage-related insurance premiums required by the creditor as set forth in proposed § 226.45(b)(1); homeowner's association, condominium, and cooperative fees; ground rent or leasehold payments; and special assessments. Proposed § 226.43(b)(8) is consistent with TILA Sections 129C(a)(1)–(3) and 129C(b)(2)(A)(iv) and (v), with modifications to the statutory language to provide greater clarity to creditors regarding what items are included in the phrase "taxes, insurance (including mortgage guarantee insurance), and assessments." Based on outreach, the Board believes greater specificity in

[30] *See* 12 CFR 226.18(s)(2)(ii) and comment 18(s)(2)(ii)–2, which discusses assumptions made for the interest rates in adjustable-rate mortgages that are negative amortization loans.

[31] *See* 2006 Nontraditional Mortgage Guidance at 58614, n.7.

defining the term "mortgage-related obligations" would address concerns that some creditors may have difficulty determining which items should be included as mortgage-related obligations when determining the total monthly debt a consumer will owe in connection with a loan. The proposed term would also track the current meaning of the term mortgage-related obligations in current § 226.34(a)(4)(i) and comment 34(a)(4)(i)–1, which the Board is proposing to remove, with several clarifications.

The Board proposes to define the term "mortgage-related obligations" with three clarifications. First, consistent with current underwriting practices, the proposed definition of "mortgage-related obligations" would include reference to ground rent or leasehold payments, which are payments made to the land owner or leaseholder for use of the land. Second, the proposed term would include reference to "special assessments." Proposed comment 43(b)(8)–1 clarifies that special assessments include, for example, assessments that are imposed on the consumer at or before consummation, such as a one-time homeowners' association fee that will not be paid by the consumer in full at or before consummation. Third, the term "mortgage-related obligations" would reference proposed § 226.45(b)(1) to include mortgage-related insurance premiums required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. Proposed § 226.45(b)(1) parallels current § 226.35(b)(3)(i), which the Board is proposing to remove. *See* 76 FR 11598, 11610, Mar. 2, 2011 for discussion of proposed § 226.45(b)(1). The Board solicits comment on how to address any issues that may arise in connection with homeowners' association transfer fees and costs associated with loans for energy-efficient improvement.

Proposed comment 43(b)(8)–1 further clarifies that mortgage-related obligations include expected property taxes and premiums for mortgage-related insurance required by the creditor as set forth in § 226.45(b)(1), such as insurance against loss of or damage to property or against liability arising out of the ownership or use of the property, and insurance protecting the creditor against the consumer's default or other credit loss. This comment would explain that the creditor need not include premiums for mortgage-related insurance that it does not require, such as earthquake insurance or credit insurance, or fees for optional debt suspension and debt cancellation agreements. To facilitate compliance, this comment would refer to commentary associated with proposed § 226.43(c)(2)(v), which discusses the requirement to take into account any mortgage-related obligations for purposes of the repayment ability determination required under proposed § 226.43(b)(2).

The term "mortgage-related obligations" appears in proposed § 226.43(c)(2)(v), which implements new TILA Sections 129C(a)(1) through (3) and requires that the creditor determine a consumer's ability to repay a covered transaction, taking into account mortgage-related obligations. The term also appears in proposed § 226.43(e)(2)(iv), which implements new TILA Section 129C(b)(2)(A)(iv) and (v) and requires that the creditor underwrite a loan taking into account mortgage-related obligations to meet the qualified mortgage definition. Proposed § 226.43(c) and (e) are discussed in further detail below.

43(b)(9) Points and Fees

For ease of reference, proposed § 226.43(b)(9) states that the term "points and fees" has the same meaning as in § 226.32(b)(1).

43(b)(10) Prepayment Penalty

TILA Section 129C(c), as added by Section 1414 of the Dodd-Frank Act, limits the transactions that may include a "prepayment penalty," the period during which a prepayment penalty may be imposed, and the maximum amount of a prepayment penalty. TILA Section 129C(c) also requires creditors to offer a consumer a covered transaction without a prepayment penalty if they offer the consumer a covered transaction with a prepayment penalty. Qualified mortgages are subject to additional limitations on prepayment penalties, pursuant to points and fees limitations under Section 1412 of the Act. TILA Section 129C(b)(2)(A)(viii) limits the points and fees that may be charged for a qualified mortgage to three percent of the total loan amount. TILA Section 103(aa)(4)(E) and (F), as added by Section 1431(c) of the Dodd-Frank Act, define "points and fees" to include (1) the maximum prepayment fees and penalties that may be charged under the terms of the covered transaction; and (2) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor.

TILA establishes certain disclosure requirements for transactions for which a penalty is imposed upon prepayment but does not define the term "prepayment penalty." TILA Section 128(a)(11) requires that the transaction-specific disclosures for closed-end consumer credit transactions disclose a "penalty" imposed upon prepayment in full of a closed-end transaction, without using the term "prepayment penalty." 15 U.S.C. 1638(a)(11).[32] Current commentary on § 226.18(k)(1), which implements TILA Section 128(a)(11), clarifies that a "penalty" imposed upon prepayment in full is a charge assessed solely because of the prepayment of an obligation and includes, for example, "interest" charges for any period after prepayment in full is made and a minimum finance charge.[33] *See* comment 18(k)–1. The Board's 2009 Closed-End Mortgage Proposal clarifies that prepayment penalties include origination or other charges that a creditor waives unless the consumer prepays, but do not include fees imposed for preparing a payoff statement, among other clarifications. *See* 74 FR 43232, 43413, Aug. 29, 2009. Also, the Board's 2010 Mortgage Proposal clarifies that prepayment penalties include "interest" charges after prepayment in full even if the charge results from the interest accrual amortization method used on the transaction. *See* 75 FR 58539, 58756, Sept. 24, 2010.

Proposed § 226.43(b)(10) defines "prepayment penalty" as a charge imposed for paying all or part of a covered transaction's principal before the date on which the principal is due. Also, proposed § 226.43(b)(10)(i) provides the following examples of "prepayment penalties" for purposes of § 226.43: (1) A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such "balance," even if the charge results from the interest accrual amortization method used for other payments in the transaction; and (2) a fee, such as a loan closing cost, that is

[32] Also, TILA Section 128(a)(12) requires that the transaction-specific disclosures state that the consumer should refer to the appropriate contract document for information regarding certain loan terms or features, including "prepayment * * * penalties." 15 U.S.C. 1638(a)(12). In addition, TILA Section 129(c) limits the circumstances in which a high-cost mortgage may include a "prepayment penalty." 15 U.S.C. 1639(c).

[33] Prepayment penalty disclosure requirements under § 226.18(k) apply to closed-end mortgage and non-mortgage transactions. In the 2009 Closed-End Mortgage Proposal, the Board proposed to establish a new § 226.38(a)(5) for disclosure of prepayment penalties specifically for closed-end mortgage transactions.

waived unless the consumer prepays the covered transaction. Proposed comment 43(b)(10)(A)–1 clarifies that "interest accrual amortization" refers to the method used to determine the amount of interest due for each period (for example, a month) in a transaction's term. The proposed comment also provides an example where a prepayment penalty of $1,000 is imposed because a full month's interest of $3,000 is charged even though only $2,000 in interest was earned in the month during which the consumer prepaid. Proposed § 226.43(b)(10)(ii) provides that a prepayment penalty does not include fees imposed for preparing and providing documents when a loan is paid in full, whether or not the loan is prepaid, such as a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan.

Proposed § 226.43(b)(10) uses language substantially similar to the language used in TILA Section 129C(c), but proposed § 226.43(b)(10) refers to charges for payment "before the date on which the principal is due" rather than "after the loan is consummated," for clarity. Proposed § 226.43(b)(10)(i) and (ii) are substantially similar to the current guidance on prepayment penalties in comment 18(k)–1 and in proposed § 226.38(a)(5) under the Board's 2009 Closed-End Mortgage Proposal and 2010 Mortgage Proposal, discussed above. However, proposed § 226.43(b)(10) omits commentary providing: (1) Examples of prepayment penalties include a minimum finance charge because such charges typically are imposed with open-end, rather than closed-end, transactions; and (2) examples of prepayment penalties do not include loan guarantee fees because loan guarantee fees are not charges imposed for paying all or part of a loan's principal before the date on which the principal is due. *See* comment 18(k)(1)–1. The term "prepayment penalty" appears in the "points and fees" definition in proposed § 226.32(b)(1)(v) and (vi) and in the requirements for prepayment penalties in § 226.43(g).

The Board recognizes that the effect of including particular types of charges in the proposed definition of a "prepayment penalty" is to apply the limitations on prepayment penalties under TILA Section 129C(c) to those types of charges, which in turn could limit the availability of credit. In particular, if "prepayment penalty" is defined to include a provision that requires the consumer to pay "interest" for a period after prepayment in full, or a provision that waives fees unless the consumer prepays, pursuant to TILA Section 129C(c) a covered transaction may not include such provisions unless the transaction: (1) Has an APR that cannot increase, (2) is a qualified mortgage, and (3) is not a higher-priced mortgage loan, as discussed in detail in the section-by-section analysis of proposed § 226.43(g). Also, the amount of the "interest" charged after prepayment, or the amount of fees waived unless the consumer prepays, would be limited. Finally, the creditor would have to offer an alternative covered transaction for which "interest" will not be charged after prepayment or for which fees are waived even if the consumer prepays (although under the Board's proposal the alternative covered transaction could have a different interest rate). Thus, the Board solicits comment on whether or not it is appropriate to include "interest" charged for a period after prepayment, or fees waived unless the consumer prepays, in the definition of "prepayment penalty" under proposed § 226.43(b)(10). Specifically, the Board requests comment on the possible effects of including those charges on the availability of particular types of covered transactions.

43(b)(11) Recast

Proposed § 226.43(b)(11) defines the term "recast," which is used in two paragraphs of proposed § 226.43: (1) Proposed § 226.43(c)(5)(ii) regarding certain required payment calculations that creditors must consider in determining a consumer's ability to repay a covered transaction; and (2) proposed § 226.43(d) regarding payment calculations required for refinancings that are exempt from the ability-to-repay requirements in § 226.43(c).

Specifically, § 226.43(b)(11) defines the term "recast" as follows: (1) For an adjustable-rate mortgage, as defined in § 226.18(s)(7)(i),[34] the expiration of the period during which payments based on the introductory interest rate are permitted under the terms of the legal obligation; (2) for an interest-only loan, as defined in § 226.18(s)(7)(iv),[35] the expiration of the period during which interest-only payments are permitted under the terms of the legal obligation; and (3) for a negative amortization loan, as defined in § 226.18(s)(7)(v),[36] the expiration of the period during which negatively amortizing payments are permitted under the terms of the legal obligation.

Proposed comment 43(b)(11)–1 explains that the date on which the "recast" occurs is the due date of the last monthly payment based on the introductory fixed rate, the interest-only payment, or the negatively amortizing payment, as applicable. Proposed comment 43(b)(11)–1 also provides an illustration of this rule for a loan in an amount of $200,000 with a 30-year loan term, where the loan agreement provides for a fixed interest rate and permits interest-only payments for the first five years of the loan (60 months). Under proposed § 226.43(b)(11), the loan is "recast" on the due date of the 60th monthly payment. Thus, the term of the loan remaining as of the date the loan is recast is 25 years (300 months).

The statute uses the term "reset" to suggest the time at which the terms of a mortgage loan are adjusted, resulting in higher required payments. For example, TILA Section 129C(a)(6)(E)(ii) states that a creditor that refinances a loan may, under certain conditions, "consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice." 15 U.S.C. 1639c(a)(6)(E)(ii). The legislative history further indicates that, for adjustable-rate mortgages with low, fixed introductory rates, Congress understood the term "reset" to mean the time at which the low teaser rates converted to fully indexed rates, resulting in "significantly higher monthly payments for homeowners."[37]

Outreach participants indicated that the term "recast" is typically used to reference the time at which fully amortizing payments are required for interest-only and negative amortization loans and that the term "reset" is more frequently used to indicate the time at which adjustable-rate mortgages with an introductory fixed rate convert to a variable rate. For simplicity and clarity, however, the Board proposes to use the term "recast" to cover the conversion to less favorable terms and higher

[34] "The term 'adjustable-rate mortgage' means a transaction secured by real property or a dwelling for which the annual percentage rate may increase after consummation." 12 CFR 226.18(s)(7)(i).

[35] "The term 'interest-only' means that, under the terms of the legal obligation, one or more of the periodic payments may be applied solely to accrued interest and not to loan principal; an 'interest-only loan' is a loan that permits interest-only payments." 12 CFR 226.18(s)(7)(iv).

[36] "[T]he term 'negative amortization' means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation; the term 'negative amortization loan' means a loan that permits payments resulting in negative amortization, other than a reverse mortgage subject to section 226.33." 12 CFR 226.18(s)(7)(v).

[37] *See* U.S. House of Reps., Comm. on Fin. Services, Report on H.R. 1728, Mortgage Reform and Anti-Predatory Lending Act, No. 111–94, 52 (May 4, 2009).

payments not only for interest-only loans and negative amortization loans but also for adjustable-rate mortgages.

The Board solicits comment on the proposed definition of "recast" for purposes of proposed § 226.43(c) and (d).

43(b)(12) Simultaneous Loan

The Board proposes to use the term "simultaneous loan" to refer to loans that are subject to TILA Section 129C(a)(2), which states that "if a creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments." TILA Section 129C(a)(2) uses the term "residential mortgage loan," which is defined in TILA Section 103(cc)(5) as excluding home equity lines of credit (HELOCs) for purposes of TILA Section 129C. *See* proposed § 226.43(a), discussing the scope of the ability-to-repay provisions. Thus, TILA Section 129C(a)(2) does not require a creditor to consider a simultaneous HELOC when determining a consumer's repayment ability on the covered transaction.

By contrast, § 226.34(a)(4) of the Board's 2008 HOEPA Final Rule requires the creditor to consider the consumer's current obligations when making its repayment ability determination. Current comment 34(a)(4)–3 clarifies the meaning of the term "current obligations," and provides that it includes other dwelling-secured credit obligations undertaken prior to or at consummation of the transaction subject to § 226.34(a)(4) of which the creditor has knowledge. This comment does not distinguish between closed-end and open-end credit transactions for purposes of "other dwelling-secured obligations." Accordingly, under current comment 34(a)(4)–3 the creditor must consider in the repayment ability assessment a HELOC of which it has knowledge if the HELOC will be undertaken at or before consummation and will be secured by the same dwelling that secures the transaction.

Proposed § 226.43(b)(12) would define the term "simultaneous loan" to refer to other loans that are secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction. The term would include HELOCs as well as closed-end mortgages for purposes of TILA Section 129C(a)(2). The Board believes TILA Section 129C(a)(2) is meant to help ensure that creditors account for the increased risk of consumer delinquency or default on the covered transaction where more than one loan secured by the same dwelling is originated concurrently, and therefore requires creditors to consider the combined payments on such loans. The Board believes this increased risk is present whether the other mortgage obligation is a closed-end credit transaction or a HELOC.

The Board proposes to broaden the scope of TILA Section 129C(a)(2) to include HELOCs, and accordingly proposes to define the term "simultaneous loan" to include HELOCs, using its authority under TILA Section 105(a). 15 U.S.C. 1604(a). TILA Section 105(a), as amended by Section 1100A of the Dodd-Frank Act, authorizes the Board to prescribe regulations to carry out the purposes of TILA and Regulation Z, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a). The inclusion of HELOCs is further supported by the Board's authority under TILA Section 129B(e) to condition terms, acts or practices relating to residential mortgage loans that the Board finds necessary or proper to effectuate the purposes of TILA. 15 U.S.C. 1639b(e). One purpose of the statute is set forth in TILA Section 129B(a)(2), which states that "[i]t is the purpose[] of * * * [S]ection 129C to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans." 15 U.S.C. 1639b. For the reasons stated below, the Board believes requiring creditors to consider simultaneous loans that are HELOCs for purposes of TILA Section 129C(a)(2) would help to ensure that consumers are offered, and receive, loans on terms that reasonably reflect their ability to repay.

First, the Board is proposing in § 226.43(c)(2)(vi) that the creditor must consider current debt obligations in determining a consumer's ability to repay a covered transaction. Consistent with current § 226.34(a)(4), proposed § 226.43(c)(2)(vi) would not distinguish between pre-existing closed-end and open-end mortgage obligations. The Board believes consistency requires that it take the same approach when determining how to consider mortgage obligations that come into existence concurrently with a first-lien loan as is taken for pre-existing mortgage obligations, whether the first-lien is a purchase or non-purchase transaction (*i.e.,* refinancing). Including HELOCs in the proposed definition of "simultaneous loan" for purposes of TILA Section 129C(a)(2) is also generally consistent with current comment 34(a)(4)–3, and the 2006 Nontraditional Mortgage Guidance regarding simultaneous second-lien loans.[38]

Second, data indicate that where a subordinate loan is originated concurrently with a first-lien loan to provide some or all of the downpayment (*i.e.,* "piggyback loan"), the default rate on the first-lien loan increases significantly, and in direct correlation to increasing combined loan-to-value ratios.[39] The data does not distinguish between "piggyback loans" that are closed-end or open-end credit transactions, or between purchase and non-purchase transactions. However, empirical evidence demonstrates that approximately 60% of consumers who open a HELOC concurrently with a first-lien loan borrow against the line of credit at the time of origination,[40] suggesting that in many cases the HELOC may be used to provide some, or all, of the downpayment on the first-lien loan.

The Board recognizes that consumers have varied reasons for originating a HELOC concurrently with the first-lien loan, for example, to reduce overall closing costs or for the convenience of having access to an available credit line in the future. However, the Board believes concerns relating to HELOCs originated concurrently for savings or convenience, and not to provide payment towards the first-lien home purchase loan, may be mitigated by the Board's proposal to require that a creditor consider the periodic payment on the simultaneous loan based on the actual amount drawn from the credit line by the consumer. *See* proposed § 226.43(c)(6)(ii), discussing payment calculation requirements for simultaneous loans that are HELOCs. Still, the Board recognizes that in the case of a non-purchase transaction (*e.g.,*

[38] *See* 2006 Nontraditional Mortgage Guidance, 71 FR 58609, 58614 (Oct.4, 2006).

[39] Kristopher Gerardi, Andreas Lehnert, Shane Sherlund, and Paul S. Willen, "Making Sense of the Subprime Crisis," *Brookings Papers on Economic Activity* (Fall 2008), at 40, Table 3.

[40] The Board conducted independent analysis using data obtained from the FRBNY Consumer Credit Panel to determine the proportion of piggyback HELOCs taken out in the same month as the first-lien loan that have a draw at the time of origination. Data used is extracted from credit record data in years 2003 through 2010. *See* Donghoon Less and Wilbert van der Klaauw, "An Introduction to the FRBNY Consumer Credit Panel," Staff Rept. No. 479 (Nov. 2010), *at http://data.newyorkfed.org/research/staff_reports/sr479.pdf,* for further description of the database.

a refinancing) a simultaneous loan that is a HELOC is unlikely to be originated and drawn upon to provide payment towards the first-lien loan, except perhaps towards closing costs. The Board solicits comment on whether it should narrow the requirement to consider simultaneous loans that are HELOCs to apply only to purchase transactions. *See* discussion under proposed § 226.43(c)(6).

Third, in developing this proposal staff conducted outreach with a variety of participants that consistently expressed the view that second-lien loans significantly impact a consumer's performance on the first-lien loan, and that many second-lien loans are HELOCs. One industry participant explained that the vast majority of "piggyback loans" it originated were HELOCs that were fully drawn at the time of origination and used to assist in the first-lien purchase transaction. Another outreach participant stated that HELOCs make up approximately 90% of their simultaneous loan book-of-business. Industry outreach participants generally indicated that it is a currently an accepted underwriting practice to include HELOCs in the repayment ability assessment on the first-lien loan, and generally confirmed that the majority of simultaneous liens considered during the underwriting process are HELOCs. Thus, for these reasons, the Board proposes to use its authority under TILA Sections 105(a) and 129B(e) to broaden the scope of TILA Section 129C(a)(2), and accordingly proposes to define the term "simultaneous loan" to include HELOCs.

Proposed § 226.43(b)(12) defines a "simultaneous loan" to mean another covered transaction or home equity line of credit subject to § 226.5b that will be secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction. The proposed definition generally tracks the meaning of "other dwelling-secured obligations" under current comment 34(a)(4)–3, as well as the statutory language of TILA Section 129C(a)(2) with the notable difference that the proposed term would include HELOCs, as discussed above. The Board proposes to replace the term "residential mortgage loan" with the term "covered transaction," as defined in proposed § 226.43(b)(1), for clarity. The Board also proposes to add a reference to the phrase "at or before consummation of the covered transaction" to further clarify that the definition does not include pre-existing mortgage obligations. Pre-existing mortgage obligations would be included as current debt obligations under proposed § 226.43(c)(2)(vi), which is discussed below. Last, the Board proposes to not include the statutory language that "the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments," because these statutory requirements are addressed in the repayment ability provisions in proposed § 226.43(c)(2)(iv) and (v), which are discussed more fully below.

Proposed comment 43(b)(12)–1 clarifies that the definition of "simultaneous loan" includes any loan that meets the definition, whether made by the same creditor or a third-party creditor, and provides an illustrative example of this principle. This proposed comment assumes a consumer will enter into a legal obligation that is a covered transaction with Creditor A. Immediately prior to consummation of the covered transaction with Creditor A, the consumer opens a HELOC that is secured by the same dwelling with Creditor B. This proposed comment explains that for purposes of this section, the loan extended by Creditor B is a simultaneous loan. To facilitate compliance, the comment would cross-reference to § 226.43(c)(2)(iv) and (c)(6) and associated commentary for further discussion of the requirement to consider the consumer's payment obligation on any simultaneous loan for purposes of determining the consumer's ability to repay the covered transaction subject to this section.

Proposed comment 43(b)(12)–2 further clarifies the meaning of the term "same consumer, and explains that for purposes of the definition of "simultaneous loan," the term "same consumer" includes any consumer, as that term is defined in § 226.2(a)(11), that enters into a loan that is a covered transaction and also enters into another loan (*e.g.,* second-lien covered transaction or HELOC) secured by the same dwelling. This comment further explains that where two or more consumers enter into a legal obligation that is a covered transaction, but only one of them enters into another loan secured by the same dwelling, the "same consumer" includes the person that has entered into both legal obligations. This proposed comment provides the following illustrative example: Assume Consumer A and Consumer B will both enter into a legal obligation that is a covered transaction with a creditor. Immediately prior to consummation of the covered transaction, Consumer B opens a HELOC that is secured by the same dwelling with the same creditor; Consumer A is not a signatory to the HELOC. For purposes of the definition of "simultaneous loan," Consumer B is the same consumer and the creditor must include the HELOC as a simultaneous loan. The Board believes this comment reflects statutory intent to include any loan that could impact the consumer's ability to repay the covered transaction according to its terms (*i.e.,* to require the creditor to consider the combined payment obligations of the consumer(s) obligated to repay the covered transaction). *See* TILA 129C(a)(2).

The term "simultaneous loan" appears in the following provisions: (1) Proposed § 226.43(c)(2)(iv), which implements the requirement under TILA § 129C(a)(2) that a creditor consider a consumer's monthly payment obligation on a simultaneous loan that the creditor "knows or has reason to know" will be made to the consumer; (2) proposed § 226.43(c)(6), which addresses the payment calculations for a simultaneous loan for purposes of proposed § 226.43(c)(2)(iv); and (3) proposed Alternative 2—§ 226.43(e)(2)(v)(C), which requires the creditor to consider a simultaneous loan as a condition to meeting the definition of a qualified mortgage.

43(b)(13) Third-Party Record

TILA Section 129C(a)(1) requires that creditors determine a consumer's repayment ability using "verified and documented information,"and TILA Section 129C(a)(4) specifically requires verifying a consumer's income or assets relied on to determine repayment ability using a consumer's tax return or "third-party documents" that provide reasonably reliable evidence of the consumer's income or assets, as discussed in detail below in the section-by-section analysis of proposed § 226.43(c)(3) and (4). The Board believes that in general creditors should rely on reasonably reliable records prepared by a third party to verify repayment ability under TILA Section 129C(a), consistent with verification requirements under the Board's 2008 HOEPA Final Rule. *See* § 226.34(a)(4)(ii). However, the Board believes that in some cases a record prepared by the creditor for a covered transaction can provide reasonably reliable evidence of a consumer's repayment ability, such as a creditor's records regarding a consumer's savings account held by the creditor or employment records for a consumer

employed by the creditor. Further, TILA Section 129C(a)(4) allows creditors to use a consumer-prepared tax return to verify the consumer's income or assets. Proposed § 226.43(b)(13) therefore would define the term "third-party records" to include certain records prepared by the consumer or creditor, for consistency and simplicity in implementing verification requirements under TILA Sections 129C(a)(1) and (4).

Proposed § 226.43(b)(13) provides that "third-party record" means: (1) A document or other record prepared or reviewed by a person other than the consumer, the creditor, any mortgage broker, as defined in § 226.36(a)(2), or any agent of the creditor or mortgage broker; (2) a copy of a tax return filed with the Internal Revenue Service or a state taxing authority; (3) a record the creditor maintains for an account of the consumer held by the creditor; or (4) if the consumer is an employee of the creditor or the mortgage broker, a document or other record regarding the consumer's employment status or income. *See* proposed § 226.43(b)(13)(i)–(iv).

Proposed comment 43(b)(13)–1 clarifies that third party records include records transmitted or viewed electronically, for example, a credit report prepared by a consumer reporting agency and transmitted or viewed electronically. Proposed comment 43(b)(13)–2 explains that a third-party record includes a form a creditor provides to a third party for providing information, even if the creditor completes parts of the form unrelated to the information sought. Proposed comment 43(b)(13)–2 provides an example where the creditor gives the consumer's employer a form for verifying the consumer's employment status and income and clarifies that the creditor may fill in the creditor's name and other portions of the form unrelated to the consumer's employment status or income. Proposed comment 43(b)(13)(i)–1 clarifies that a third-party record includes a document or other record prepared by the consumer, the creditor, the mortgage broker, or an agent of the creditor or mortgage broker, if the record is reviewed by a third party. For example, a profit-and-loss statement prepared by a self-employed consumer and reviewed by a third-party accountant is a third-party record under § 226.43(b)(13)(i). Finally, proposed comment 43(b)(13)(iii)–1 clarifies that a third-party record includes a record the creditor maintains for an account of the consumer held by the creditor, and provides the examples of checking accounts, savings accounts, and retirement accounts. Proposed comment 43(b)(13)(iii)–1 also provides the example of a creditor's records for an account related to a consumer's outstanding obligations to the creditor, such as the creditor's records for a first-lien mortgage to a consumer who applies for a subordinate-lien home equity loan.

43(c) Repayment Ability

TILA Section 129C(a)(1) provides that no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms and all applicable taxes, insurance, and assessments. TILA Section 129C(a)(2) provides that if a creditor knows or has reason to know that one or more residential mortgage loans secured by the dwelling that secures the covered transaction will be made to the same consumer, the creditor must make a reasonable and good faith determination that the consumer has a reasonable ability to repay the other loan(s) and all taxes, insurance, and assessments applicable to the other loan(s). TILA Section 129C(a)(3) provides that to determine the consumer's repayment ability creditors must consider: The consumer's (1) credit history; (2) current income and reasonably expected income; (3) current obligations; (4) debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations; (5) employment status; and (6) financial resources other than the consumer's equity in the dwelling that secures repayment of the loan. Further, creditors must base their determination of the consumer's repayment ability on verified and documented information. Finally, TILA Section 129C(a)(3) provides that creditors must use a payment schedule that fully amortizes the loan over the loan term in determining the consumer's repayment ability. These TILA provisions are substantially similar to the repayment ability requirements under the Board's 2008 HOEPA Final Rule. *See* § 226.34(a)(4), 226.35(b)(1).

Proposed § 226.43(c) would implement TILA Section 129C(a)(1)–(3) and is substantially similar to those provisions. Specifically, proposed § 226.43(c) provides that a creditor:

- Must not make a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability, at the time of consummation, to repay the loan according to its terms, including any mortgage-related obligations;
- Must make the repayment ability determination by considering the consumer's:
  - Current or reasonably expected income or assets other than the value of the dwelling, or of any real property to which the dwelling is attached, that secures the loan;
  - Employment status, if the creditor relies on income from the consumer's employment in determining repayment ability;
  - Monthly payment on the covered transaction;
  - Monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made;
  - Monthly payment for mortgage-related obligations;
  - Current debt obligations;
  - Monthly debt-to-income ratio or residual income; and
  - Credit history; and
- Must verify a consumer's repayment ability using reasonably reliable third-party records.

Proposed comment 43(c)–1 clarifies that, to evaluate a consumer's repayment ability, creditors may look to widely accepted governmental or non-governmental underwriting standards, such as the Federal Housing Administration's Handbook on Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Unit Mortgage Loans. Proposed comment 43(c)–1 states, for example, that creditors may use such standards in determining: (1) Whether to classify particular inflows, obligations, or property as "income," "debt," or "assets"; (2) factors to consider in evaluating the income of a self-employed or seasonally-employed consumer; and (3) factors to consider in evaluating the credit history of a consumer who has obtained few or no extensions of traditional "credit," as defined in § 226.2(a)(14). Proposed comment 43(c)–1 is consistent with, but broader than, current commentary on determining a consumer's debt-to-income ratio to meet the presumption of compliance with the repayment ability requirement of the Board's 2008 HOEPA Final Rule. *See* § 226.34(a)(4)(iii)(C), 226.35(b)(1). Currently, comment 34(a)(4)(iii)(C)–1 states that creditors may look to widely accepted underwriting standards to determine whether to classify particular inflows or obligations as "income" or "debt."

The Board's proposed rule provides flexibility in underwriting standards so

that creditors may adapt their underwriting processes to a consumer's particular circumstances, such as to the needs of self-employed consumers and consumers heavily dependent on bonuses and commissions, consistent with the Board's 2008 HOEPA Final Rule. *See* 73 FR 44522, 44547, July 30, 2008. For example, the proposed rule does not prescribe: How many years of tax returns or other information a creditor must consider to determine the consumer's repayment ability; which income figure on tax returns creditors must use; the elements of credit history to be considered, such as late payments or bankruptcies; the way in which to verify credit history, such as by using a tri-merge report or records of rental payments; or a specific maximum debt-to-income ratio or the compensating factors to allow a consumer to exceed such a ratio. The Board believes such flexibility is necessary because the rule would cover such a wide variety of consumers and mortgage products.

Removal of § 226.34(a)(4) and 226.35(b)(1). Repayment ability requirements under TILA Section 129C(a) apply to all dwelling-secured consumer credit transactions, other than HELOCs, reverse mortgages, temporary or "bridge" loans with a loan term of 12 months or less, and timeshare transactions, as discussed in detail above in the section-by-section analysis of proposed § 226.43(a). Accordingly, the Board proposes to implement TILA Section 129C in a new § 226.43 and remove requirements to consider repayment ability for high-cost mortgages under § 226.34(a)(4) and for higher-priced mortgage loans under § 226.35(b)(1), as discussed in detail above in the section-by-section analysis of § 226.34 and 226.35.

43(c)(1) General Requirement

Proposed § 226.43(c)(1) would implement TILA Section 129C(a)(1) and provides that no creditor may make a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability, at the time of consummation, to repay the covered transaction according to its terms, including any mortgage-related obligations. Proposed comment 43(c)(1)–1 clarifies that a change in the consumer's circumstances after consummation (for example, a significant reduction in income due to a job loss or a significant obligation arising from a major medical expense) that is not reflected in the consumer's application or the records used to determine repayment ability is not relevant to determining a creditor's compliance with the rule. However, proposed comment 43(c)(1)–1 states further that if such application or records state there will be a change in the consumer's repayment ability after consummation (for example, if a consumer's application states that the consumer plans to retire within twelve months without obtaining new employment or transition from full-time to part-time employment), the creditor must consider that information. Proposed comment 43(c)(1)–1 is substantially similar to current comment 34(a)(4)–5 adopted by the Board's 2008 HOEPA Final Rule.

Proposed comment 43(c)(1)–2 clarifies that proposed § 226.43(c)(1) does not require or permit the creditor to make inquiries prohibited by Regulation B, 12 CFR part 202, consistent with current comment 34(a)(4)–7 adopted by the Board's 2008 HOEPA Final Rule.

43(c)(2) Basis for Determination

TILA Section 129C(a)(3) provides that to determine a consumer's repayment ability, creditors must consider a consumer's credit history, current and reasonably expected income, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and "financial resources" other than the consumer's equity in the dwelling or real property that secures repayment of the loan. TILA Section 129C(a)(3) also provides that creditors must determine repayment ability using a repayment schedule that fully amortizes the loan over the loan term. Proposed § 226.43(c)(2) would implement the requirement to consider specific factors in determining repayment ability. Proposed § 226.43(c)(2) is substantially similar to TILA Section 129C(a)(3), except for some minor terminology changes, as discussed below.

43(c)(2)(i) Income or Assets

TILA Section 129C(a)(3) provides that in making the repayment ability determination, creditors must consider, among other factors, a consumer's current income, reasonably expected income, and "financial resources" other than the consumer's equity in the dwelling or real property that secures loan repayment. Furthermore, under TILA Section 129C(a)(9), creditors may consider the seasonality or irregularity of a consumer's income in determining repayment ability.

Proposed § 226.43(c)(2)(i) generally mirrors TILA Section 129C(a)(3) but differs in two respects. First, proposed § 226.43(c)(2)(i) uses the term "assets" rather than "financial resources," to conform with terminology used in other provisions under TILA Section 129C(a) and Regulation Z. *See, e.g.* TILA Section 129C(a)(4) (requiring that creditors consider a consumer's assets in determining repayment ability); § 226.51(a) (requiring consideration of a consumer's assets in determining a consumer's ability to repay a credit extension under a credit card account). The Board believes the terms "financial resources" and "assets" are synonymous as used in TILA Section 129C(a), and the term "assets" is used throughout the proposal for consistency.

Second, proposed § 226.43(c)(2)(i) provides that creditors may not look to the value of the dwelling that secures the covered transaction, instead of providing that creditors may not look to the consumer's equity in the dwelling. The Board believes that TILA Section 129C(a)(3) is intended to address the risk that creditors will consider the amount that could be obtained through a foreclosure sale of the dwelling, which may exceed the amount of the consumer's equity in the dwelling. This approach is consistent with the Board's 2008 HOEPA Final Rule, which prohibits a creditor from extending credit "based on the value of the consumer's collateral." *See* § 226.34(a)(4), 226.35(b)(1). The Board proposes this adjustment pursuant to its authority under TILA Section 105(a), which provides that the Board's regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions as in the Board's judgment are necessary or proper to effectuate the purposes of TILA, prevent circumvention or evasion thereof, or facilitate compliance therewith. 15 U.S.C. 1604(a). This approach is further supported by the Board's authority under TILA Section 129B(e) to condition terms, acts or practices relating to residential mortgage loans that the Board finds necessary or proper to effectuate the purposes of TILA. 15 U.S.C. 1639b(e). One of the purposes of TILA is to "assure that consumers are offered and receive residential mortgage loan on terms that reasonably reflect their ability to repay the loans." TILA Section 129B(a)(2); 15 U.S.C. 1629b(a)(2). The Board believes providing that creditors may not consider the value of the dwelling is proper to effectuate the purposes of TILA Section 129C(a) that creditors extend credit based on the consumer's

repayment ability rather than on the dwelling's foreclosure value. *See* TILA Section 129B(a)(2).

Proposed comment 43(c)(2)(i)–1 clarifies that creditors may base a determination of repayment ability on current or reasonably expected income from employment or other sources, assets other than the dwelling that secures the covered transaction, or both. Proposed comment 43(c)(2)(i)–2 cross-references proposed comment 43(a)–2 to clarify that the value of the dwelling includes the value of the real property to which the dwelling is attached, if the real property also secures the covered transaction. Proposed comment 43(c)(2)(i)–1 also provides examples of types of income the creditor may consider, including salary, wages, self-employment income, military or reserve duty income, tips, commissions, and retirement benefits; and examples of assets the creditor may consider, including funds in a savings or checking account, amounts vested in a retirement account, stocks, and bonds. The proposed comment is substantially similar to comment 34(a)(4)–6 adopted by the Board's 2008 HOEPA Final Rule, but adds additional examples of income and assets to facilitate compliance. Proposed comment 43(c)(2)(i)–2 clarifies that if a creditor bases its determination of repayment ability entirely or in part on a consumer's income, the creditor need consider only the income necessary to support a determination that the consumer can repay the covered transaction. For example, if a consumer earns income from a full-time job and a part-time job and the creditor reasonably determines that the consumer's income from a full-time job is sufficient to repay the covered transaction, the creditor need not consider the consumer's income from the part-time job. Further, the creditor need verify only the income (and assets) relied on to determine the consumer's repayment ability, as discussed below in the section-by-section analysis of proposed § 226.43(c)(4). Proposed comment 43(c)(2)(i)–2 cross-references proposed comment 43(c)(4)–1, which is substantially similar to current comment 34(a)(4)(ii)–1, adopted by the Board's 2008 HOEPA Final Rule.

Expected income. TILA Section 129C(a) provides that creditors must consider a consumer's current and reasonably expected income to determine repayment ability. This is consistent with current § 226.34(a)(4), but commentary on § 226.34(a)(4) clarifies that creditors need consider a consumer's reasonably expected income only if the creditor relies on such income in determining repayment ability. *See* comments 34(a)(4)(ii)–1, –3. The Board believes that the requirement to consider a consumer's reasonably expected income under TILA Section 129C(a) should be interpreted consistent with current § 226.34(a)(4), in light of the substantial similarity between the provisions. Accordingly, proposed § 226.43(c)(2)(i) provides that creditors must consider a consumer's current income or reasonably expected income. Proposed comment 43(c)(2)(i)–3 clarifies that the creditor may rely on the consumer's reasonably expected income either in addition to or instead of current income.

Proposed comment 43(c)(2)(i)–3 further clarifies that if creditors rely on expected income, the expectation that the income will be available for repayment must be reasonable and verified with third-party records that provide reasonably reliable evidence of the consumer's expected income. Proposed comment 43(c)(2)(i)–3 also gives examples of expected bonuses verified with documents demonstrating past bonuses, and expected salary from a job verified with a written statement from an employer stating a specified salary, consistent with current comment 34(a)(4)(ii)–3 adopted by the Board's 2008 HOEPA Final Rule. As the Board stated in connection with the 2008 HOEPA Final Rule, in some cases a covered transaction may have a likely payment increase that would not be affordable at the borrower's income at the time of consummation. A creditor may be able to verify a reasonable expectation of an increase in the borrower's income that will make the higher payment affordable to the borrower. *See* 73 FR 44522, 44544, July 30, 2008.

Seasonal or irregular income. TILA Section 129C(a)(9) provides that creditors may consider the seasonality or irregularity of a consumer's income in determining repayment ability. Accordingly, proposed comment 43(c)(2)(i)–4 clarifies that a creditor reasonably may determine that a consumer can make periodic loan payments even if the consumer's income, such as self-employment income, is seasonal or irregular. Proposed comment 43(c)(2)(i)–4 states, for example, that if the creditor determines that the income a consumer receives a few months each year from selling crops is sufficient to make monthly loan payments when divided equally across 12 months, the creditor reasonably may determine that the consumer can repay the loan, even though the consumer may not receive income during certain months. Comment 43(c)(2)(i)–4 is consistent with current comment 34(a)(4)–6 adopted by the Board's 2008 HOEPA Final Rule but provides an example of seasonal or irregular income that is not employment income.

43(c)(2)(ii) Employment Status

TILA Section 129C(a)(3) requires that creditors consider a consumer's employment status in determining the consumer's repayment ability, among other requirements. Proposed § 226.43(c)(2)(ii) implements this requirement and clarifies that creditors need consider a consumer's employment status only if they rely on income from the consumer's employment in determining repayment ability. Proposed comment 43(c)(2)(ii)–1 states, for example, that if a creditor relies wholly on a consumer's investment income to determine the consumer's repayment ability, the creditor need not verify the consumer's employment status. Proposed comment 43(c)(2)(ii)–1 clarifies that employment may be full-time, part-time, seasonal, irregular, military, or self-employment. This comment is consistent with current comment 34(a)(4)–6 adopted by the Board's 2008 HOEPA Final Rule.

Employment status of military personnel. Creditors in general must verify information relied on to determine repayment ability using reasonably reliable third-party records but may verify employment status orally as long as they prepare a record of the oral information, as discussed below in the section-by-section analysis of proposed § 226.43(c)(3)(ii). Proposed comment 43(c)(2)(ii)–2 clarifies that creditors also may verify the employment status of military personnel using the electronic database maintained by the Department of Defense (DoD) to facilitate identification of consumers covered by credit protections provided pursuant to 10 U.S.C. 987, also known as the "Talent Amendment." [41] The Board solicits comment on whether additional flexibility in verifying the employment status of military personnel is necessary to facilitate compliance and whether comment 43(c)(2)(ii)–2 also should state that creditors may verify the employment status of a member of the military using a Leave and Earnings Statement. Is a Leave and Earnings Statement as reliable a means of

[41] The Talent Amendment is contained in the John Warner National Defense Authorization Act. *See* Public Law 109–364, 120 Stat. 2083, 2266, Oct. 17, 2006; *see also* 72 FR 50580, 5088, Aug. 31, 2007 (discussing the DoD database in a final rule implementing the Talent Amendment). Currently, the DoD database is available at *https://www.dmdc.osd.mil/appj/mla/*.

verifying the employment status of military personnel as using the electronic database maintained by the DoD? Is a Leave and Earnings Statement equally reliable for determining employment status for a civilian employee of the military as for a service member?

The Board solicits comment on this approach, and on whether there are other specific employment situations for which additional guidance should be provided.

43(c)(2)(iii) Monthly Payment on the Covered Transaction

Proposed § 226.43(c)(2)(iii) would implement the requirements under TILA Section 129C(a)(1) and (3), in part, by requiring that the creditor consider the consumer's monthly payment on the covered transaction, calculated in accordance with proposed § 226.43(c)(5) for purposes of determining the consumer's repayment ability on a covered transaction. *See* proposed § 226.43(c)(5) for a discussion of the proposed payment calculation requirements. Proposed comment 43(c)(2)(iii)–1 would clarify that for purposes of the repayment ability determination, the creditor must consider the consumer's monthly payment on a covered transaction that is calculated as required under proposed § 226.43(c)(5), taking into account any mortgage-related obligations. This comment would also provide a cross-reference to proposed § 226.43(b)(8) for the meaning of the term "mortgage-related obligations."

43(c)(2)(iv) Simultaneous Loans

Proposed § 226.43(c)(2)(iv) requires that the creditor consider the consumer's monthly payment obligation on any simultaneous loan that the creditor knows or has reason to know will be made to the consumer. Proposed § 226.43(c)(2)(iv) also requires that the consumer's monthly payment obligation on the simultaneous loan be calculated in accordance with proposed § 226.43(c)(6), which is discussed below. Proposed § 226.43(c)(2)(iv) implements TILA Section 129C(a)(2), which provides that "if a creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments." As discussed under proposed § 226.43(b)(12), the Board is proposing to use its authority under TILA Sections 105(a) and 129B(e) to broaden the scope of TILA Section 129C(a)(2) to include HELOCs, and define the term "simultaneous loan" accordingly, for purposes of the requirements under proposed § 226.43(c)(2)(iv) and (c)(6). 15 U.S.C. 1604(a).

Proposed comment 43(c)(2)(iv)–1 clarifies that for purposes of the repayment ability determination, a simultaneous loan includes any covered transaction or HELOC that will be made to the same consumer at or before consummation of the covered transaction and secured by the same dwelling that secures the covered transaction. This comment explains that a HELOC that is a simultaneous loan that the creditor knows or has reason to know about must be considered as a mortgage obligation in determining a consumer's ability to repay the covered transaction, even though the HELOC is not a covered transaction subject to § 226.43. To facilitate compliance, this comment cross-references proposed § 226.43(a), which discusses the scope of the ability-to-repay provisions, proposed § 226.43(b)(12) for the meaning of the term "simultaneous loan," and proposed comment 43(b)(12)–2 for further explanation of the term "same consumer."

Proposed comment 43(c)(2)(iv)–2 provides additional guidance regarding the standard "knows or has reason to know" for purposes of proposed § 226.43(c)(2)(iv) and explains that, for example, where a covered transaction is a home purchase loan, the creditor must consider the consumer's periodic payment obligation for any "piggyback" second-lien loan that the creditor knows or has reason to know will be used to finance part of the consumer's down payment. This comment would provide that the creditor complies with this requirement where, for example, the creditor follows policies and procedures that show at or before consummation that the same consumer has applied for another credit transaction secured by the same dwelling.

This proposed comment would provide the following illustrative example: Assume a creditor receives an application for a home purchase loan where the requested loan amount is less than the home purchase price. The creditor's policies and procedures require the consumer to state the source of the downpayment. If the creditor determines the source of the downpayment is another extension of credit that will be made to the same consumer at consummation and secured by the same dwelling, the creditor knows or has reason to know of the simultaneous loan and must consider the simultaneous loan. Alternatively, if the creditor has information that suggests the downpayment source is the consumer's income or existing assets, the creditor would be under no further obligation to determine whether a simultaneous loan will be extended at or before consummation of the covered transaction.

Proposed comment 43(c)(2)(iv)–3 clarifies the scope of timing and the meaning of the phrase "at or before consummation" with respect to simultaneous loans that the creditor must consider for purposes of proposed § 226.43(c)(2)(iv). This comment would explain that a simultaneous loan includes a loan that comes into existence concurrently with the covered transaction subject to proposed § 226.43(c). The comment would further state that, in all cases, a simultaneous loan does not include a credit transaction that occurs after consummation of the covered transaction subject to proposed § 226.43(c).

Proposed comment 43(c)(2)(iv)–4 provides further guidance regarding verification of simultaneous loans. This comment would state that although a credit report may be used to verify current obligations, it will not reflect a simultaneous loan that has not yet been consummated or has just recently been consummated. This comment would explain that if the creditor knows or has reason to know that there will be a simultaneous loan extended at or before consummation, the creditor may verify the simultaneous loan by obtaining third-party verification from the third-party creditor of the simultaneous loan. The comment would provide, as an example, that the creditor may obtain a copy of the promissory note or other written verification from the third-party creditor in accordance with widely accepted governmental or non-governmental standards. To facilitate compliance, the comment would cross-reference proposed comments 43(c)(3)–1 and –2, which discuss verification using third-party records. Based on outreach, the Board believes it is feasible for creditors to obtain copies of promissory notes or other written verification from third-party creditors, but solicits comment on other examples the Board could provide to facilitate creditors' compliance with the proposed verification requirement with respect to simultaneous loans.

The Board notes that proposed § 226.43(c)(2)(iv) requires creditors to consider a simultaneous loan when assessing the consumer's ability to repay a covered transaction, regardless of whether the simultaneous loan is made in connection with a purchase or non-purchase covered transaction (*i.e.,* refinancing). As discussed more fully below under proposed § 226.43(c)(6), which addresses payment calculation requirements for simultaneous loans, the Board recognizes that in the case of a non-purchase transaction, a simultaneous loan that is a HELOC is unlikely to be originated and drawn upon to provide payment towards the first-lien loan being refinanced, except perhaps towards closing costs. The Board is soliciting comment on whether it should narrow the requirement to consider simultaneous loans that are HELOCs to apply only to purchase transactions. *See* discussion under proposed § 226.43(c)(6) regarding payment calculations for simultaneous loans.

43(c)(2)(v) Mortgage-Related Obligations

Proposed § 226.43(c)(2)(v) implements the requirement under TILA Sections 129C(a)(1)–(3) that the creditor determine a consumer's repayment ability taking into account the consumer's monthly payment for any mortgage-related obligations, based on verified and documented information as required under proposed § 226.43(c)(3). TILA Sections 129C(a)(1) and (2) require that the creditor determine a consumer's repayment ability on a covered transaction based on verified and documented information, "according to [the loans's] terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments." TILA Section 129C(a)(3) further requires that a consumer's debt-to-income ratio be considered as part of the repayment ability determination after allowing for "non-mortgage debt and mortgage-related obligations." The Dodd-Frank Act does not define the term "mortgage-related obligations." As discussed in proposed § 226.43(b)(8), the Board proposes to use the term "mortgage-related obligations" to refer to "all applicable taxes, insurance (including mortgage guarantee insurance), and assessments." Proposed § 226.43(b)(8) would define the term "mortgage-related obligations" to mean property taxes; mortgage-related insurance premiums required by the creditor as set forth in proposed § 226.45(b)(1);[42] homeowner association, condominium, and cooperative fees; ground rent or leasehold payments; and special assessments.

Proposed § 226.43(c)(2)(v) is generally consistent with the requirement under current § 226.34(a)(4) of the Board's 2008 HOEPA Final Rule that the creditor include mortgage-related obligations when determining the consumer's repayment ability on the loan, except that § 226.34(a)(4) does not extend the verification requirement to mortgage-related obligations. In contrast, under proposed § 226.43(c)(3) creditors would need to verify mortgage-related obligations for purposes of the repayment ability determination. *See* proposed § 226.43(c)(3) and associated commentary discussing the verification requirement generally.

Proposed comment 43(c)(2)(v)–1 states that the creditor must include in its repayment ability assessment the consumer's mortgage-related obligations, such as the expected property taxes and premiums for mortgage-related insurance required by the creditor as set forth in proposed § 226.45(b)(1). This comment would clarify, however, that creditors need not include mortgage-related insurance premiums that the creditor does not require, such as credit insurance or fees for optional debt suspension and debt cancellation agreements. This comment would also explain that mortgage-related obligations must be included in the creditor's determination of repayment ability regardless of whether the amounts are included in the monthly payment or whether there is an escrow account established. To facilitate compliance, this comment would cross-reference proposed § 226.43(b)(8) for the meaning of the term "mortgage-related obligations."

As discussed more fully below under proposed § 226.43(c)(5), the Dodd-Frank Act provisions require creditors to determine the consumer's ability to repay based on monthly payments, taking into account mortgage-related obligations. However, the Board recognizes that creditors will need to convert mortgage-related obligations that are not monthly to *pro rata* monthly amounts to comply with this proposed requirement. Thus, proposed comment 43(c)(2)(v)–2 clarifies that, in considering mortgage-related obligations that are not paid monthly, the creditor may look to widely accepted governmental or non-governmental standards in determining the *pro rata* monthly payment amount. The Board solicits comment on operational difficulties creditors may encounter when complying with this "monthly" requirement, and whether additional guidance is necessary.

Proposed comment 43(c)(2)(v)–3 explains that estimates of mortgage-related obligations should be based upon information that is known to the creditor at the time the creditor underwrites the mortgage obligation. This comment would further explain that information is known if it is "reasonably available" to the creditor at the time of underwriting the loan, and would cross-reference current comment 17(c)(2)(i)–1 for the meaning of "reasonably available." The Board believes it is appropriate to permit creditors to use estimates of mortgage-related obligations because actual amounts may be unknown at the time of underwriting. For example, outreach participants confirmed that the current underwriting practice is to use estimates of property taxes because actual property tax amounts are typically unknown until consummation. Proposed comment 43(c)(2)(v)–3 further clarifies that for purposes of proposed § 226.43(c), the creditor would not need to project potential changes, such as by estimating possible increases in taxes and insurance.

Proposed comment 43(c)(2)(v)–4 states that creditors must make the repayment ability determination required under proposed § 226.43(c) based on information verified from reasonably reliable records. This comment would explain that guidance regarding verification of mortgage-related obligations can be found in proposed comments 43(c)(3)–1 and –2, which discuss verification using third-party records. The Board solicits comment on any special concerns regarding the requirement to document certain mortgage-related obligations, such as for ground rent or leasehold payments, or special assessments. The Board also solicits comment on whether it should provide, by way of example, that the HUD–1 or 1A, or a successor form, can serve as verification of certain mortgage-related obligations reflected therein (*e.g.,* title insurance), where a legal obligation exists to complete the HUD–1 or 1A accurately. *See* 24 CFR 3500.1 *et seq.* of Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), 15 U.S.C. 2601 *et seq.*

43(c)(2)(vi) Current Debt Obligations

TILA Section 129C(a)(1) and (3) requires creditors to consider and verify "current obligations" as part of the repayment ability determination. This new TILA provision is consistent with the 2008 HOEPA Final Rule, which prohibits creditors from extending

[42] *See* 2011 Escrow Proposal, 76 FR 11598, 11621, Mar. 2, 2011.

credit without regard to a consumer's repayment ability, including a consumer's current obligations, and requires creditors to verify the consumer's current obligations. Sections 226.34(a)(4) and (a)(4)(ii)(C), 226.35(b)(1). In addition, current comment 34(a)(4)(iii)(C)–1 provides that creditors may look to widely accepted governmental and non-governmental underwriting standards in defining "debt," including, for example, those set forth in the Federal Housing Administration's (FHA) handbook on Mortgage Credit Analysis for Mortgage Insurance on One- to Four-Unit Mortgage Loans. Finally, current comment 34(a)(4)(ii)(C)–1 provides that a credit report may be used to verify current obligations. If, however, a credit report does not reflect an obligation that a consumer has listed on an application, then the creditor is responsible for considering the obligation, but is not required to verify the existence or amount of the obligation through another source. If a creditor nevertheless verifies an obligation, the creditor must consider the obligation based on the information from the verified source.

Proposed § 226.43(c)(2)(vi) implements TILA Section 129C(a)(1) and (3) and requires creditors to consider the consumer's current debt obligations as part of the repayment ability determination. As discussed below, proposed § 226.43(c)(3) implements TILA Section 129C(a)(1) by requiring that a creditor verify a consumer's repayment ability, which would include the consumer's current debt obligations.

Proposed comment 43(c)(2)(vi)–1 clarifies that creditors may look to widely accepted governmental and non-governmental underwriting standards in determining how to define "current debt obligations" and how to verify such obligations. For example, a creditor would be required to consider student loans, automobile loans, revolving debt, alimony, child support, and existing mortgages. To verify current debt obligations as required by § 226.43(c)(3), a creditor would be permitted, for instance, look to credit reports, student loan statements, automobile loan statements, credit card statements, alimony or child support court orders, and existing mortgage statements. This approach would parallel the 2008 HOEPA Final Rule's model for consideration and verification of income and would preserve flexibility for creditors. The Board solicits comment on this approach, and on whether more specific guidance should be provided.

Proposed comment 43(c)(2)(vi)–2 states that if a credit report reflects a current debt obligation that a consumer has not listed on the application, the creditor must consider the obligation. The credit report is deemed a reasonably reliable third-party record under § 226.43(b)(3). Consistent with commentary to the 2008 HOEPA Final Rule, the proposed comment further provides that if a credit report does not reflect a current debt obligation that a consumer has listed on the application, the creditor must consider the obligation. However, the creditor need not verify the existence or amount of the obligation through another source, as discussed in the section-by-section analysis for § 226.43(c)(3) below. If a creditor nevertheless verifies an obligation, the creditor must consider the obligation based on the information from the verified source. The Board solicits comment on the feasibility of requiring creditors independently to verify current debt obligations not reflected in the credit report that a consumer has listed on the application. Such a requirement would be consistent with TILA Section 129C(a)(1), which requires the repayment ability determination to be based on verified information. On the other hand, requiring creditors to verify these obligations may result in increased compliance and litigation costs without offsetting benefits.

The Board solicits comment on three additional issues. First, the Board solicits comment on whether it should provide additional guidance on considering debt obligations that are almost paid off. For example, some underwriting standards limit the consideration of current debt obligations to recurring obligations extending 10 months or more, and recurring obligations extending less than 12 months if they affect the consumer's repayment ability in the months immediately after consummation. Requiring creditors to consider debts that are almost paid off would advance safe and responsible lending, but may unduly limit access to credit.

Second, the Board solicits comment on whether it should provide additional guidance on considering debt obligations that are in forbearance or deferral. For example, some underwriting standards do not include consideration of projected obligations deferred for at least 12 months, in particular student loans. Many creditors, however, consider all projected obligations. Permitting creditors not to consider debt obligations that are in forbearance or deferral may further limit access to credit, but may also run counter to safe and responsible lending.

Finally, the Board solicits comment on whether it should provide guidance on consideration and verification of current debt obligations for joint applicants. The Board also solicits comment on whether the guidance should differ for non-occupant joint applicants and occupant joint applicants.

43(c)(2)(vii) Debt-to-Income Ratio or Residual Income

TILA Section 129C(a)(3) requires creditors, as part of the repayment ability determination, to consider the debt-to-income ratio or the residual income the consumer will have after paying mortgage-related obligations and current debt obligations. This new TILA provision is consistent with the Board's 2008 HOEPA Final Rule, in which a creditor is presumed to have complied with the repayment ability requirement if, among other things, the creditor "assesses the consumer's repayment ability taking into account at least one of the following: The ratio of total debt obligations to income, or the income the consumer will have after paying debt obligations." Section 226.34(a)(4)(iii)(C), 226.35(b)(1). In addition, comment 34(a)(4)(iii)(C)–1 provides that creditors may look to widely accepted governmental and non-governmental underwriting standards in defining "income" and "debt," including, for example, those set forth in the Federal Housing Administration's (FHA) handbook on Mortgage Credit Analysis for Mortgage Insurance on One- to Four-Unit Mortgage Loans.

Proposed § 226.43(c)(2)(vii) implements TILA Section 129C(a)(3) and requires creditors, as part of the repayment ability determination, to consider the consumer's monthly debt-to-income ratio, or residual income. Proposed comment 43(c)(2)(vii)–1 cross-references § 226.43(c)(7) regarding the definitions and calculations for the monthly debt-to-income ratio and residual income.

Consistent with the 2008 HOEPA Final Rule, TILA Section 129C(a)(3) requires creditors to consider either the consumer's debt-to-income ratio or the consumer's residual income. As in the 2008 HOEPA Final Rule, the proposal provides creditors flexibility to determine whether using a debt-to-income ratio or residual income increases a creditor's ability to predict repayment ability. If one of these metrics alone holds as much predictive power as the two together, as may be true of certain underwriting models at certain times, then requiring creditors to use both metrics could reduce access to credit without an offsetting increase in

consumer protection. 73 FR 44550, July 30, 2008. Outreach conducted by Board staff also indicates that residual income appears not to be as widely used or tested as the debt-to-income ratio.

43(c)(2)(viii) Credit History

TILA Section 129C(a)(1) and (3) requires creditors to consider and verify credit history as part of the ability-to-repay determination. Creditors must accordingly assess willingness to repay and not simply ability to repay. By contrast, the 2008 HOEPA Final Rule does not require consideration of credit history.

Proposed § 226.43(c)(2)(vii) implements TILA Section 129C(a)(3) and requires creditors to consider the consumer's credit history as part of the repayment ability determination. As discussed below, proposed § 226.43(c)(3) implements TILA Section 129C(a)(1) by requiring that a creditor verify a consumer's repayment ability, which would include the consumer's credit history.

Proposed comment 43(c)(2)(viii)–1 clarifies that creditors may look to widely accepted governmental and non-governmental underwriting standards to define and verify "credit history." For example, a creditor may consider factors such as the number and age of credit lines, payment history, and any judgments, collections, or bankruptcies. To verify credit history as required by § 226.43(c)(3), a creditor may, for instance, look to credit reports from credit bureaus, or other nontraditional credit references contained in third-party documents, such as rental payment history or public utility payments. The Board solicits comment on this approach.

43(c)(3) Verification Using Third-Party Records

TILA Section 129C(a)(1) requires that creditors make a reasonable and good faith determination, based on "verified and documented information," that a consumer has a reasonable ability to repay the covered transaction. The Board's 2008 HOEPA Final Rule requires that creditors verify the consumer's income or assets relied on to determine repayment ability and the consumer's current obligations. *See* § 226.34(a)(4)(ii)(A), (C). Thus, TILA Section 129C(a)(1) differs from the Board's 2008 HOEPA Final Rule by requiring creditors to verify information relied on in considering each of the specific factors required to be considered under TILA Section 129C(a)(3), which are discussed above in the section-by-section analysis of proposed § 226.43(c)(2).

Proposed § 226.43(c)(3) would implement the general requirement to verify a consumer's repayment ability under TILA Section 129C(a)(1) and requires that creditors verify a consumer's repayment ability using reasonably reliable third-party records, with two exceptions. First, creditors may orally verify a consumer's employment status, if they prepare a record of the oral employment status information. *See* proposed § 226.43(c)(3)(i). The Board believes that creditors in general should use reasonably reliable third-party records to verify information they rely on to determine repayment ability, to document that independent information supports their determination. Based on outreach to several creditors and secondary market investors, however, the Board believes that allowing creditors to verify a consumer's employment status orally may increase the efficiency of the process of verifying employment status without reducing the reliability of the information obtained. Over time, many creditors and secondary market investors have come to allow oral verification of employment status as long as the consumer's employment income is verified using third-party records. The Board is not aware of a reduction in the reliability of employment status information as a result of the shift from written to oral verification of employment status. Also, some employers may prefer to orally verify a consumer's employment status, for example, because of efficiency considerations or concerns about appearing to commit to continuing to employ the consumer. Proposed § 226.43(c)(3)(ii) does not allow creditors to orally verify a consumer's employment income, however.

The second exception to the requirement to verify repayment ability using third-party records applies in cases where a creditor relies on a consumer's credit report to verify a consumer's current debt obligations, and the consumer's application states a current debt obligation not shown in the consumer's credit report. Under proposed § 226.43(c)(3)(ii), the creditor need not independently verify such current debt obligations. Proposed § 226.43(c)(3)(ii) is consistent with current comment 34(a)(4)(ii)(C)–1 adopted by the Board's 2008 HOEPA Final Rule.

Proposed comment 43(c)(3)–1 explains that records used to verify a consumer's repayment ability under proposed § 226.43(c)(1)(ii) must be specific to the individual consumer. Records regarding average incomes in the consumer's geographic location or average incomes paid by the consumer's employer, for example, would not be specific to the individual consumer and are not sufficient. Proposed comment 43(c)(3)–2 explains that creditors may obtain third-party records from a third-party service provider, as long as the records are reasonably reliable and specific to the individual consumer. Creditors also may obtain third-party records, for example, payroll statements, directly from the consumer. Proposed comments 43(c)(3)–1 and –2 are consistent with current commentary and the supplementary information discussing how creditors may obtain records relied on to determine repayment ability under the Board's 2008 HOEPA Final Rule. *See* comments 34(a)(4)(ii)(A)–1, –2, and –4; 73 FR 44522, 44547, July 30, 2008 ("Creditors may [* * *] rely on third party documentation the consumer provides directly to the creditor.")

The Board solicits comment on whether any documents or records prepared by the consumer and not reviewed by a third party appropriately can be considered in determining repayment ability, for example, because a particular record provides information not obtainable using third-party records. In particular, the Board solicits comment on methods currently used to ensure that documents prepared by self-employed consumers (such as a year-to-date profit and loss statement for the period after the period covered by the consumer's latest income tax return, or an operating income statement prepared by a consumer whose income includes rental income) are reasonably reliable for use in determining repayment ability.

43(c)(4) Verification of Income or Assets

TILA Section 129C(a)(4) requires that creditors verify amounts of income or assets relied upon to determine repayment ability by reviewing the consumer's Internal Revenue Service (IRS) Form W–2, tax returns, payroll statements, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. TILA Section 129C(a)(4) provides further that, to safeguard against fraudulent reporting, creditors must consider either (1) IRS transcripts of tax returns or (2) an alternative method that quickly and effectively verifies third-party income documentation, subject to rules prescribed by the Board. TILA Section 129C(a)(4) is substantially similar to § 226.34(a)(4)(ii)(A), adopted by the Board's 2008 HOEPA Final Rule. However, TILA Section 129C(a)(4)(B) provides for the alternative methods of

third-party income documentation (other than use of an IRS tax-return transcript) to be both "reasonably reliable" and to "quickly and effectively" verify a consumer's income. The Board proposes to adjust the requirement that such alternative method "quickly and effectively" verify a consumer's income. *See* TILA Section 129C(a)(4)(B). Specifically, the Board proposes to implement TILA Section 129C(a)(4) without using the phrase "quickly and effectively" and instead to (1) require the use of third-party records that are reasonably reliable; and (2) provide examples of reasonably reliable records that creditors can use to efficiently verify income, as well as assets. *See* proposed § 226.43(c)(4).

The Board proposes this approach pursuant to the Board's authority under TILA Section 105(a) to prescribe regulations that contain such additional requirements, classifications, differentiations, or other provisions or provide for such adjustments and exceptions for all or any class of transactions as in the judgment of the Board are necessary or proper to effectuate the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance therewith. 15 U.S.C. 1604(a). This approach is further supported by the Board's authority under TILA Section 129B(e) to condition terms, acts or practices relating to residential mortgage loans that the Board finds necessary or proper to effectuate the purposes of TILA. 15 U.S.C. 1639b(e). One of the purposes of TILA Section 129C is to assure that consumers are offered and receive covered transactions on terms that reasonably reflect their ability to repay the loan. *See* TILA Section 129B(a)(2). The Board believes that considering reasonably reliable records is an effective means of verifying a consumer's income and helps ensure that consumers are offered and receive loans on terms that reasonably reflect their repayment ability. The Board believes further that TILA Section 129C(a)(4) is intended to safeguard against fraudulent reporting, rather than to speed the process of verifying a consumer's income. Indeed, there is a risk that requiring that creditors use quick methods to verify the consumer's income would undermine the effectiveness of the ability-to-repay requirement by sacrificing speed for thoroughness. The Board believes that, by contrast, requiring the use of reasonably reliable records effectuates the purposes of TILA Section 129C(a)(4) without suggesting that creditors must obtain records or complete income verification within a specific period of time. The Board also believes that providing examples of reasonably reliable records creditors may use to efficiently verify income or assets facilitates compliance by providing clear guidance to creditors. In addition, providing examples of such records is consistent with TILA Section 129C(a)(4)(B), which authorizes the Board to prescribe the types of records that can be used to quickly and effectively verify a consumer's income.

Proposed § 226.43(c)(4) implements TILA Section 129C(a)(4) and provides that a creditor must verify the amounts of income or assets it relies on to determine a consumer's ability to repay a covered transaction using third-party records that provide reasonably reliable evidence of the consumer's income or assets. The proposed rule and associated commentary provide the following examples of third-party records creditors may use to verify the consumer's income or assets, in addition to or instead of tax-return transcripts issued by the IRS: (1) Copies of tax returns the consumer filed with the IRS or a state taxing authority; (2) IRS Form W–2s or similar IRS forms for reporting wages or tax withholding; (3) payroll statements, including military Leave and Earnings Statements; (4) financial institution records; (5) records from the consumer's employer or a third party that obtained consumer-specific income information from the consumer's employer; (6) records from a government agency stating the consumer's income from benefits or entitlements, such as a "proof of income" letter issued by the Social Security Administration; (7) check cashing receipts; and (8) receipts from a consumer's use of funds transfer services. *See* proposed § 226.43(c)(4)(i)–(viii); proposed comment 43(c)(4)(vi)–1. Those examples are illustrative, not exhaustive, and creditors may determine that other records provide reasonably reliable evidence of the income relied upon in determining a consumer's repayment ability.

Creditors need consider only the income or assets relied upon to determine the consumer's repayment ability, as discussed above in the section-by-section analysis of proposed § 226.43(c)(2)(i). *See* proposed comment 43(c)(2)(i)–2. Accordingly, proposed comment 43(c)(4)–1 clarifies that creditors need verify only the income or assets relied upon to determine the consumer's repayment ability. Proposed comment 43(c)(4)–1 also provides an example where the creditor need not verify a consumer's annual bonus because the creditor relies on only the consumer's salary to determine the consumer's repayment ability. Proposed comment 43(c)(4)–2 clarifies that, if multiple consumers apply jointly for a loan and each lists income or assets on the application, the creditor need verify only the income or assets the creditor relies on to determine repayment ability. Proposed comment 43(c)(4)–3 clarifies that creditors may verify a consumer's income using an IRS tax-return transcript that summarizes the information in the consumer's filed tax return, another record that provides reasonably reliable evidence of the consumer's income, or both. Proposed comment 43(c)(4)–3 also clarifies that creditors may obtain a copy of an IRS tax-return transcript or filed tax return from a service provider or the consumer and need not obtain the copy directly from the IRS or other taxing authority, and cross-references guidance on obtaining records in proposed comment 43(c)(3)–2. Proposed comments 43(c)(4)–1, –2, and –3 are consistent with current commentary adopted by the Board's 2008 HOEPA Final Rule. *See* comments 34(a)(4)–7, 34(a)(4)(ii)(A)–1 and –2. Proposed comment 43(c)(4)(vi)–1 clarifies that an example of a record from a Federal, state, or local government agency stating the consumer's income from benefits or entitlements is a "proof of income letter" (also known as a "budget letter," "benefits letter," or "proof of award letter") from the Social Security Administration.

The Board generally solicits comment on this approach. In addition, the Board specifically solicits comment on whether, consistent with the Board's 2008 HOEPA Final Rule, the Board should provide an affirmative defense for a creditor that can show that the amounts of the consumer's income or assets relied upon in determining the consumer's repayment ability were not materially greater than the amounts the creditor could have verified using third-party records at or before consummation. *See* § 226.34(a)(4)(ii)(B).

43(c)(5) Payment Calculation

Background

Requirements of TILA Sections 129C(a)(1), (3) and (6)

The Board proposes § 226.43(c)(5) to implement the payment calculation requirements of TILA Section 129C(a), as enacted by Section 1411 of the Dodd-Frank Act. TILA Section 129C(a) contains the general requirement that a creditor determine the consumer's "ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage

guarantee insurance), and assessments," based on several considerations, including "a payment schedule that fully amortizes the loan over the term of the loan." TILA Sections 129C(a)(1) and (3). The statutory requirement to consider mortgage-related obligations, as defined under proposed § 226.43(b)(8), is discussed above in the section-by-section analysis for proposed § 226.43(c)(2)(v).

TILA Sections 129C(a)(6)(A)–(D) also require creditors to make uniform assumptions when calculating the payment obligation for purposes of determining the consumer's repayment ability for the covered transaction. Specifically, TILA Section 129C(a)(6)(D)(i)–(iii) provides that when calculating the payment obligation that will be used to determine whether the consumer can repay the covered transaction, the creditor must use a fully amortizing payment schedule and assume that—

(1) The loan proceeds are fully disbursed on the date the loan is consummated;

(2) the loan is repaid in substantially equal, monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment; and

(3) the interest rate over the entire term of the loan is a fixed rate equal to the fully-indexed rate at the time of the loan closing, without considering the introductory rate.

The statute defines the term "fully-indexed rate" in TILA Section 129C(a)(7).

TILA Section 129C(a)(6)(D)(ii)(*I*) and (*II*), however, provides two exceptions to the second assumption regarding "substantially equal, monthly payments over the entire term of the loan with no balloon payment" for loans that require "more rapid repayment (including balloon payment)." First, this statutory provision authorizes the Board to prescribe regulations for calculating the payment obligation for loans that require more rapid repayment (including balloon payment), and which have an annual percentage rate that does not exceed a certain rate threshold. TILA Section 129C(a)(6)(D)(ii)(*I*). Second, for loans that "require more rapid repayment (including balloon payment)," and which exceed a certain rate threshold, the statute requires that the creditor use the loan contract's repayment schedule. TILA Section 129C(a)(6)(D)(ii)(*II*). The statute does not define the term "rapid repayment."

The statute also provides three additional clarifications to the assumptions stated above for loans that contain certain features. First, for variable-rate loans that defer repayment of any principal or interest, TILA Section 129C(a)(6)(A) states that for purposes of the repayment ability determination a creditor must use "a fully amortizing repayment schedule." This provision generally reiterates the requirement provided under TILA Section 129C(a)(3) to use a payment schedule that fully amortizes the loan.

Second, for covered transactions that permit or require interest-only payments, the statute requires that the creditor determine the consumers' repayment ability using "the payment amount required to amortize the loan by its final maturity." TILA Section 129C(a)(6)(B).

Third, for covered transactions with negative amortization, the statute requires the creditor to also take into account "any balance increase that may accrue from any negative amortization provision" when making the repayment ability determination. TILA Section 129C(a)(6)(C). The statute does not define the terms "variable-rate," "fully amortizing," "interest-only," or "negative amortization." Proposed § 226.43(c)(5)(i) and (ii) implement these statutory provisions, and are discussed in further detail below.

2008 HOEPA Final Rule

TILA Section 129C(a), as enacted by Section 1411 of the Dodd-Frank Act, largely codifies many aspects of the repayment ability rule under § 226.34(a)(4) of the Board's 2008 HOEPA Final Rule, which the Board is proposing to remove, and extends such requirements to the entire mortgage market regardless of the loan's interest rate. Similar to § 226.34(a)(4), the statutory framework of TILA Section 129C(a) focuses on prescribing the requirements that govern the underwriting process and extension of credit to consumers, rather than dictating which credit terms may or may not be permissible. However, there are differences between TILA Section 129C(a) and the Board's 2008 HOEPA Final Rule with respect to payment calculation requirements.

Current § 226.34(a)(4) does not address how a creditor must calculate the payment obligation for a loan that cannot meet the presumption of compliance under § 226.34(a)(4)(iii)(B). For example, § 226.34(a)(4) does not specify how to calculate the periodic payment required for a negative amortization loan or balloon loan with a term of less than seven years. In contrast, the Dodd-Frank Act lays out a specific framework for underwriting any loan subject to proposed § 226.43(c). In taking this approach, the statutory requirements in TILA Section 129C(a)(6)(D) addressing payment calculation requirements differ from § 226.34(a)(4)(iii) in the following manner: (1) The statute generally premises repayment ability on monthly payment obligations calculated using the fully indexed rate, with no limit on the term of the loan that should be considered for such purpose; (2) the statute permits underwriting loans with balloon payments to differ depending on whether the loan's annual percentage rate exceeds the applicable loan pricing metric, or meets or falls below the applicable loan pricing metric; and (3) the statute expressly addresses underwriting requirements for loans with interest-only payments or negative amortization.

Interagency Supervisory Guidance

As discussed above in Part II.C, in 2006 and 2007 the Board and other Federal banking agencies addressed concerns regarding the increased risk to creditors and consumers presented by loans that permit consumers to defer repayment of principal and sometimes interest, and by adjustable-rate mortgages in the subprime market. The Interagency Supervisory Guidance stated that creditors should determine a consumer's repayment ability using a payment amount based on the fully indexed rate, assuming a fully amortizing schedule. In addition, the 2006 Nontraditional Mortgage Guidance addressed specific considerations for negative amortization and interest-only loans. State supervisors issued parallel statements to this guidance, which most states have adopted. TILA Sections 129C(a)(3) and (6) are generally consistent with this longstanding Interagency Supervisory Guidance, and largely extend the guidance regarding payment calculation assumptions to all loan types covered under TILA Section 129C(a), regardless of loan's interest rate.

The Board's Proposal

The Board proposes § 226.43(c)(5) to implement the payment calculation requirements of TILA Sections 129C(a)(1), (3) and (6) for purposes of the repayment ability determination required under proposed § 226.43(c). Consistent with these statutory provisions, proposed § 226.43(c)(5) does not prohibit the creditor from offering certain credit terms or loan features, but rather focuses on the calculation process the creditor must use to determine whether the consumer can repay the loan according to its terms. Under the proposal, creditors generally would be required to determine a consumer's

ability to repay a covered transaction using the fully indexed rate or the introductory rate, whichever is greater, to calculate monthly, fully amortizing payments that are substantially equal, unless a special rule applies. *See* proposed § 226.43(c)(5)(i). For clarity and simplicity, proposed § 226.43(c)(5)(i) would use the terms "fully amortizing payment" and "fully indexed rate," as discussed above under proposed § 226.43(b)(2) and (3), respectively. Proposed comment 43(c)(5)(i)-1 would clarify that the general rule would apply whether the covered transaction is an adjustable-, step-, or fixed-rate mortgage, as those terms are defined in § 226.18(s)(7)(i), (ii), and (iii), respectively.

Proposed § 226.43(c)(5)(ii)(A)–(C) create exceptions to the general rule and provide special rules for calculating the payment obligation for balloon-payment loans, interest-only loans or negative amortization loans, as follows:

Balloon-payment loans. Consistent with TILA Section 129C(a)(6)(D)(ii)(*I*) and (*II*) of the Dodd-Frank Act, proposed § 226.43(c)(5)(ii)(A) provides special rules for covered transactions with a balloon payment that would differ depending on the loan's rate. Proposed § 226.43(c)(5)(ii)(A)(*1*) states that for covered transactions with a balloon payment that are *not* higher-priced covered transactions, the creditor must determine a consumer's ability to repay the loan using the maximum payment scheduled in the first five years after consummation. Proposed § 226.43(c)(5)(ii)(A)(*2*) further states that for covered transactions with balloon payments that *are* higher priced covered transactions, the creditor must determine the consumer's ability to repay according to the loan's payment schedule, including any balloon payment. For clarity, proposed § 226.43(c)(5)(ii)(A) would use the term "higher-priced covered transaction" to refer to a loan that exceeds the applicable loan rate threshold, and is defined in proposed § 226.43(b)(4), discussed above. The term "balloon payment" has the same meaning as in current § 226.18(s)(5)(i).

Interest-only loans. Consistent with TILA Sections 129C(a)(6)(B) and (D) of the Dodd-Frank Act, proposed § 226.43(c)(5)(ii)(B) provides special rules for interest-only loans. Proposed § 226.43(c)(5)(ii)(B) requires that the creditor determine the consumer's ability to repay the interest-only loan using (1) the fully indexed rate or the introductory rate, whichever is greater; and (2) substantially equal, monthly payments of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast. For clarity, proposed § 226.43(c)(5)(ii)(B) would use the terms "loan amount" and "recast," which are defined and discussed under proposed § 226.43(b)(5) and (11), respectively. The term "interest-only loan" has the same meaning as in current § 226.18(s)(7)(iv).

Negative amortization loans. Consistent with TILA Sections 129C(a)(6)(C) and (D) of the Dodd-Frank Act, proposed § 226.43(c)(5)(ii)(C) provides special rules for negative amortization loans. Proposed § 226.43(c)(5)(ii)(C) requires that the creditor determine the consumer's ability to repay the negative amortization loan using (1) the fully indexed rate or the introductory rate, whichever is greater; and (2) substantially equal, monthly payments of principal and interest that will repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast. Proposed comment 43(c)(5)(ii)(C)–1 clarifies that for purposes of this proposed rule, the creditor must first determine the maximum loan amount and the period of time that remains in the loan term after the loan is recast. For clarity, proposed § 226.43(c)(5)(ii)(C) would use the terms "maximum loan amount" and "recast," which are defined and discussed under proposed § 226.43(b)(7) and (11), respectively. The term "negative amortization loan" has the same meaning as in current § 226.18(s)(7)(v) and comment 18(s)(7)(v)–1.

Each of these proposed payment calculation provisions is discussed in greater detail below.

43(c)(5)(i) General rule

Proposed § 226.43(c)(5)(i) implements the payment calculation requirements in TILA Sections 129C(a)(3) and (6)(D)(i)–(iii), and states the general rule for calculating the payment obligation on a covered transaction for purposes of the ability-to-repay provisions. Consistent with the statute, proposed § 226.43(c)(5)(i) provides that unless an exception applies under proposed § 226.43(c)(5)(ii), a creditor must make the repayment ability determination required under proposed § 226.43(c)(2)(iii) by using the greater of the fully indexed rate or any introductory interest rate, and monthly, fully amortizing payments that are substantially equal. That is, under this proposed general rule the creditor would calculate the consumer's monthly payment amount based on the loan amount, and amortize that loan amount in substantially equal payments over the loan term, using the fully indexed rate.

Proposed comment 43(c)(5)(i)–1 would explain that the payment calculation method set forth in § 226.43(c)(5)(i) applies to any covered transaction that does not have a balloon payment, or that is not an interest-only loan or negative amortization loan, whether it is a fixed-rate, adjustable-rate or step-rate mortgage. This comment would further explain that the payment calculation method set forth in § 226.43(c)(5)(ii) applies to any covered transaction that is a loan with a balloon payment, interest-only loan, or negative amortization loan. To facilitate compliance, this comment would list the defined terms used in proposed § 226.43(c)(5) and provide cross-references to their definitions.

The fully indexed rate or introductory rate, whichever is greater. Proposed § 226.43(c)(5)(i)(A) implements the requirement in TILA Section 129C(a)(6)(D)(iii) to use the fully indexed rate when calculating the monthly, fully amortizing payment for purposes of the repayment ability determination. Proposed § 226.43(c)(5)(i)(A) would also provide that when creditors calculate the monthly, fully amortizing payment for adjustable-rate mortgages, they must use the introductory interest rate if it is greater than the fully indexed rate (*i.e.,* a premium rate). In some adjustable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were determined by using the index plus margin, or formula (*i.e.,* the fully indexed rate). However, an initial rate that is a premium rate is *higher* than the rate based on the index or formula. *See* proposed comment 43(c)(5)(i)–2. Thus, requiring creditors to use only the fully indexed rate would result in creditors underwriting loans that have a "premium" introductory rate at a rate lower than the rate on which the consumer's initial payments would be based. The Board believes requiring creditors to assess the consumer's ability to repay on the initial higher payments better effectuates the statutory intent and purpose.

The Board proposes to require creditors to underwrite the loan at the premium rate if greater than the fully indexed rate for purposes of the repayment ability determination using its authority under TILA Section 105(a). 15 U.S.C. 1604(a). TILA Section 105(a), as amended by Section 1100A of the Dodd-Frank Act, authorizes the Board to

prescribe regulations to carry out the purposes of TILA and Regulation Z, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a). This approach is further supported by the Board's authority under TILA Section 129B(e) to condition terms, acts or practices relating to residential mortgage loans that the Board finds necessary or proper to effectuate the purposes of TILA. 15 U.S.C. 1639b(e). The stated purpose of TILA Section 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loan. TILA Section 129B(b), 15 U.S.C. 1639b. For the reasons discussed above, the Board believes requiring creditors to underwrite the loan to the premium rate for purposes of the repayment ability determination will help to ensure that the consumers are offered, and receive, loans on terms that reasonably reflect their ability to repay, and to prevent circumvention or evasion.

Monthly, fully amortizing payments. For simplicity, proposed § 226.43(c)(5)(i) uses the term "fully amortizing payment" to refer to the statutory requirements that a creditor use a payment schedule that repays the loan assuming that (1) the loan proceeds are fully disbursed on the date of consummation of the loan; and (2) the loan is repaid in amortizing payments for principal and interest over the entire term of the loan. *See* TILA Sections 129C(a)(3) and (6)(D)(i)–(ii). As discussed above, proposed § 226.43(b)(2) defines "fully amortizing payment" to mean a periodic payment of principal and interest that will fully repay the loan amount over the loan term. The terms "loan amount" and "loan term" are defined in proposed § 226.43(b)(5) and (b)(6), respectively, and discussed above.

The statute also expressly requires that a creditor use "*monthly* amortizing payments" for purposes of the repayment ability determination. TILA Section 129C(6)(D)(ii). The Board recognizes that some loan agreements require consumers to make periodic payments with less frequency, for example quarterly or semi-annually. Proposed § 226.43(c)(5)(i)(B) does not dictate the frequency of payment under the terms of the loan agreement, but does require creditors to convert the payment schedule to monthly payments to determine the consumer's repayment ability. Proposed comment 43(c)(5)(i)–3 clarifies that the general payment calculation rules do not prescribe the terms or loan features that a creditor may choose to offer or extend to a consumer, but establishes the calculation method a creditor must use to determine the consumer's repayment ability for a covered transaction. This comment explains, by way of example, that the terms of the loan agreement may require that the consumer repay the loan in quarterly or bi-weekly scheduled payments, but for purposes of the repayment ability determination, the creditor must convert these scheduled payments to monthly payments in accordance with § 226.43(c)(5)(i)(B). This comment would also explain that the loan agreement may not require the consumer to make fully amortizing payments, but for purposes of the repayment ability determination the creditor must convert any non-amortizing payments to fully amortizing payments.

Substantially equal. Proposed comment 43(c)(5)(i)–4 provides additional guidance to creditors for determining whether monthly, fully amortizing payments are "substantially equal." *See* TILA Section 129C(a)(6)(D)(ii). This comment would state that creditors should disregard minor variations due to payment-schedule irregularities and odd periods, such as a long or short first or last payment period. The comment would explain that monthly payments of principal and interest that repay the loan amount over the loan term need not be equal, but that the monthly payments should be substantially the same without significant variation in the monthly combined payments of both principal and interest. Proposed comment 43(c)(5)(i)–4 further explains that where, for example, no two monthly payments vary from each other by more than 1% (excluding odd periods, such as a long or short first or last payment period), such monthly payments would be considered substantially equal for purposes of this proposal. The comment would further provide that, in general, creditors should determine whether the monthly, fully amortizing payments are substantially equal based on guidance provided in § 226.17(c)(3) (discussing minor variations), and § 226.17(c)(4)(i)–(iii) (discussing payment-schedule irregularities and measuring odd periods due to a long or short first period) and associated commentary. The Board solicits comment on operational difficulties that arise by ensuring payment amounts meet the "substantially equal" condition. The Board also solicits comment on whether a 1% variance is an appropriate tolerance threshold.

Examples of payment calculations. Proposed comment § 226.43(c)(5)(i)–5 provides illustrative examples of how to determine the consumer's repayment ability based on substantially equal, monthly, fully amortizing payments as required under proposed § 226.43(c)(5)(i) for a fixed-rate, adjustable-rate and step-rate mortgage. For example, proposed comment 43(c)(5)(i)–5.ii provides an illustration of the payment calculation for an adjustable-rate mortgage with a five-year discounted rate. The example first assumes a loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 6% that is fixed for an initial period of five years, after which the interest rate will adjust annually based on a specified index plus a margin of 3%, subject to a 2% annual periodic interest rate adjustment cap. The index value in effect at consummation is 4.5%; the fully indexed rate is 7.5% (4.5% plus 3%). *See* proposed comment 43(c)(5)(i)–5.ii. This proposed comment explains that even though the scheduled monthly payment required for the first five years is $1,199, for purposes of § 226.43(c)(2)(iii) the creditor must determine the consumer's ability to repay the loan based on a payment of $1,398, which is the substantially equal, monthly, fully amortizing payment that will repay $200,000 over 30 years using the fully indexed rate of 7.5%.

The Board recognizes that, although consistent with the statute, the proposed framework would require creditors to underwrite certain loans, such as hybrid ARMs with a discounted rate period of five or more years (*e.g.,* 5/1, 7/1, and 10/1 ARMs) to a more stringent standard as compared to the underwriting standard set forth in proposed § 226.43(e)(2)(v) for qualified mortgages. The Board believes this approach is consistent with the statute's intent to ensure consumers can reasonably repay their loan, and that in both cases consumers' interests are properly protected. *See* TILA Section 129B(a)(2), 15 U.S.C. 1639b(a)(2). To meet the definition of a qualified mortgage, a loan cannot have certain risky terms or features, such as provisions that permit deferral of principal or a term that exceeds 30 years; no similar restrictions apply to loans subject to the ability-to-repay standard. *See* proposed § 226.43(e)(2)(i) and (ii). As a result, the risk of potential payment shock is diminished significantly for qualified mortgages. For this reason, the Board believes maintaining the more lenient statutory underwriting standard for loans that satisfy the qualified mortgage criteria will help to ensure that responsible and affordable credit

remains available to consumers. *See* TILA 129B(a)(2), 15 U.S.C. 1639b(a)(2).

Requests for Comment

Loan amount or outstanding principal balance. As noted above, proposed § 226.43(c)(5)(i) is consistent with the statutory requirements regarding payment calculations for purposes of the repayment ability determination. The Board believes the intent of these statutory requirements is to prevent creditors from assessing the consumer's repayment ability based on understated payment obligations, especially when risky features can be present on the loan. However, the Board is concerned that the statute, as implemented in proposed § 226.43(c)(5)(i), would require creditors to determine, in some cases, a consumer's repayment ability using overstated payment amounts because the creditor must assume that the consumer repays the loan amount in substantially equal payments based on the fully indexed rate, regardless of when the fully indexed rate can take effect under the terms of the loan. The Board is concerned that this approach may restrict credit availability, even where consumers are able to demonstrate that they can repay the payment obligation once the fully indexed rate takes effect.

For this reason, the Board solicits comment on whether it should exercise its authority under TILA Sections 105(a) and 129B(e) to provide that the creditor may calculate the monthly payment using the fully indexed rate based on the outstanding principal balance as of the date the fully indexed rate takes effect under the loan's terms, instead of the loan amount at consummation. 15 U.S.C. 1604(a). Under this approach, the creditor would determine the consumer's repayment ability using the largest payment that could occur under the loan's terms based on the fully indexed rate, rather than using monthly, fully amortizing payments that are substantially equal. For example, for loans with a significant introductory rate period of 7 years or longer, it may be reasonable for the creditor to underwrite the consumer by applying the fully indexed rate to the outstanding principal balance at the end of the 7 year introductory period. To illustrate this approach (all amounts are rounded), assume an adjustable-rate mortgage in the amount of $200,000 with a seven-year discounted rate of 6.5%, after which the interest rate will adjust annually to the specified index plus a margin of 3%. The index value at consummation is 4.5%; the fully indexed rate is 7.5%. At the end of the seventh year (after the 84th monthly payment is credited), when the fully indexed rate takes effect, the outstanding principal balance is $180,832. Under this approach, the creditor could underwrite the loan based on the monthly payment of principal and interest of $1,377 to repay the outstanding principal balance of $180,832, instead of the monthly payment of $1,398 to repay the loan amount of $200,000. Such an approach would seem to be consistent with the purpose of TILA Section 129B(a)(2), which is to ensure the consumer can reasonably repay the loan according to its terms. 15 U.S.C. 1639b(a)(2).

Step-rate mortgages. The Board also notes that for purposes of the repayment ability determination, a step-rate mortgage would be subject to the general payment calculation rule under proposed § 226.43(c)(5)(i), or the special rules under proposed § 226.43(c)(5)(ii), if it did not otherwise meet the definition of a "qualified mortgage." *See* proposed comment 43(c)(5)(i)–1. As discussed in proposed § 226.43(b)(3), which defines the term "fully indexed rate" for purposes of the repayment ability determination, the proposed payment calculation requirements would require creditors to determine a consumer's ability to repay a step-rate mortgage using the maximum rate that can occur at any time during the loan term. The Board notes that this approach is consistent with the requirement that the creditor give effect to the largest margin that can apply at any time during the loan term when determining the fully indexed rate. *See* TILA Section 129C(a)(6)(iii) and (7). However, the Board notes that by requiring creditors to use the maximum rate in a step-rate mortgage, the monthly payments used to determine the consumer's repayment ability will be higher than the consumer's actual maximum payment.

The Board is concerned that this approach could restrict credit availability. The Board recognizes that this concern is also present for adjustable-rate mortgages, but notes that a step-rate product differs from an adjustable-rate mortgage in that future interest rate adjustments are known in advance and do not fluctuate over time in accordance with a market index. The Board believes this feature of a step-rate product could mitigate the payment shock risk to the consumer because the exact rate and payment increases would be disclosed to the consumer in advance, with no potential for the payment amounts to be greater depending on market conditions.

On the other hand, the Board recognizes that a step-rate mortgage that does not have a balloon payment, and is not an interest-only or negative amortization loan, can meet the definition of a qualified mortgage if the other underwriting criteria required are also met. As a result, step-rate mortgages that would need to comply with the payment calculation rules under proposed § 226.43(c)(5) may be more likely to be loans that contain a risky feature. The Board solicits comment, and supporting data for alternative approaches, on whether it should exercise its authority under TILA Sections 105(a) and 129B(e) to provide an exception for step-rate mortgages subject to the payment calculation rules in proposed § 226.43(c)(5). For example, should the Board require that creditors underwrite the step-rate mortgage using the maximum rate in the first seven years, ten years, or some other appropriate time horizon? Should the Board similarly require that creditors underwrite an adjustable-rate mortgage using the maximum interest rate in the first seven years or some other appropriate time horizon that reflects a significant introductory rate period?

Safe harbor to facilitate compliance. The Board recognizes that under this proposal, creditors must comply with multiple assumptions when calculating the particular payment for purposes of the repayment ability determination. For example, creditors would need to ensure that the monthly payment amounts are "substantially equal." Creditors would also need to follow different payment calculation rules depending on the type of loan being underwritten (*i.e.,* balloon-payment loan *vs.* a negative amortization loan), as discussed below under proposed § 226.43(c)(5)(ii). The Board is concerned that the complexity attendant to the proposed payment calculation requirements may increase the potential for unintentional errors to occur, making compliance difficult, especially for small creditors that may be unable to invest in advanced technology or software needed to ensure payment calculations are compliant. At the same time, the Board notes that the intent of the statutory framework and this proposal is to ensure consumers are offered and receive loans on terms that they can reasonably repay. Thus, the Board solicits comment on whether it should exercise its authority under TILA Sections 105(a) and 129B(e) to provide a safe harbor for creditors that use the largest scheduled payment that can occur during the loan term to determine the consumer's ability to repay to facilitate compliance with the requirements under proposed

§ 226.43(c)(5)(i) and (ii). 15 U.S.C. 1604(a).

43(c)(5)(ii) Special Rules: Balloon, Interest-Only, and Negative Amortization Loans

Proposed § 226.43(c)(5)(ii) creates exceptions to the general rule under proposed § 226.43(c)(5)(i), and provides special rules in proposed § 226.43(c)(5)(ii)(A)–(C) for loans with a balloon payment, interest-only loans, and negative amortization loans, respectively, for purposes of the repayment ability determination required under proposed § 226.43(c)(2)(iii). In addition to TILA Section 129C(a)(6)(D)(i)–(iii), proposed § 226.43(c)(5)(ii)(A)–(C) implement TILA Sections 129C(a)(6)(B) and (C), and TILA Section 129C(a)(6)(D)(ii)(*I*)-(*II*). Each of these proposed special rules is discussed below.

43(c)(5)(i)(A) Balloon Loans

The statute provides an exception to the requirement that creditors determine a consumer's repayment ability using substantially equal, monthly payments for loans that require "more rapid repayment (including balloon payment)." *See* TILA Section 129C(a)(6)(D)(ii)(*I*) and (*II*). First, the statute authorizes the Board to prescribe regulations for calculating the payment obligation for loans that require more rapid repayment (including balloon payment), and which have an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction by 1.5 or more percentage points for a first-lien transaction, and by 3.5 or more percentage points for a subordinate-lien transaction (*i.e.,* a "prime" loan). *See* TILA Section 129C(a)(6)(D)(ii)(*I*). Second, for loans that "require more rapid repayment (including balloon payment)," and exceed the loan pricing threshold set forth (*i.e.,* a "nonprime" loan), the statute requires that the creditor use the loan contract's repayment schedule. *See* TILA Section 129C(a)(6)(D)(ii)(*II*). The Board interprets these statutory provisions as authorizing the Board to prescribe special payment calculation rules for "prime" balloon loans, as discussed more fully below.

Scope. The scope of loans covered by the phrase "more rapid repayment (including balloon payment)" in TILA Section 129C(a)(6)(D)(ii) is unclear, and the statute does not define the term "rapid repayment." The Board interprets the use of the term "including," which qualifies the phrase "more rapid repayment," as meaning that balloon loans are covered, but that other loan types are also intended to be covered. The Board notes, however, that loans with a balloon payment actually require *less* rapid payment of principal and interest because the amortization period used is much longer than the term, thereby causing the balloon payment of principal and interest at maturity. Thus, the reference to the phrase "including balloon payment" makes it unclear whether the scope of this provision is meant to cover loans that permit, for example, consumers to make initial payments that are not fully amortizing, such as loans with negative amortization, but that later require larger payments of principal and interest, or other loan types.

Outreach participants offered various interpretations of the phrase "more rapid repayment (including balloon payment)." Participants suggested that the loan types that could be covered by the phrase "more repaid repayment" could range from graduated payment mortgages and negative amortization loans (where initial payments do not cover principal and only some interest, and therefore higher payments of principal and interest are required once the loan recasts to require fully amortizing payments), to niche-market balloon-payment loans (where a series of balloon payments are required intermittently throughout the loan), to growth-equity mortgages (where the loan is paid in full earlier than the term used to calculate initial payments required under the payment schedule).

The Board does not believe it is feasible for the phrase "more rapid repayment" to cover all these loan types given that each one has varying terms and features. Thus, the Board is proposing to use its authority under TILA Section 129C(a)(6)(D)(i)(*I*) only with respect to balloon loans. The Board solicits comment on the meaning of the phrase "more rapid repayment" and what loan products should be covered by this phrase. For example, the Board solicits comment on whether the phrase "more rapid repayment" should include any loan where the payments of principal and interest are based on an amortization period that is shorter than the term of the loan during which scheduled payments are permitted. For example, a loan may amortize the loan amount over a 30-year period to determine monthly payment of interest during the first five years, but fully amortizing payments begin after five years, and therefore are amortized over a period of time that is shorter than the term of the loan (*i.e.,* 25 years). The Board further solicits comment on the specific terms and features of loans that would result in "more rapid repayment."

Higher-priced covered transaction. The Board is proposing § 226.43(c)(5)(i)(A)(*1*) and (*2*) to provide special payment calculation rules for a covered transaction with a balloon payment that would differ depending on whether the loan is or is not a higher-priced covered transaction. For purposes of proposed § 226.43(c)(5)(i)(A), the Board would define "higher-priced covered transaction" to mean a covered transaction with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, or by 3.5 or more percentage points for a subordinate-lien covered transaction. *See* proposed § 226.43(b)(4).

As noted above under the proposed definition of higher-priced covered transaction, the Board recognizes that "jumbo" loans typically carry a premium interest rate to reflect the increased credit risk and cost associated with lending larger loan amounts to consumers. Such loans are more likely to be considered "higher-priced covered transactions" and as a result, creditors would need to underwrite such loans using the loan's payment schedule, including any balloon payment. *See* proposed § 226.43(c)(5)(i)(A)(*2*), discussed below. The Board is concerned that this would restrict credit availability for consumers in the "jumbo" balloon market. Accordingly, the Board is soliciting comment on whether it should use its authority under TILA Sections 105(a) and 129B(e) to incorporate the special, separate coverage threshold of 2.5 percentage points for "jumbo loans" to permit more jumbo loans to benefit from the special payment calculation rule under proposed § 226.43(c)(5)(ii)(A)(*1*), and also to be consistent with proposed § 226.45(a)(1), which implements rate thresholds for the proposed escrow account requirement and certain appraisal-related requirements. *See* 76 FR 11598, Mar. 2, 2011; 75 FR 66554, Oct. 28, 2010.

The Board further notes under proposed § 226.43(b)(4) that premium interest rates are typically required for loans secured by non-principal dwellings, such as vacation homes, which are covered by this proposal. Accordingly, the Board also solicits comment and supporting data on whether it should exercise its authority under TILA Sections 105(a) and 129B(e) to incorporate a special, separate coverage threshold to address loans secured by non-principal dwellings, and

what rate threshold would be appropriate for such loans.

Proposed comment 43(c)(5)(ii)(A)–1 clarifies that for higher-priced covered transactions with a balloon payment, the creditor must consider the consumer's ability to repay the loan based on the payment schedule under the terms of the legal obligation, including any required balloon payment. This comment would explain that for loans with a balloon payment that are *not* higher-priced covered transactions, the creditor should use the maximum payment scheduled during the first five years of the loan following consummation. To facilitate compliance, the comment would cross-reference to the definition of "balloon payment" in current § 226.18(s)(5)(i).

43(c)(5)(ii)(A)(*1*) "Prime" Balloon Loans

Proposed § 226.43(c)(5)(ii)(A)(*1*) requires a creditor to determine a consumer's ability to repay a loan with a balloon payment using the maximum payment scheduled during the first five years after consummation where the loan is *not* a higher-priced covered transaction (*i.e.,* a "prime" loan). This proposed rule would apply to "prime" loans with a balloon payment that have a term of five or more years.

Legal authority. The Board proposes this approach using its authority under TILA Section 129C(a)(6)(D)(ii)(*I*), which authorizes the Board to prescribe regulations for "prime" balloon loans. In addition, TILA Sections 105(a) and 129B(e) authorize the Board to prescribe regulations that are consistent with the purposes of TILA. 15 U.S.C. 1604(a); 15 U.S.C. 1639b(e). One of the purposes of TILA is to "assure that consumers are offered and receive residential mortgage loan on terms that reasonably reflect their ability to repay the loans." TILA Section 129B(a)(2); 15 U.S.C. 1629b(a)(2). The Board believes proposing to require the creditor to use the largest payment that can occur during the first five years after consummation to determine repayment ability helps to ensure that consumers are offered and receive loans on terms that reasonably reflect their ability to repay the loan, and also facilitates compliance.

First five years after consummation. For several reasons, the Board believes that five years is the appropriate time horizon for purposes of determining the consumer's ability to repay a balloon loan. First, the Board believes this approach preserves credit choice for consumers interested in financing options that are based on interest rates more consistent with shorter-term maturities, and therefore typically less expensive than 30-year fixed-rate loans, but that may offer more stability than some adjustable-rate loans. Five-year balloon loans generally offer consumers a fixed rate for the entire term that is lower than the prevailing rate for a 30-year fixed. Consumers may choose this type of loan as short-term financing with the intent to refinance in the near future into a fully amortizing, longer term loan once the consumer's personal finances, market rate conditions, or some other set of facts and circumstances improves. The Board believes that five years is a sufficient period of time for consumers to improve personal finances, for example, and that there is an increased likelihood that a consumer may refinance, move or relocate during such time frame. In contrast, as discussed in proposed § 226.43(f)(1)(iv), balloon loans with terms less than five years, but with extended amortization periods, such as 30 or more years, may prevent consumers from growing equity and therefore, likely present greater credit risk.

Second, the Board notes that using the first five years after consummation to determine the consumer's repayment ability on a "prime" balloon loan is consistent with other proposed repayment ability provisions, and therefore facilitates compliance. For example, proposed § 226.43(d)(5)(ii) and (e)(2)(iv) require the creditor to use the five-year period after consummation for purposes of the determining whether an exception applies to the repayment ability rules for certain refinancings, and when underwriting the loan to meet the qualified mortgage standard, respectively. The Board further notes that the five-year period under proposed § 226.43(e)(2)(iv) implements the statutory requirement that creditors underwrite a loan, for purposes of the qualified mortgage standard, based on the maximum rate permitted during the first five years after consummation, and therefore, reflects the statutory intent that a five-year period is a reasonable period of time to repay a loan. *See* TILA Section 129(b)(2)(A)(v).

Third, the Board also is proposing to require that balloon loans made by creditors in rural or underserved areas have a minimum five-year term to be considered qualified mortgages. *See* proposed § 226.43(f)(1), discussed below. The Board believes it is appropriate for all types of creditors to use the same loan term when determining a consumer's ability to repay a balloon loan to create a more level playing field. The Board recognizes this concern may be mitigated in part by the proposed asset threshold requirement, *see* proposed § 226.43(f)(1)(v)(D), but believes a consistent approach to underwriting balloon loans helps to prevent unintended consequences. For these reasons, the Board believes this approach preserves credit availability and choice of loan products that may offer more favorable terms to consumers, and also facilitates compliance.

In developing the proposed approach for "prime" balloon loans, the Board considered several different alternatives. For example, the Board considered requiring the creditor to determine whether the consumer could refinance the loan before incurring the balloon payment, using a fully amortizing payment based on the then prevailing interest rate for a fixed-rate mortgage with a 30-year term. The Board also considered requiring the creditor to use a fully amortizing payment based on a rate that would be two times the contractual rate offered during the first five years of the loan with the balloon payment. The Board believes both approaches are speculative in nature, and that neither can accurately predict the interest rate that would be available to consumers at the time they may want to refinance. Moreover, the Board believes both approaches would likely overstate the consumer's actual payment obligation for purposes of the repayment ability determination where, for example, the interest rate on a five-year balloon loan is typically lower than the rate offered on a 30-year fixed. For these reasons, the Board did not believe these approaches were appropriate.

The Board notes that the proposed five-year horizon for purposes of determining the consumers repayment ability for a "prime" balloon loan does not parallel the time horizon used for balloon loans under the Board's anti-steering provisions regarding loan originator compensation. *See* 75 FR 58509, Sept. 24, 2010. The Board's anti-steering rules prohibit a loan originator from steering or directing a consumer to a loan to earn more compensation, unless the transaction is in the consumer's interest. *See* current § 226.36(e). The Board provides a safe harbor for loan originators if certain conditions are met, including offering certain loan options to the consumer. One such loan option must be a loan with no risky features; a balloon payment that occurs in the first 7 years of the life of the loan is deemed a risky feature for this purpose. The Board believes the different approaches are warranted by the different purposes served by the respective rules. Although the anti-steering provisions help to

ensure consumers' are offered certain loan options for which they likely qualify, they are primarily intended to prevent loan originators from offering loan options with features that may not benefit the consumer, or that the consumer may not want or need, but which yield the loan originator greater compensation. In contrast, the proposed repayment ability provisions are meant to help ensure that the loan offered or chosen by the consumer has terms that the consumer can reasonably repay.

The Board solicits comment on whether the five-year term is an appropriate time horizon, with supporting data for any alternative approaches.

Proposed comment § 226.43(c)(5)(ii)(A)(*1*)–2 provides further guidance to creditors on determining whether a balloon payment occurs in the first five years after consummation. This comment would clarify that in considering the consumer's repayment ability for a balloon loan that is not a higher-priced covered transaction, the creditor must use the maximum payment scheduled during the first five years, or first 60 months, of the loan after the date of consummation. This comment would provide an illustrative example that assumes a loan with a balloon payment due at the end of a five-year loan term is consummated on August 15, 2011. The first monthly payment is due on October 1, 2011. The first five years after consummation occurs on August 15, 2016, with a balloon payment required on the due date of the 60th monthly payment, which is September 1, 2016. This comment would conclude that in this example, the creditor does not need to consider the balloon payment when determining the consumer's ability to repay this loan.

Proposed comment 43(c)(5)(ii)(A)(*1*)–3 addresses renewable balloon loans. This comment recognizes balloon loans that are not higher-priced covered transactions which provide an unconditional obligation to renew a balloon loan at the consumer's option or obligation to renew subject to conditions within the consumer's control. This comment would clarify that for purposes of the repayment ability determination, the loan term does not include the period of time that could result from a renewal provision. This comment would provide the following illustration to provide further clarification: Assume a 3-year balloon loan that is not a higher-priced covered transaction contains an unconditional obligation to renew for another three years at the consumer's option. In this example, the loan term for the balloon loan is 3 years, and not the potential 6 years that could result if the consumer chooses to renew the loan. Accordingly, the creditor must underwrite the loan using the maximum payment scheduled in the first five years after consummation, which includes the balloon payment due at the end of the 3-year loan term. This comment would cross-reference proposed comment 43(c)(5)(ii)(A).ii, which provides an example of how to determine the consumer's repayment ability for a 3-year renewable balloon loan, and comment 17(c)(1)–11 for a discussion of renewable balloon payment loans.

The Board recognizes that proposed comment 43(c)(5)(ii)(A)(*1*)–3 does not take the same approach as guidance contained in comment 17(c)(1)–11 regarding treatment of renewable balloon loans for disclosure purposes, or with guidance contained in current comment 34(a)(4)(iv)–2 of the Board's 2008 HOEPA Final Rule. Current comment 17(c)(1)–11 states that creditors may make the required TILA disclosures based on a period of time that accounts for any unconditional obligation to renew (*i.e.,* the payment amortization period), assuming the interest rate in effect at the time of consummation. Comment 34(a)(4)(iv)–2, which the Board is proposing to remove, provides that where the creditor is unconditionally obligated to renew the balloon loan, the full term resulting from such renewal is the relevant term for purposes of the exclusion of certain balloon-payment loans from the ability-to-repay presumption of compliance.

Although the proposal differs from current guidance in Regulation Z, the Board believes this approach is appropriate for several reasons. First, the ability-to-repay provisions in the Dodd-Frank Act do not address extending the term of a balloon loan with an unconditional obligation to renew provision. Second, permitting short-term "prime" balloon loans to benefit from the special payment calculation rule when a creditor includes an unconditional obligation to renew, but retains the right to increase the interest rate at the time of renewal, would create a significant loophole in the balloon payment rules. Such an approach could frustrate the objective to ensure consumers obtain mortgages on affordable terms for a reasonable period of time because the interest rate could escalate within a short period of time, increasing the potential risk of payment shock to the consumer. This is particularly the case where no limits exist on the interest rate that the creditor can choose to offer to the consumer at the time of renewal. TILA Section 129B(a)(2), 15 U.S.C. 1639b(a)(2), and TILA Section 129C(b)(2)(A)(v). Moreover, the Board believes it would be speculative to posit the interest rate at the time of renewal for purposes of the repayment ability determination. Third, the guidance contained in comment 17(c)(1)–11 regarding treatment of renewable balloon loans is to help ensure consumers are aware of their loan terms and avoid the uninformed use of credit, which differs from the stated purpose of this proposed provision which is to help ensure that consumers receive loans on terms that reasonably reflect their repayment ability. TILA Section 102(a), 15 U.S.C. 1601(a)(2), and TILA Section 129B(a)(2), 15 U.S.C. 1639b(a)(2).

At the same time, the Board recognizes that small creditors with limited capital and reserves may use these short-term balloon loans with unconditional obligations to renew to hedge their market rate risk. Not treating renewable balloon loans in the same manner as comment 17(c)(1)–11 could restrict credit access to "prime" balloon loans. Accordingly, the Board solicits comment on whether creditors should be able to treat the loan term of a "prime" balloon loan with an unconditional obligation to renew as extended by the renewal provision for purposes of proposed § 226.43(c)(5)(ii)(A), subject to certain conditions. Specifically, the Board solicits comment on how to ensure consumers can reasonably repay the loan on its terms at the time of renewal. The Board further solicits comment on methods to address the risk of circumvention and potential payment shock risk to consumers where creditors are able to unilaterally increase the interest rate at the time of renewal. For example, should the Board permit loan terms to be extended by renewal provisions for purposes of proposed § 226.43(c)(5)(ii)(A) when the creditor underwrites the "prime" balloon loan based on an average fully indexed rate for a comparable transaction?

Proposed 226.43(c)(5)(ii)(A)(*1*)–4 would provide several illustrative examples of how to determine the maximum payment scheduled during the first five years after consummation for loans with a balloon payment that are not higher-priced covered transactions. For example, this comment would illustrate the payment calculation rule for a balloon payment loan with a five-year loan term and fixed interest rate. This comment would assume that a loan provides for a fixed interest rate of 6%, which is below the APOR threshold for a comparable transaction, and thus the loan is not a

higher-priced covered transaction. The comment would further assume that the loan amount is $200,000, and that the loan has a five-year loan term but is amortized over 30 years. The loan is consummated on March 15, 2011, and the monthly payment scheduled for the first five years following consummation is $1,199, with the first monthly payment due on May 1, 2011. The first five years after consummation end on March 15, 2016. The balloon payment of $187,308 is required on the due date of the 60th monthly payment, which is April 1, 2016 (more than five years after consummation). *See* proposed comment 226.43(c)(5)(ii)(A)(*1*)–4.iii. This comment explains that for purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on the monthly payment of $1,199, and need not consider the balloon payment of $187,308 due on April 1, 2016.

43(c)(5)(ii)(A)(*2*) "Non-Prime" Balloon Loans

Proposed § 226.43(c)(5)(ii)(A)(*2*) implements TILA Section 129C(a)(6)(D)(ii)(*II*) and provides that for a higher-priced covered transaction, the creditor must determine the consumer's ability to repay a loan with a balloon payment using the scheduled payments required under the terms of the loan, including any balloon payment. TILA Section 129C(a)(6)(D)(ii)(*II*) states that for loans that require more rapid repayment (including balloon payment), and which exceed the loan pricing threshold set forth, the creditor must underwrite the loan using the "[loan] contract's repayment schedule." The Board interprets the statutory requirement that the creditor use "the loan contract's payment schedule" to mean that the creditor must use all scheduled payments under the terms of the loan needed to fully amortize the loan, consistent with the requirement under TILA Section 129C(a)(3). Payment of the balloon payment, either at maturity or during at any intermittent period, is necessary to fully amortize the loan. The proposed rule would apply to "non-prime" loans with a balloon payment regardless of the length of the term or any contract provision that provides for an unconditional guarantee to renew. The Board is concerned that this approach could lessen credit choice for non-prime borrowers, restrict credit availability and negatively impact competition for this credit market. Accordingly, the Board solicits comment, with supporting data, on the impact of this approach for low-to-moderate income borrowers. In addition, under proposed § 226.43(c)(2), the creditor would be required to determine that the consumer has a reasonable ability to repay the loan, including the balloon payment, from current or reasonably expected income or assets other than the value of the dwelling. As a result, the creditor would not be able to consider the consumer's ability to refinance the loan in order to pay, or avoid, the balloon payment. The Board requests comment on this approach.

Proposed comment § 226.43(c)(5)(ii)(A)(*2*)–5 provides an illustrative example of how to determine the consumer's repayment ability based on the loan contract's payment schedule, including any balloon payment, for higher-priced covered transactions with a balloon payment. This comment would provide an illustrative example for a balloon payment loan with a 10-year loan term; fixed interest rate. This comment would assume that the loan is a higher-priced covered transaction with a fixed interest rate of 7%. This comment would also assume that the loan amount is $200,000 and the loan has a 10-year loan term, but is amortized over 30 years. This comment would state that the monthly payment scheduled for the first ten years is $1,331, with a balloon payment of $172,956. This comment would explain that for purposes of § 226.43(c)(2)(iii), the creditor must consider the consumer's ability to repay the loan based on the payment schedule that repays the loan amount, including the balloon payment of $172,956.

43(c)(5)(i)(B) Interest-Only Loans

For interest-only loans (*i.e.,* loans that permit interest only payments for any part of the loan term), proposed § 226.43(c)(5)(ii)(B) provides that the creditor must determine the consumer's ability to repay the interest-only loan using (1) the fully indexed rate or any introductory rate, whichever is greater; and (2) substantially equal, monthly payments of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast. The proposed payment calculation rule for interest-only loans parallels the general rule proposed in § 226.43(c)(5)(i), except that proposed § 226.43(c)(5)(ii)(B)(*2*) requires a creditor to determine the consumer's ability to repay the loan amount over the term that remains after the loan is recast, rather than requiring the creditor to use fully amortizing payments, as defined under proposed § 226.43(b)(2).

Proposed § 226.43(c)(5)(ii)(B)(*2*) implements TILA Section 129C(a)(6)(B), which requires that the creditor determine the consumer's repayment ability using "the payment amount required to amortize the loan by its final maturity." For clarity, this proposed rule uses the term "recast," which is defined for interest-only loans as the expiration of the period during which interest-only payments are permitted under the terms of the legal obligation. *See* proposed § 226.43(b)(11). The statute does not define the term "interest-only." For purposes of this proposal, the terms "interest-only loan" and "interest-only" have the same meaning as in § 226.18(s)(7)(iv).[43]

Interest-only loans typically provide a fixed introductory payment period, such as five or ten years, during which the consumer may make payments that pay only accrued interest, but no principal. When the interest-only period expires, the payment amount required under the terms of the loan is the principal and interest payment that will repay the loan amount over the remainder of the loan term. The Board interprets the statutory text in TILA Section 129C(a)(6)(B) as requiring the creditor to determine the consumer's ability to repay an interest-only loan using the monthly principal and interest payment amount needed to repay the loan amount once the interest-only payment period expires, rather than using, for example, an understated monthly principal and interest payment that would amortize the loan over its entire term, similar to a 30-year fixed mortgage. The proposed rule would apply to all interest-only loans, regardless of the length of the interest-only period. The Board believes this approach most accurately assesses the consumer's ability to repay the loan once it begins to amortize; this is consistent with the approach taken for interest-only loans in the Interagency Supervisory Guidance.

Proposed comment 43(c)(5)(ii)(B)–1 would clarify that for loans that permit interest-only payments, the creditor must use the fully indexed rate or introductory rate, whichever is greater, to calculate the substantially equal, monthly payment of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast for purposes of the repayment ability determination. This comment would also clarify that under proposed § 226.43(c)(5)(ii)(B), the relevant term of the loan is the period of time that remains after the loan is recast to

[43] *See* 12 CFR 226.18(s)(7)(iv), defining "interest only" to mean that under the terms of the legal obligation, one or more of the periodic payments may be applied solely to accrued interest and not to loan principal, and "interest-only loan" to mean a loan that permits interest-only payments.

require payments that will repay the loan amount. This comment would also explain that for a loan on which only interest and no principal has been paid, the loan amount will be the outstanding principal balance at the time of the recast. To facilitate compliance, this comment would cross-reference to proposed comments 43(b)(3)–1 through –5, which provide further guidance on determining the fully indexed rate on the transaction, and proposed comment 43(c)(5)(i)–4, which provides further guidance on the meaning of "substantially equal." This comment would also provide cross-references to defined terms.

Proposed comment 43(c)(5)(ii)(B)–2 would provide illustrative examples for how to determine the consumer's repayment ability based on substantially equal, monthly payments of principal and interest for interest-only loans. This comment would provide the following illustration of the payment calculation rule for a fixed-rate mortgage with interest-only payments for five years: A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate of 7%, and permits interest-only payments for the first five years. The monthly payment of $1167 scheduled for the first five years would cover only the interest due. The loan is recast on the due date of the 60th monthly payment, after which the scheduled monthly payments increase to $1414, a monthly payment that repays the loan amount of $200,000 over the 25 years remaining as of the date the loan is recast (300 months). For purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a payment of $1414, which is the substantially equal, monthly, fully amortizing payment that would repay $200,000 over the 25 years remaining as of the date the loan is recast using the fixed interest rate of 7%.

43(c)(5)(i)(C) Negative Amortization Loans

For negative amortization loans, proposed § 226.43(c)(5)(ii)(C) provides that a creditor must determine the consumer's repayment ability using (1) the fully indexed rate or any introductory interest rate, whichever is greater; and (2) substantially equal, monthly payments of principal and interest that will repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast. This proposed payment calculation rule for negative amortization loans parallels the general rule in proposed § 226.43(c)(5)(i), except that proposed § 226.43(c)(5)(ii)(C)(*2*) requires the creditor to use the monthly payment amount that repays the maximum loan amount over the term of the loan that remains after the loan is recast, rather than requiring the creditor to use fully amortizing payments, as defined under proposed § 226.43(b)(2). This proposed rule uses the terms "maximum loan amount" and "recast," which are defined and discussed under proposed § 226.43(b)(7) and (b)(11), respectively. Proposed § 226.43(c)(5)(ii)(C)(*2*) implements the statutory requirement in TILA Section 129C(a)(6)(C) that the creditor consider "any balance increase that may accrue from any negative amortization provision when making the repayment ability determination." The statute does not define the term "negative amortization."

Scope. The Board proposes that the term "negative amortization loan" have the same meaning as set forth in current § 226.18(s)(7)(v) for purposes of the repayment ability determination. The Board recently amended § 226.18(s)(7)(v) to clarify that the term "negative amortization loan" covers a loan, other than a reverse mortgage subject to current § 226.33, that provides for a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization. As defined, the term "negative amortization loan" does not cover other loan types that may have a negative amortization feature, but which do not permit the consumer multiple payment options, such as seasonal income loans.[44] Accordingly, proposed § 226.43(c)(5)(ii)(C) covers only loan products that permit or require minimum periodic payments, such as pay option loans and graduated payment mortgages with negative amortization.

Negative amortization loans typically permit borrowers to defer principal and interest repayment for a fixed period of time, such as five years, or until the principal balance increases to the maximum amount allowed under the terms of the loan (*i.e.,* the negative amortization cap). When the introductory period permitting such minimum periodic payments expires or the negative amortization cap is reached, whichever is earlier, the payment amount required under the terms of the loan is the monthly principal and interest payment that will repay the loan amount, plus any balance increase, over the remaining term of the loan. These loans are also often referred to as "pay option" loans because they offer multiple payment options to the consumer. Similarly, graduated payment mortgages that have negative amortization and fall within the definition of "negative amortization loans" provide for step payments that may be less than the interest accrued for a fixed period of time. The unpaid interest is added to the principal balance of the loan. When the introductory payment period expires, the payment amount required under the terms of the loan is the monthly principal and interest payment that will repay the loan amount, plus any principal balance increase, over the remaining term of the loan. The Board believes covering both types of loans in proposed § 226.43(c)(5)(ii)(C) is consistent with statutory intent to account for the negative equity that can occur when a consumer makes payments that defer some or all principal or interest for a period of time, and to address the impact any potential payment shock may have on the consumer's ability to repay the loan. *See* TILA Section 129C(a)(6)(C).

In contrast, in a transaction that has a negative amortization feature, but which does not provide for minimum periodic payments that permit deferral of some or all principal, the consumer repays the loan with fully amortizing payments in accordance with the payment schedule and therefore, the same potential for payment shock or negative equity does not exist. For example, certain loans are designed to permit borrowers with seasonal income to make periodic payments that repay the loan amount for part of the year, and then to skip payments during certain months. During those months when no payments are made, accrued interest results in an increase in the principal balance. However, when the monthly required payments resume, they are fully amortizing payments that repay the principal and interest accrued during that year. *See* comment 18(s)(7)–1 discussing negative amortization loans, and providing an example of a seasonal income loan that is not covered by the term. Loans not covered by the term "negative amortization loan," but which may have a negative amortization feature, would be subject to the payment calculation requirements under the proposed general rule for purposes of determining the consumer's repayment ability. *See* proposed § 226.43(c)(5)(i). Thus, seasonal income loans and

[44] *See* the 2010 MDIA Interim Final Rule, 75 FR 58470, Sept. 24, 2010, revised by 75 FR 81836, 81840, Dec. 29, 2010, which defines the terms "negative amortization" and "negative amortization loan." The term "negative amortization" means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation. *See* § 226.18(s)(7)(v).

graduated payment mortgages that do not fall within the definition of a "negative amortization loan" would be covered by the general payment calculation rule in proposed § 226.43(c)(5)(i).

For purposes of determining the consumer's ability to repay a negative amortization loan under proposed § 226.43(c)(5)(ii)(C), creditors must make a two-step payment calculation.

Step one: maximum loan amount. Proposed § 226.43(c)(5)(ii)(C) requires that the creditor first determine the maximum loan amount and period of time that remains in the loan term after the loan is recast before determining the consumer's repayment ability on the loan. See proposed comment 43(c)(5)(ii)(C)–1; *see also* proposed § 226.43(b)(11), which defines the term "recast" to mean the expiration of the period during which negatively amortizing payments are permitted under the terms of the legal obligation. Proposed comment 43(c)(5)(ii)(C)–2 would further clarify that recast for a negative amortization loan occurs after the maximum loan amount is reached (*i.e.,* the negative amortization cap) or the introductory minimum periodic payment period expires. *See* proposed comment 43(c)(5)(ii)(C)–2.

As discussed above, proposed § 226.43(b)(7) defines "maximum loan amount" as the loan amount plus any increase in principal balance that results from negative amortization, as defined in § 226.18(s)(7)(v), based on the terms of the legal obligation. Under the proposal, creditors would make the following two assumptions when determining the maximum loan amount: (1) The consumer makes only the minimum periodic payments for the maximum possible time, until the consumer must begin making fully amortizing payments; and (2) the maximum interest rate is reached at the earliest possible time.

As discussed above under the proposed definition of "maximum loan amount," the Board interprets the statutory language in TILA Section 129C(a)(6)(C) as requiring creditors to fully account for any potential increase in the loan amount that may result under the loan's terms where the consumer makes only the minimum periodic payments required. The Board believes the intent of this statutory provision is to help ensure that the creditor consider the consumer's capacity to absorb the increased payment amounts that would be needed to amortize the larger loan amount once the loan is recast. The Board recognizes that the approach taken towards calculating the maximum loan amount requires creditors to assume a "worst-case scenario," but believes this approach is consistent with statutory intent to take into account the greatest potential increase in the principal balance.

Moreover, the Board believes that where negative equity occurs in the loan, it can be more difficult for the consumer to refinance out of the loan because no principal has been reduced; a dropping home value market can further aggravate this situation. In these cases, the consumer is more likely to incur the increased payment obligation once the loan is recast. Accordingly, the Board believes it is appropriate to ensure that the consumer can make these increased payment amounts assuming the maximum loan amount, consistent with the statute. The Board also notes that calculating the maximum loan amount based on these assumptions is consistent with the approach in the 2010 MDIA Interim Final Rule,[45] which addresses disclosure requirements for negative amortization loans, and also the 2006 Nontraditional Mortgage Guidance, which provides guidance to creditors regarding underwriting negative amortization loans.[46] Both the 2010 MDIA Interim Final Rule and the 2006 Nontraditional Mortgage Guidance provide that the loan amount plus any balance increase should be taken into account when disclosing terms or calculating the monthly principal and interest payment obligation, respectively.

As discussed above, comment proposed 43(b)–1 would clarify that in determining the maximum loan amount, the creditor must assume that the consumer makes the minimum periodic payment until any negative amortization cap is reached or until the period permitting minimum periodic payments expires, whichever occurs first. Comment 43(b)–2 would provide further guidance to creditors regarding the assumed interest rate. Comment 43(b)–3 would provide examples illustrating how to calculate the maximum loan amount for negative amortization loans for purposes of proposed § 226.43(c)(5)(ii)(C).

Step two: payment calculation. Once the creditor knows the maximum loan amount and period of time that remains after the loan is recast, the proposed payment calculation rule for negative amortization loans requires the creditor to use the fully indexed rate or introductory rate, whichever is greater, to calculate the substantially equal, monthly payment amount that will repay the maximum loan amount over the term of the loan that remains as of the date the loan is recast. *See* proposed § 226.43(c)(5)(ii)(C)(*1*) and (*2*).

Proposed comment 43(c)(5)(ii)(C)–1 would clarify that creditors must follow this two-step approach when determining the consumer's repayment ability on a negative amortization loan, and would also cross-reference to the following defined terms: "maximum loan amount," "negative amortization loan," "fully indexed rate," and "recast." To facilitate compliance, this comment would also cross-reference to proposed comment 43(c)(5)(i)–4 for further guidance on the "substantially equal" requirement.

Proposed comment 43(c)(5)(ii)(C)–2 would provide further guidance to creditors regarding the relevant term of the loan that must be used for purposes of the repayment ability determination. This comment would explain that the relevant term of the loan is the period of time that remains as of the date the terms of the legal obligation recast. This comment would further explain that the creditor must determine substantially equal, monthly payments of principal and interest that will repay the maximum loan amount based on the period of time that remains after any negative amortization cap is triggered or any period permitting minimum periodic payments expires, whichever occurs first.

Proposed comment 43(c)(5)(ii)(C)–3 would provide illustrative examples of how to determine the consumer's repayment ability based on substantially equal, monthly payments of principal and interest as required under proposed § 226.43(c)(5)(ii)(C) for a negative amortization loan. For example, proposed comment 43(c)(5)(ii)(C)–3.ii would illustrate the payment calculation rule for a graduated payment mortgage with a fixed-interest rate that is a negative amortization loan. This comment would first assume a loan in the amount of $200,000 has a 30-year loan term. Second, the comment assumes that the loan agreement provides for a fixed-interest rate of 7.5%, and requires the consumer to make minimum monthly payments during the first year, with payments increasing 12.5% every year (the annual payment cap) for four years. This comment would state that the payment schedule provides for payments of $943 in the first year, $1061 in the second year, $1194 in the third year, $1343 in the fourth year, and then requires $1511 for the remaining term of the loan. This

[45] *See* 12 CFR 226.18(s)(2)(ii) and comment 18(s)(2)(ii)–2.

[46] *See* 2006 Nontraditional Mortgage Guidance *at* 58614, n.7.

comment would then explain that during the first three years of the loan, the payments are less than the interest accrued each month, resulting in negative amortization. Assuming the minimum payments increase year-to-year up to the 12.5% payment cap, the consumer will begin making payments that cover at least all of the interest accrued at the end of the third year. Thus, the loan is recast on the due date of the 36th monthly payment. The maximum loan amount on that date is $207,659, and the remaining loan term is 27 years (324 months). *See* proposed comment 43(c)(5)(ii)(C)–3.ii.

This comment would conclude that for purposes of the repayment ability determination required in § 226.43(c)(2)(iii), the creditor must determine the consumer's ability- to repay the loan based on a monthly payment of $1497, which is the substantially equal, monthly payment of principal and interest that will repay the maximum loan amount of $207,659 over the remaining loan term of 27 years using the fixed interest rate of 7.5%.

The Board recognizes that the payment calculation requirements, which are consistent with statutory requirements, will sometimes require the creditor to underwrite a graduated payment mortgage using a monthly payment that is *lower* than the largest payment the consumer would be required to pay. For example, as illustrated in proposed comment 43(c)(5)(ii)(C)–3.ii, the creditor would underwrite the loan using a monthly payment of $1497 for purposes of the repayment ability determination, even though the consumer will need to begin making monthly payments of $1511 beginning in the fifth year of the loan. This anomaly occurs because the creditor must assume substantially equal payments over the term of the loan remaining as of the date the loan is recast. As discussed above in relation to step-rate mortgages, the Board solicits comment on whether it should exercise its authority under TILA Sections 105(a) and 129B(e) to require the creditor to use the largest payment scheduled when determining the consumer's ability to repay the loan. 15 U.S.C. 1604(a).

43(c)(6) Payment Calculation for Simultaneous Loans

As discussed above, proposed § 226.43(c)(2)(iv) implements TILA Section 129C(a)(2) and requires that when determining the consumer's repayment ability on a covered transaction, the creditor must consider the consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, calculated in accordance with proposed § 226.43(c)(6). Furthermore, as discussed under proposed § 226.43(b)(12), the Board is proposing to use its authority under TILA Sections 105(a) and 129B(e) to broaden the scope of TILA Section 129C(a)(2) to include HELOCs, and define the term "simultaneous loan" accordingly, for purposes of the requirements under proposed § 226.43(c)(2)(iv) and (c)(6). 15 U.S.C. 1604(a).

Proposed § 226.43(c)(6) provides the payment calculation for a simultaneous loan that is a closed-end covered transaction or a HELOC. Specifically, proposed § 226.43(c)(6) requires that the creditor consider the consumer's payment on a simultaneous loan that is: (1) A covered transaction, by following proposed § 226.43(c)(5)(i)–(ii); or (2) a HELOC, by using the periodic payment required under the terms of the plan using the amount of credit that will be drawn at consummation of the covered transaction. That is, with respect to simultaneous loans that are covered transactions (*i.e.,* closed-end loans subject to proposed § 226.43(c)), proposed § 226.43(c)(6)(i) requires the creditor to calculate the payment obligation consistent with the rules that apply to covered transactions under proposed § 226.43(c)(5). Under those proposed rules, the creditor must make the repayment ability determination using the greater of the fully indexed rate or any introductory rate, to calculate monthly, fully amortizing payments that are substantially equal. Under proposed § 226.43(b)(2), a "fully amortizing payment" is defined as a periodic payment of principal and interest that will repay the loan amount over the loan term. Thus, in the case of a simultaneous loan that is a closed-end credit transaction, the payment is based on the loan amount. Typically, in closed-end transactions the consumer is committed to using the entire loan amount because there is full disbursement of funds at consummation. *See* proposed comment 43(b)(5)–1, which discusses the definition of loan amount and clarifies that the amount disbursed at consummation is not determinative for purposes of the payment calculation rules. *See* proposed § 226.43(c)(5) for further discussion of the payment calculation requirements for covered transactions.

By contrast, for a simultaneous loan that is a HELOC, the consumer is generally not committed to using the entire credit line at consummation. The amount of funds drawn on a simultaneous HELOC may differ greatly depending, for example, on whether the HELOC is used as a "piggyback loan" to help towards payment on a home purchase transaction or if the HELOC is opened for convenience to be drawn down at a future time. The Board is concerned that requiring the creditor to underwrite a simultaneous HELOC assuming a full draw on the credit line may unduly restrict credit access, especially in connection with non-purchase transactions (*i.e.,* refinancings), because it would require creditors to assess the consumer's repayment ability using potentially overstated payment amounts. Thus, the Board is proposing under § 226.43(c)(6)(ii) that the creditor calculate the payment for the simultaneous HELOC based on the amount of funds to be drawn by the consumer at consummation of the covered transaction. As discussed in further detail below under proposed comment 43(c)(6)–3, the Board solicits comment on whether this approach is appropriate.

Proposed comment 43(c)(6)–1 states that in determining the consumer's repayment ability for a covered transaction, the creditor must include consideration of any simultaneous loan which it knows or has reason to know will be made at or before consummation of the covered transaction. To facilitate compliance, the comment would cross-reference to proposed comment 43(c)(2)(iv)–2 for further discussion on the standard "knows or has reason to know," and proposed § 226.43(b)(12) for the meaning of the term "simultaneous loan."

Proposed comment 43(c)(6)–2 explains that for a simultaneous loan that is a covered transaction, as that term is defined in proposed § 226.43(b)(1), the creditor must determine a consumer's ability to repay the monthly payment obligation for a simultaneous loan as set forth in § 226.43(c)(5), taking into account any mortgage-related obligations. The comment would provide a cross-reference to proposed § 226.43(b)(8) for the meaning of the term "mortgage-related obligations."

Proposed comment 43(c)(6)–3 clarifies that for a simultaneous loan that is a HELOC, the creditor must consider the periodic payment required under the terms of the plan when assessing the consumer's ability to repay the covered transaction secured by the same dwelling as the simultaneous loan. This comment would explain that under proposed § 226.43(c)(6)(ii), the creditor must determine the periodic payment required under the terms of the plan by considering the actual amount of credit to be drawn by the consumer at or

before consummation of the covered transaction. This comment would clarify that the amount to be drawn is the amount requested by the consumer; when the amount requested will be disbursed, or actual receipt of funds, is not determinative. This comment would provide the following example: Where the creditor's policies and procedures require the source of downpayment to be verified, and the creditor verifies that a simultaneous loan that is a HELOC will provide the source of downpayment for the first-lien covered transaction, the creditor must consider the periodic payment on the HELOC by assuming the amount to be drawn at consummation is the downpayment amount. The Board recognizes that determining the actual amount to be drawn by the consumer may depend on a number of variables, and may not be readily determined prior to consummation. As discussed more fully below, the Board is soliciting comment on the appropriateness of this approach. Proposed comment 43(c)(6)–3 would further clarify that, in general, the creditor should determine the periodic payment based on guidance in staff commentary to § 226.5b(d)(5), which discusses disclosure of payment terms for HELOCs.

The Board recognizes that consumers may fully draw on available credit immediately after closing on the first-lien loan, which could significantly impact their repayment ability on both the first-lien and second-lien mortgage obligations. Although this risk is present with respect to any credit line available to a consumer post-consummation, unlike credit cards, HELOCs are secured by a consumer's dwelling. Inability to repay the first- or second-lien loan could result in foreclosure and loss of the home. In addition, outreach revealed that creditors take varied approaches to determining the periodic payment they consider when underwriting a simultaneous HELOC, with some participants indicating they assume a full draw and calculate the periodic payment based on the fully indexed rate, and other participants indicating that a 50% draw is assumed and only the minimum periodic payment is considered.

For these reasons, the Board solicits comment on the appropriateness of the approach provided under proposed § 226.43(c)(6)(ii) and comment 43(c)(6)–3 regarding the payment calculation for simultaneous HELOCs, with supporting data for any alternative approaches. Specifically, the Board solicits comment on what amount of credit should be assumed as drawn by the consumer for purposes of the payment calculation for simultaneous HELOCs. For example, should the Board require creditors to assume a full draw (*i.e.,* requested amount to be used) of the credit line, a 50% draw, or some other amount instead of the actual amount to be drawn by the consumer? The Board also solicits comment on whether it would facilitate compliance to provide a safe harbor where creditors assume the full credit line is drawn at consummation.

In addition, as noted above, proposed § 226.43(c)(2)(iv) and (c)(6) do not distinguish between purchase and non-purchase covered transactions when requiring creditors to consider a periodic payment required on a simultaneous loan that is a HELOC for purposes of the repayment ability determination. The Board recognizes, however, that concerns regarding "piggyback loans" may not be as acute with non-purchase transactions (*i.e.,* refinancings) where HELOCs generally are taken against established equity in the home, and are opened concurrently with the refinancing of the first-lien loan for convenience and savings in closing costs. In addition, the Board notes that with respect to simultaneous HELOCs originated in connection with a refinancing, proposed § 226.43(c)(2)(iv) and (c)(6) could be circumvented, or its value diminished significantly, where consumers do not draw on the credit line until after the covered transaction is consummated. Moreover, the Board is concerned that the proposal could encourage creditors and consumers to simply originate HELOCs immediately subsequent to the consummation of a covered transaction that is a refinancing, resulting in lost savings and convenience to consumers. For these reasons, the Board solicits comment, and supporting data, on whether the Board should narrow the requirement under proposed § 226.43(c)(2)(iv) and (c)(6) to require creditors to consider simultaneous HELOCs only in connection with purchase transactions.

43(c)(7) Monthly Debt-to-Income Ratio or Residual Income

As discussed above, proposed § 226.43(c)(2)(vii) implements TILA Section 129C(a)(3) and requires creditors, as part of the repayment ability determination, to consider the consumer's monthly debt-to-income ratio or residual income. Proposed § 226.43(c)(7) provides the definitions and calculations for the monthly debt-to-income ratio and residual income. With respect to the definitions, proposed § 226.43(c)(7)(i)(A) defines the term "total monthly debt obligations" to mean the sum of: The payment on the covered transaction, as required to be calculated by § 226.43(c)(2)(iii) and (c)(5); the monthly payment on any simultaneous loans, as required to be calculated by § 226.43(c)(2)(iv) and (c)(6); the monthly payment amount of any mortgage-related obligations, as required to be considered by § 226.43(c)(2)(v); and the monthly payment amount of any current debt obligations, as required to be considered by § 226.43(c)(2)(vi). Proposed § 226.43(c)(7)(i)(B) defines the term "total monthly income" to mean the sum of the consumer's current or reasonably expected income, including any income from assets, as required to be considered by § 226.43(c)(2)(i) and (c)(4).

With respect to the calculations, proposed § 226.43(c)(7)(ii)(A) requires the creditor to consider the consumer's monthly debt-to-income ratio for purposes of § 226.43(c)(2)(vii) using the ratio of the consumer's total monthly debt obligations to total monthly income. Proposed § 226.43(c)(7)(ii)(B) requires the creditor to consider the consumer's remaining income after subtracting the consumer's total monthly debt obligations from the total monthly income.

Proposed comment 43(c)(7)–1 states that creditors must calculate the consumer's total monthly debt obligations and total monthly income in accordance with the requirements in proposed § 226.43(c)(7). The commentary explains that creditors may look to widely accepted governmental and non-governmental underwriting standards to determine the appropriate thresholds for the debt-to-income ratio or residual income.

Proposed comment 43(c)(7)–2 explains that if a creditor considers both the consumer's debt-to-income ratio and residual income, the creditor may base its repayment ability determination on either the consumer's debt-to-income ratio or residual income, even if the ability-to-repay determination would differ with the basis used. Indeed, the Board does not wish to create an incentive for creditors to consider and verify as few factors as possible in the repayment ability determination.

Proposed comment 43(c)(7)–3 clarifies that creditors may consider compensating factors to mitigate a higher debt-to-income ratio or lower residual income. For example, creditors may consider the consumer's assets other than the dwelling securing the covered transaction, or the consumer's residual income as compensating factors for a higher debt-to-income ratio. The proposed commentary permits creditors to look to widely accepted governmental and non-governmental underwriting

standards in determining whether and in what manner to include the compensating factors. The Board solicits comment on whether it should provide more guidance on what compensating factors creditors may consider, and on how creditors may include compensating factors in the repayment ability determination.

Residual income. Except for one small creditor and the U.S. Department of Veterans' Affairs (VA), the Board is not aware of any creditors that routinely use residual income in underwriting, other than as a compensating factor.[47] The VA underwrites its loans to veterans based on a residual income table developed in 1997. The table shows the residual income required for the borrower based on the loan amount, region of the country, and family size. The residual income is calculated by deducting obligations, including Federal and state taxes, from effective income. The Board solicits comment on whether consideration of residual income should account for loan amount, region of the country, and family size. The Board also solicits comment on whether creditors should be required to include Federal and state taxes in the consumer's obligations for purposes of calculating residual income.

Automated underwriting systems. The Board understands that creditors routinely rely on automated underwriting systems. Many of those systems are proprietary and thus lack transparency to the individual creditors using the systems. The Board solicits comment on providing a safe harbor for creditors relying on automated underwriting systems that use monthly debt-to-income ratios, if the system developer certifies that the system's use of monthly debt-to-income ratios in determining repayment ability is empirically derived and statistically sound. The Board also solicits comment on other methods to facilitate creditor reliance on automated underwriting systems, while ensuring that creditors can demonstrate compliance with the rule.

43(d) Refinancing of Non-Standard Mortgages

Introduction

Proposed § 226.43(d) exempts creditors of refinancings under certain limited circumstances from the requirement to verify income and assets in determining whether a consumer has the ability to repay a covered transaction. *See* proposed § 226.43(c)(2)(ii). It also applies a different payment calculation requirement to creditors determining whether a consumer has the ability to repay these special types of refinanced loans. *See* proposed § 226.43(c)(2)(iii), and (c)(5). Proposed § 226.43(d) implements TILA Section 129C(a)(6)(E), which was added to TILA under § 1411 of the Dodd-Frank Act. 15 U.S.C. 1639c(a)(6)(E). As previously noted, Section 1411 of the Dodd-Frank Act amends TILA by adding new Section 129C(a), which requires creditors to determine whether a consumer has a reasonable ability to repay a home mortgage loan before making the loan and sets the parameters for that determination (detailed above in the section-by-section analysis of § 226.43(c)). 15 U.S.C. 1639c(a). TILA Section 129C(a)(6)(E) applies special ability-to-repay provisions to transactions in which a "hybrid loan" is refinanced into a "standard loan" and the following additional conditions are met:

- The "creditor" for the hybrid loan and the standard loan is the "same";
- There is a "reduction" in the consumer's monthly payment from the hybrid loan to the standard loan; and
- The consumer "has not been delinquent on any payment on the existing hybrid mortgage."

15 U.S.C. 1639c(a)(6)(E).

Specifically, "in considering any application for a refinancing," the creditor may—

- Consider the consumer's "good standing on the existing mortgage."
- Consider whether the extension of new credit would prevent a likely default should the original mortgage reset and may give this concern a "higher priority as an acceptable underwriting practice."
- Offer rate discounts and other favorable terms to the consumer that would be available to "new customers with high credit ratings based on [the creditor's] underwriting practice."

TILA Section 129C(a)(6)(E)(i)–(iii); 15 U.S.C. 1639c(a)(6)(E)(i)–(iii).

The Dodd-Frank Act does not define the terms "hybrid loan" or "standard loan." The statute also does not expressly state that a creditor is exempt from the statutory ability to repay requirements in refinancings for which the above conditions are met. To determine the meaning of these provisions, the Board reviewed the Dodd-Frank Act's legislative history; consulted with consumer advocates and representatives of both industry and government-sponsored housing finance enterprises (GSEs); and examined underwriting rules and guidelines for the streamlined refinance programs of private creditors, GSEs and government agencies, as well as for the Home Affordable Modification Program (HAMP). For additional guidance, the Board also considered the Dodd-Frank Act provisions exempting streamlined refinancings under Federal government agency programs. *See* TILA Section 129C(a)(5); 15 U.S.C. 1639c(a)(5).

In the Board's view, both the statutory text and additional research support interpreting TILA Section 129C(a)(6)(E) to mean that creditors of refinancings meeting certain conditions should have greater flexibility to comply with the general ability-to-repay provisions in TILA Section 129C(a) (proposed to be implemented by § 226.43(c)). Accordingly, the proposal: (1) Clarifies the conditions that must be met in home mortgage refinancings to which greater flexibility applies; and (2) provides an exemption for creditors of these refinancings from certain limited criteria required to be considered as part of the general repayment ability determination under TILA Section 129C(a) (*see* proposed § 226.43(c)).

Under the proposal, loans that can result in "payment shock" may be refinanced without the creditor having to verify the borrower's income and assets with written documentation as prescribed in the general ability-to-repay requirements (*see* the section-by-section analysis of § 226.43(c)(2)(ii) and (c)(4)), as long as a number of additional conditions are met. In addition, the creditor is permitted to calculate the monthly payment used for determining the consumer's ability to repay the new loan based on assumptions that would typically result in a lower monthly payment than those required to be used under the general ability-to-repay requirements (*see* the section-by-section analysis of § 226.43(c)(2)(iii) and (c)(5)). As a result, when all of the special refinancing conditions are met, creditors may be better able to qualify a consumer for a new loan than under the general ability-to-repay requirements.

A central provision of TILA Section 129C(a)(6)(E) permits creditors to give prevention of a "likely default should the original mortgage reset a higher priority as an acceptable underwriting practice." TILA Section 129C(a)(6)(E)(ii); 15 U.S.C. 1639c(a)(6)(E)(ii). The Board believes that the structure of the statute supports interpreting this provision to mean that certain ability-to-repay criteria under TILA Section 129C(a) should not apply to refinances that meet

[47] *See also,* Michael E. Stone, *What is Housing Affordability? The Case for the Residual Income Approach,* 17 Housing Policy Debate 179 (Fannie Mae 2006) (advocating use of a residual income approach but acknowledging that it "is neither well known, particularly in this country, nor widely understood, let alone accepted").

the requisite conditions. The special refinancing provisions of TILA Section 129C(a)(6)(E) are part of TILA Section 129C(a), entitled "Ability to Repay," the paragraph that specifically prescribes the requirements that creditors must meet to satisfy the obligation to determine a consumer's ability to repay a home mortgage. In the Board's view, the term "underwriting practice" is reasonably interpreted to refer to the underwriting rules prescribed in earlier portions of TILA Section 129C(a)—namely, those concerning the general ability to repay underwriting requirements.

Overall, the Board interprets the special refinancing provisions of TILA Section 129C(a)(6)(E) as intended to allow for the greater flexibility in underwriting that is characteristic of so-called "streamlined refinances." The Board notes in particular that typical streamlined refinance programs do not require documentation of income and assets, although a verbal verification of employment may be required.[48] The Board's interpretation is based both on the statutory text and on the Board's research and outreach with concerned parties.

Regarding the Board's research and outreach, the Board understands that streamlined refinances have been an important resource for consumers, particularly in recent years, who faced impending payment shock, could not qualify for a typical refinance because of property value declines, or both. To address these problems, many lenders as well as the GSEs and government agencies developed lending programs to allow borrowers of loans held by them to refinance despite high loan-to-value ratios or other characteristics that might otherwise impede refinancing. Representatives of creditors and GSEs in particular informed the Board that their streamlined refinance programs are a significant proportion of their portfolios and that they view their programs as valuable to both consumers and loan holders. Consumers are able to take advantage of lower rates to obtain a more affordable loan (and lower payments) and, in some cases, to avoid default or even foreclosure. At the same time, loan holders strengthen their portfolios by replacing potentially unaffordable and unstable loans with affordable, stable products.

Regarding the statutory text, the Board notes that the refinancing provisions under TILA Section 129C(a)(6)(E) include three central elements of typical streamlined refinance programs.[49] First, the creditor for both the existing mortgage and the new mortgage must be the same (see the section-by-section analysis of § 226.43(d)(1)(i) discussing the Board's interpretation of "same creditor" to mean the current holder of the loan or the servicer acting on behalf of the current holder). 15 U.S.C. 1639C(a)(6)(E). Second, the borrower must have a positive payment history on the existing mortgage (see the section-by-section analysis of § 226.43(d)(1)(iv) and (d)(1)(v) for further discussion). Third, TILA's special refinancing provisions require that the payment on the new mortgage be lower than the payment on the existing mortgage—a common objective of typical streamlined refinance programs.[50]

Finally, as noted, TILA Section 129C(a) includes a provision that specifically addresses how the general ability-to-repay requirements apply to streamlined refinances under programs of government agencies such as the Federal Housing Administration and U.S. Department of Veterans' Affairs. *See* TILA Section 129C(a)(5), 15 U.S.C. 1639c(a)(5). In the Board's view, the most reasonable interpretation of the additional section on refinancings under TILA Section 129C(a)(6)(E) is that it is intended to cover the remaining market for streamlined refinances—namely, those offered under programs of private creditors and the GSEs.

One difference between the statute and typical streamlined refinance programs, however, is that the statute targets consumers facing "likely default" if the existing mortgage "reset[s]." The Board understands that, by contrast, streamlined refinance programs are not normally limited to borrowers at risk in this way. For example, they often assist consumers who are not facing potential default but who simply wish to take advantage of lower rates despite a drop in their home value or wish to switch from a less stable variable-rate product to a fixed-rate product.[51] However, the focus of TILA's new refinancing provisions is similar to the focus of HAMP, a government program specifically aimed at providing modifications for borrowers at risk of "imminent default," or in default or foreclosure.[52] Underwriting criteria for a HAMP modification are considerably more stringent than for a typical streamlined refinance; for example, income verification documentation is required, in addition to documented verification of expenses.[53] Concerns about the potential risks posed by loans to troubled borrowers may explain the robust underwriting standards for HAMP modifications.

On balance, the Board believes that the statutory language is most appropriately interpreted to be modeled on the underwriting standards of typical streamlined refinance programs rather than the tighter standards of HAMP. The plain language of the Dodd-Frank Act indicates that Congress intended to facilitate opportunities to refinance loans on which their payments could become significantly higher and thus unaffordable. Applying the strict underwriting standards that are too stringent could impede refinances that Congress intended to encourage. In particular, the statutory language permitting creditors to give "likely default" a "higher priority as an acceptable underwriting practice" indicates that flexibility in these special refinances should be permitted. In addition, underwriting standards that go significantly beyond those used in existing streamlined refinance programs could create a risk that these programs would be unable to meet the TILA ability-to-repay requirements; thus, an important refinancing resource for at-risk borrowers would be compromised and the overall mortgage market potentially disrupted at a vulnerable time.

At the same time, the Board recognizes that borrowers at risk of default when higher payments are required might present greater credit risks to the institutions holding their loans when those loans are refinanced without verifying the consumer's income and assets. For example, a consumer may be paying $525 per month as an interest-only payment on an existing adjustable-rate loan. When refinanced at a lower, fixed rate with fully amortizing payments, however, the

[48] *See id.* at 4. *See also, e.g.,* Freddie Mac Single-Family Seller/Servicer Guide, Vol. 1, Ch. 24: Refinance Mortgages/24.4: Requirements for Freddie Mac-owned streamlined refinance mortgages (Sept. 1, 2010). As of May 1, 2011, Freddie Mac will no longer purchase Freddie Mac-owned streamlined refinance mortgages. *See* Freddie Mac Bulletin 2011–2 (Jan. 18, 2011).

[49] During outreach, Fannie Mae provided data to the Board indicating that for 2010, Fannie Mae, Freddie Mac and Ginnie Mae refinancings totaled $925 billion, while non-GSE refinancings totaled $73 billion. Of the combined GSE refinancings, $288.6 billion were "streamlined refinances"—approximately one-third of all GSE refinancings.

[50] *See, e.g.,* Fannie Mae, "Home Affordable Refinance Refi Plus™ Options," p. 1 (Mar. 29, 2010).

[51] *See, e.g.,* Fannie Mae, "Home Affordable Refinance Refi Plus™ Options," p. 1 (Mar. 29, 2010); Freddie Mac, "Freddie Mac-owned Streamlined Refinance Mortgage," Pub. No. 387, pp. 1–2 (Aug. 2010).

[52] *See, e.g.,* Fannie Mae, "Home Affordable Modification Program," p. 1, FM 0509 (2009).

[53] *See,* Fannie Mae, "Making Home Affordable℠ Program, Handbook for Servicers of Non-GSE Mortgages," Ch. II, § 5, pp. 59–62 (Dec. 2, 2010).

payment may go up somewhat from the previous interest-only level—for example, to $650—because the new payments now cover both principal and interest. (For further discussion of how this scenario is possible under the proposal, see the section-by-section analysis of proposed § 226.43(d)(5).) The new payment of $650 is likely to be lower than the "reset" payment at the fully-indexed rate on the existing mortgage; nonetheless, the creditor incurs some risk that the consumer may not be able to afford the new payments.

For this reason, to qualify for the ability to repay exemptions under proposed § 226.43(d), a consumer must meet some requirements that are more stringent than those of typical streamlined refinance programs. Under the proposal, for example, a consumer may have had only one delinquency of more than 30 days in the 24 months immediately preceding the consumer's application for a refinance. *See* proposed § 226.43(d)(1)(iv). By contrast, streamlined refinance programs of which the Board is aware tend to consider the consumer's payment history for only the last 12 months.[54] As another safeguard against risk, the Board defines the type of loan into which a consumer may refinance under TILA's new refinancing provisions to include several characteristics designed to ensure that those loans are stable and affordable. These include a requirement that the interest rate be fixed for the first five years after consummation (*see* proposed § 226.43(d)(2)(ii)(D)) and that the points and fees be capped at three percent of the total loan amount, subject to a limited exemption for smaller loans (*see* proposed § 226.43(d)(2)(ii)(B))).

The Board's Proposal

43(d)(1) Scope

Proposed § 226.43(d)(1) defines the scope of the provisions regarding the refinancing of non-standard mortgages under proposed § 226.43(d). Specifically, this provision states that § 226.43(d) applies to the refinancing of a "non-standard mortgage" (defined in proposed § 226.43(d)(2)(i)) into a "standard mortgage" (defined in proposed § 226.43(d)(2)(ii)) when the following conditions are met—

- The creditor of the standard mortgage is the current holder of the existing non-standard mortgage or the servicer acting on behalf of the current holder.
- The monthly payment for the standard mortgage is significantly lower than the monthly payment for the non-standard mortgage, as calculated under proposed § 226.43(d)(5).
- The creditor receives the consumer's written application for the standard mortgage before the non-standard mortgage is "recast" (defined in proposed § 226.43(b)(11)).
- The consumer has made no more than one payment more than 30 days late on the non-standard mortgage during the 24 months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage.
- The consumer has made no payments more than 30 days late during the six months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage.

As discussed further below, proposed § 226.43(d)(2)(iii) defines the term "refinancing" to have the same meaning as in § 226.20(a).

Proposed comment 43(d)(1)–1 clarifies that the requirements for a "written application," a term that appears in § 226.43(d)(1)(iii), (d)(1)(iv) and (d)(1)(v), discussed in detail below, are found in comment 19(a)(1)(i)–3. Comment 19(a)(1)(i)–3 states that creditors may rely on the Real Estate Settlement Procedures Act (RESPA) and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. This comment further states that, in general, Regulation X defines "application" to mean the submission of a borrower's financial information in anticipation of a credit decision relating to a Federally related mortgage loan. *See* 24 CFR 3500.2(b). The comment clarifies that an application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. The comment further clarifies that, if an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker. This comment also cross-references comment 19(b)–3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.

43(d)(1)(i) Creditor is the Current Holder or Servicer Acting on Behalf of Current Holder

Proposed § 226.43(d)(1)(i) requires that the creditor for the new mortgage (the "standard mortgage") also be either the current holder of the existing "non-standard mortgage" or the servicer acting on behalf of the current holder. This provision implements the statutory requirement that the existing loan must be refinanced by "the creditor into a standard loan to be made by the same creditor." TILA Section 129C(a)(6)(E); 15 U.S.C. 1639c(a)(6)(E). The Board believes that this statutory provision requires the entity refinancing the loan to have an existing relationship with the consumer. The existing relationship is important because the creditor must be able to easily access the consumer's payment history and potentially other information about the consumer in lieu of documenting the consumer's income and assets. In addition, the Board reads the statute to be intended in part to ensure the safety and soundness of financial institutions by giving them greater flexibility to improve the quality of their loan portfolios through streamlined refinances.

The Board also believes that this statutory provision is intended to ensure that the creditor of the refinancing have an interest in placing the consumer into new loan that is affordable and beneficial. In the Board's view, the creditor of the new loan will in most cases retain an interest in the consumer's well-being when the creditor is also the current holder of the loan or the servicer acting on the current holder's behalf. In cases where a creditor holds a loan and will hold the loan after it is refinanced, the creditor has a direct interest in refinancing the consumer into a more stable and affordable product. In addition, the Board understands that the existing servicer often will be the entity conducting the refinance, particularly for refinances held by GSEs. By also permitting the creditor on the refinanced loan to be the servicer acting on behalf of the holder of the existing mortgage, the proposal is intended clearly to cover instances where a loan that has been sold to a GSE is refinanced by the existing servicer and continues to be held by the same GSE.

At the same time, the Board recognizes that the creditor on the new mortgage may not necessarily retain an interest in the new loan if the creditor immediately sells the loan to a new holder. The Board requests comment on whether the proposed rule could be structured differently to better ensure that the creditor on a refinancing under § 226.43(d) retains an interest in the performance of the new loan and whether additional guidance is needed.

[54] *See, e.g.,* Fannie Mae, "Home Affordable Refinance Refi Plus™ Options," p. 2 (Mar. 29, 2010); Freddie Mac, "Freddie Mac-owned Streamlined Refinance Mortgage," Pub. No. 387, p. 2 (Aug. 2010).

43(d)(1)(ii) Monthly Payment for the Standard Mortgage is Materially Lower Than the Monthly Payment for the Non-Standard Mortgage

Proposed § 226.43(d)(1)(ii) requires that the monthly payment on the new loan (the "standard mortgage") be "materially lower" than the monthly payment for the existing loan (the "non-standard mortgage"). This provision implements the statutory requirement that there be "a reduction in monthly payment on the existing hybrid loan" in order for the special provisions to apply to a refinancing. TILA Section 129C(a)(6)(E); 15 U.S.C. 1639c(a)(6)(E). Proposed comment 43(d)(1)(ii)–1 provides that the exemptions afforded under § 226.43(d)(3) (discussed below) apply to a refinancing only if the monthly payment for the new loan is "materially lower" than the monthly payment for an existing non-standard mortgage and clarifies that the payments that must be compared must be calculated based on the requirements under § 226.43(d)(5) (discussed below). This comment also explains that whether the new loan payment is "materially lower" than the non-standard mortgage payment depends on the facts and circumstances, but that, in all cases, a payment reduction of 10 percent or greater would meet the "materially lower" standard.

For several reasons, the Board interprets the statutory requirement for a "reduction in monthly payment" to mean that the new payment must be "materially lower" than the payment under the existing mortgage and that a 10 percent or greater reduction is a reasonable safe harbor. First, if the required reduction could be merely *de minimis*—such as a reduction of a few cents or dollars—the statutory purpose would not be met. In such cases, the consumer would not obtain a meaningful benefit that would prevent default—in other words, the reduction would not be "material." Second, based on outreach, the Board understands that a 10 percent reduction in the payment is a reasonable minimum reduction that can provide a meaningful benefit to the consumer.

The Board requests comment on whether a requirement that the payment on the standard mortgage must be "materially lower" than the payment on the non-standard mortgage (as calculated under § 226.43(d)(5)(ii) and (d)(5)(i), respectively) and whether a 10 percent reduction or some other percentage or dollar amount would be a more appropriate safe harbor for compliance with this requirement. The Board also requests comment on whether a percentage or dollar amount reduction would be more appropriate a rule rather than a safe harbor.

43(d)(1)(iii) Creditor Receives the Consumer's Written Application for the Standard Mortgage Before the Non-Standard Mortgage is Recast

Proposed § 226.43(d)(1)(iii) requires that the creditor for the refinancing receive the consumer's written application for the refinancing before the existing non-standard mortgage is "recast." As discussed in the section-by-section analysis of § 226.43(b)(11), the Board defines the term "recast" to mean, for an adjustable-rate mortgage, the expiration of the period during which payments based on the introductory fixed rate are permitted; for an interest-only loan, the expiration of the period during which the interest-only payments are permitted; and, for a negative amortization loan, the expiration of the period during which negatively amortizing payments are permitted.

The Board believes that proposed § 226.43(d)(1)(iii) is necessary to implement TILA Section 129C(a)(6)(E)(ii), which permits creditors of certain refinances to "consider if the extension of new credit would prevent a likely default should the original mortgage reset." 15 U.S.C. 1639c(a)(6)(E)(ii). This statutory language implies that the special refinancing provisions apply only where the original mortgage has not yet "reset." Congress's concern appears to be prevention of default in the event of a "reset," not loss mitigation on a mortgage for which a default on the "reset" payment has already occurred.

The Board recognizes that a consumer may not realize that a loan will be recast until the recast occurs and that, at that point, the consumer could not refinance the loan under the special streamlined refinancing provisions of proposed § 226.43(d). The Board requests comment on whether to use its legal authority to make adjustments to TILA to permit streamlined refinancings even after a loan is recast.

43(d)(1)(iv) One Payment More Than 30 Days Late During the 24 Months Immediately Preceding the Creditor's Receipt of the Consumer's Written Application

Proposed § 226.43(d)(1)(iv) requires that, during the 24 months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage, the consumer has made no more than one payment on the non-standard mortgage more than 30 days late. Together with § 226.43(d)(1)(v) (discussed below), § 226.43(d)(1)(iv) implements the portion of TILA Section 129C(a)(6)(E) that requires that the borrower not have been "delinquent on any payment on the existing hybrid loan." 15 U.S.C. 1639c(a)(6)(E).

The Board believes that the proposal is consistent with the statutory prohibition on "any" delinquencies on the existing non-standard ("hybrid") mortgage, in addition to being consistent with the consumer protection purpose of TILA and industry practices under many current streamlined refinance programs. Further, the proposal is supported by the Board's authority under TILA Sections 105(a) and 129B(e) to adjust provisions of TILA and condition practices "to assure that consumers are offered and receive residential mortgage loan on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive." 15 U.S.C. 1604(a); 15 U.S.C. 1639b(e); TILA Section 129B(a)(2), 15 U.S.C. 1639b(a)(2). The proposal is designed to further this purpose by facilitating transactions that help consumers refinance out of unaffordable loans.

During outreach, the Board learned that a delinquency of more than 30 days often can occur at the time of loan set-up due to errors in the set-up process outside of the consumer's control. The Board also noted, as discussed above, that all of the streamlined refinance programs reviewed by the Board permit at least one 30- or 31-day delinquency, although usually during the last 12 months rather than the last 24 months prior to application for a refinancing.[55] Thus the proposal is more stringent than typical streamlined refinance programs, but does not prohibit all delinquencies.

24–Month Look-Back Period. The Board proposes to require a look-back period for payment history of 24 months, rather than a 12-month period, for several reasons. First, as noted earlier, typical streamlined refinance programs are often aimed at helping borrowers with no risk of default. The Board recognizes that borrowers at risk of default when higher payments are required might present greater credit risks to the institutions holding their loans, even if the institutions refinance those loans. In the Board's view, when income and assets are not required to be verified, as proposed, the borrower's payment history takes on greater

[55] *See, e.g.,* Fannie Mae, "Home Affordable Refinance Refi Plus™ Options," p. 2 (Mar. 29, 2010); Freddie Mac, "Freddie Mac-owned Streamlined Refinance Mortgage," Pub. No. 387, p. 2 (Aug. 2010).

importance, especially in dealing with at-risk borrowers.

Second, the Board sees some merit in the views expressed during outreach by GSE and creditor representatives that borrowers with positive payment histories tend to be less likely than other borrowers to sign up for a new loan for which they cannot afford the monthly payments. At the same time, the Board acknowledges that a positive payment history on payments at low levels due to temporarily favorable loan terms is no guaranty that the consumer can afford the payments on a new loan. The Board solicits comment on the proposal to require that the consumer have only one delinquency during the 24 months prior to applying for a refinancing, particularly on whether a longer or shorter look-back period should be required.

Delinquency of 30 days or fewer permitted. Under the proposal, late payments of 30 days or fewer on the existing, non-standard mortgage would not disqualify a consumer from refinancing the non-standard mortgage under the streamlined refinance provisions of proposed § 226.43(d). The Board believes that allowing delinquencies of 30 or fewer days is consistent with the statutory prohibition on "any" delinquency for several reasons. First, delinquencies of this length may occur for many reasons outside of the consumer's control, such as mailing delays, miscommunication about where the payment should be sent, or payment crediting errors. Second, many creditors incorporate a late fee "grace period" into their payment arrangements, which permits consumers to make their monthly payments for a certain number of days after the contractual due date without incurring a late fee. Thus, many consumers regularly make their payments after the contractual due date and may even set up automated withdrawals for their payments to be made after the contractual due date in order to coincide with the consumer's pay periods. The Board does not believe that the statute is reasonably interpreted to prohibit consumers from obtaining needed refinances due to payments that are late but within a late fee grace period.

In addition, as discussed above, the Board interprets TILA Section 129C(a)(6)(E) to be intended as a mechanism for allowing existing streamlined refinance programs to continue should the entities offering them wish to maintain these programs. The predominant streamlined refinance programs of which the Board is aware uniformly measure whether a consumer has a positive payment history based on whether the consumer has made any payments late by 30 days or more (or, as in the proposal, more than 30 days).[56]

Proposed comment 43(d)(1)(iv)–1 provides the following illustration of the rule under § 226.43(d)(1)(iv): Assume a consumer applies for a refinancing on May 1, 2011. Assume also that the consumer made a non-standard mortgage payment on August 15, 2009, that was 45 days late, but made no other late payments on the non-standard mortgage between May 1, 2009, and May 1, 2011. In this example, the requirement under § 226.43(d)(1)(iv) is met because the consumer made only one payment that was over 30 days late within the 24 months prior to applying for the refinancing (*i.e.,* 20 and one-half months prior to application).

Payment due date. Proposed comment 43(d)(1)(iv)–2 clarifies that whether a payment is more than 30 days late depends on the contractual due date not accounting for any grace period. The comment provides the following example: The contractual due date for a non-standard mortgage payment is the first day of every month, but no late fee will be charged as long as the payment is received by the 16th day of the month. Here, the "payment due date" is the first day of the month rather than the 16th day of the month. Thus, a payment due under the contract on September 1st that is paid on October 1st is made more than 30 days after the payment due date.

The Board believes that using the contractual due date for determining whether a payment has been made more than 30 days after the due date will facilitate compliance and enforcement by providing clarity. Whereas late fee "grace periods" are often not stated in writing, the contractual due date is unambiguous. In addition, using the contractual due date for determining whether a loan payment is made on time is consistent with standard home mortgage loan contracts.[57]

The Board requests comment on whether the delinquencies that creditors are required to consider under § 226.43(d)(1) should be late payments of more than 30 days as proposed, 30 days or more, or some other time period.

43(d)(1)(v) No Payments More Than 30 Days Late During the Six Months Immediately Preceding the Creditor's Receipt of the Consumer's Written Application

Proposed § 226.43(d)(1)(v) requires that the consumer have made no payments on the non-standard mortgage more than 30 days late during the six months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage. This provision is intended to complement proposed § 226.43(d)(1)(iv), discussed above, in implementing the portion of TILA Section 129C(a)(6)(E) that requires that the borrower not have been "delinquent on any payment on the existing hybrid loan." 15 U.S.C. 1639C(a)(6)(E). The Board believes that, together with proposed § 226.43(d)(1)(iv), this aspect of the proposal is a reasonable interpretation of the prohibition on "any" delinquencies on the non-standard mortgage and is supported by the Board's authority under TILA Sections 105(a) and 129B(e) to adjust provisions of TILA and condition practices "to assure that consumers are offered and receive residential mortgage loan on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive." 15 U.S.C. 1604(a); TILA Section 129B(a)(2), 15 U.S.C. 1639b(a)(2).

The Board believes that a six-month "clean" payment record indicates a reasonable level of financial stability on the part of the consumer applying for a refinancing. This measure of financial stability is especially important where income and assets are not required to be verified. In addition, some outreach participants indicated that a prohibition on delinquencies of more than 30 days for the six months prior to application for the refinancing was generally consistent with common industry practice and would not be unduly disruptive to existing streamlined refinance programs with well-performing loans.

Proposed comment 43(d)(1)(v)–1 provides the following examples of the proposed rule: Assume a consumer in a non-standard mortgage applies for a refinancing on May 1, 2011. If the consumer made a 45-day late payment on March 15, 2011, the requirement under § 226.43(d)(1)(v) is not met because the consumer made a payment more than 30 days late just one and one-half months prior to application.

[56] *See, e.g.,* Freddie Mac Single-Family Seller/Servicer Guide, Vol. 1, Ch. 24: Refinance Mortgages/24.4: Requirements for Freddie Mac-owned streamlined refinance mortgages (Sept. 1, 2010) (requiring that the consumer has been current on the existing mortgage "for the most recent 90 days and has not been 30 days delinquent more than once in the most recent 21 months, or if the Mortgage being refinanced is seasoned for less than 12 months, since the Mortgage Note Date").

[57] *See* Fannie Mae/Freddie Mac Uniform Instrument, Multistate Fixed Rate Note—Single Family, Form 3200, §§ 3, 6.

The comment further clarifies that if the number of months between consummation of the non-standard mortgage and the consumer's application for the standard mortgage is six or fewer, the consumer may not have made any payment more than 30 days late on the non-standard mortgage. The comment cross-references proposed comments 43(d)(1)–2 and 43(d)(1)(iv)–2 for an explanation of "written application" and how to determine the payment due date, respectively.

43(d)(2) Definitions

Proposed Section 226.43(d)(2) defines the terms "non-standard mortgage" and "standard mortgage" in proposed § 226.43(d). As noted earlier, the statute does not define the terms "hybrid loan" and "standard loan" used in the special refinancing provisions of TILA Section 129C(a)(6)(E). Therefore, the Board proposes definitions that in its view are consistent with the policy objective underlying these special provisions: Facilitating the refinancing of home mortgages on which consumers risk a likely default due to impending payment shock into more stable and affordable products.

43(d)(2)(i) Non-Standard Mortgage

Proposed § 226.43(d)(2)(i) substitutes the term "non-standard mortgage" for the statutory term "hybrid loan" and defines this term to mean a covered transaction on which the loan has a fixed "teaser" rate for a period of one year or longer after consummation, which then adjusts to a variable rate plus a margin for the remaining term of the loan; or the minimum periodic payments (whether required or optional) are either interest-only or negatively amortizing. Specifically, a "non-standard mortgage" is any "covered transaction" (defined in proposed § 226.43(b)(1)) that is:

- An adjustable-rate mortgage, as defined in § 226.18(s)(7)(i), with an introductory fixed interest rate for a period of one year or longer; [58]
- An interest-only loan, as defined in § 226.18(s)(7)(iv); [59] or
- A negative amortization loan, as defined in § 226.18(s)(7)(v).[60]

Proposed comment 43(d)(2)(i)(A)–1 explains what it means that a "non-standard mortgage" includes an adjustable-rate mortgage with an introductory fixed interest rate for one or more years. This comment clarifies that, for example, a covered transaction with a fixed introductory rate for the first two, three or five years and then converts to a variable rate for the remaining 28, 27 or 25 years, respectively, is a "non-standard mortgage." By contrast, a covered transaction with an introductory rate for six months that then converts to a variable rate for the remaining 29 and ½ years is not a "non-standard mortgage."

The Board believes that the proposed definition of a "non-standard mortgage" is consistent with congressional intent. First, the legislative history of the Dodd-Frank Act describes "hybrid" mortgages as mortgages with a "blend" of fixed-rate and adjustable-rate characteristics—generally loans with an initial fixed period and adjustment periods, such as "2/23s and 3/27s." [61] The legislative history also indicates that Congress was concerned about borrowers being trapped in mortgages likely to result in payments that would suddenly become significantly higher—often referred to as "payment shock"—because their home values had dropped, thereby "making refinancing difficult." [62]

The Board believes that Congress's overriding concern about consumers being at risk due to payment shock supports an interpretation of the term "hybrid loan" to encompass both loans that are "hybrid" in that they start with a fixed interest rate and convert to a variable rate, but also loans that are "hybrid" in that borrowers can make payments that do not pay down principal for a period of time that then convert to higher payments covering all or a portion of principal. By defining "non-standard mortgage" in this way, the proposal is intended to increase refinancing options for a wide range of at-risk consumers while remaining true to the statutory language and legislative intent.

The proposed definition of "non-standard mortgage" does not include adjustable-rate mortgages whose rate is fixed for an initial period of less than one year. In those instances, a consumer arguably does not face "payment shock" because the consumer has paid the fixed rate for such a short period of time. Another concern is that allowing streamlined refinancings under this provision where the interest rate is fixed for less than one year could result in "loan flipping." A creditor, for example, could make a covered transaction and then only a few months later refinance that loan under § 226.43(d) to take advantage of the exemption from certain ability-to-repay requirements while still profiting from the refinancing fees.

The Board recognizes that under this definition, a consumer could refinance out of a relatively stable product, such as an adjustable-rate mortgage with a fixed interest rate for a period of 10 years, which then adjusts to a variable rate for the remaining loan term (a "10/1 ARM"). Whether this is the type of product that the special refinancing provisions were meant to accommodate is unclear. The Board solicits comment on whether adjustable-rate mortgages with an initial fixed rate should be considered "non-standard mortgages" regardless of how long the initial fixed rate applies, or if the proposed initial fixed-rate period of at least one year should otherwise be revised.

The proposed definition of "non-standard mortgage" also does not include balloon mortgages. As discussed above, the Board understands Congress's intent to be to cover "hybrid" loans, meaning loans on which the monthly payment will jump because new monthly payment terms take effect, making the loan unaffordable for the remaining loan term. Balloon mortgages are not clearly "hybrid" in this sense. The monthly payments on a balloon mortgage do not necessarily increase or change from the time of consummation; rather, the entire outstanding principal balance becomes due on a particular, predetermined date. Consumers of balloon mortgages typically expect that the entire loan balance will be due at once at a certain point in time and are generally aware well in advance that they will need to repay the loan or refinance.

However, the Board recognizes that consumers of balloon mortgages may be at risk of being unable to pay the outstanding principal balance when due and may need refinancing assistance. Thus the Board solicits comment on whether to use its legal authority to include balloon mortgages in the definition of "non-standard mortgage" for purposes of the special refinancing provisions of TILA Section 129C(a)(6)(E). The Board also requests comment generally on the

[58] "The term 'adjustable-rate mortgage' means a transaction secured by real property or a dwelling for which the annual percentage rate may increase after consummation." 12 CFR 226.18(s)(7)(i).

[59] "The term 'interest-only' means that, under the terms of the legal obligation, one or more of the periodic payments may be applied solely to accrued interest and not to loan principal; an 'interest-only loan' is a loan that permits interest-only payments." 12 CFR 226.18(s)(7)(iv).

[60] "[T]he term 'negative amortization' means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation; the term 'negative amortization loan' means a loan that permits payments resulting in negative amortization, other than a reverse mortgage subject to section 226.33." 12 CFR 226.18(s)(7)(v).

[61] *See* U.S. House of Reps., Comm. on Fin. Services, Report on H.R. 1728, Mortgage Reform and Anti-Predatory Lending Act, No. 111–94, 51 (May 4, 2009).

[62] *Id.* at 51–52.

appropriateness of the proposed definition of "non-standard mortgage."

43(d)(2)(ii) Standard Mortgage

Proposed § 226.43(d)(2)(ii) substitutes the term "standard mortgage" for the statutory term "standard loan" and defines this term to mean a covered transaction (*see* proposed § 226.43(b)(1)) that has the following five characteristics, each of which will be discussed in more detail further below:

- *First,* the regular periodic payments may not (1) cause the principal balance to increase; (2) allow the consumer to defer repayment of principal; or (3) result in a balloon payment. In other words, to qualify as a standard mortgage, a covered transaction may not provide for negative amortization payments, payments of interest only or of only a portion of the principal required to pay off the loan amount over the loan term, or a balloon payment.
- *Second,* the total points and fees payable in connection with the transaction may not exceed three percent of the total loan amount, with exceptions for smaller loans specified in proposed § 226.43(e)(3), discussed in detail below.
- *Third,* the loan term may not exceed 40 years.
- *Fourth,* the interest rate must be fixed for the first five years after consummation.
- *Fifth,* the proceeds from the loan may be used solely to pay—(1) the outstanding principal balance on the non-standard mortgage; and (2) closing or settlement charges required to be disclosed under RESPA. In other words, the refinance must be what is commonly referred to as a "no-cash-out" refinancing, in which the consumer receives no funds from the loan proceeds for discretionary spending.

In general, the criteria for a "standard mortgage" is designed to be similar to the criteria for a "qualified mortgage" under proposed § 226.43(e)(2), which places certain limits on loan features and fees. The Board believes that this approach is appropriate to ensure that standard mortgages provide product stability and affordability for consumers.

Limitations on regular periodic payments. Under proposed § 226.43(d)(2)(ii)(A), to qualify as a standard mortgage, a covered transaction must provide for regular periodic payments that do not result in negative amortization, deferral of principal repayment, or a balloon payment. The Board believes that these limitations promote the statutory purpose of facilitating refinances that place at-risk consumers in more sustainable mortgages. These provisions are also consistent with the definition of a "qualified mortgage" under proposed § 226.43(e)(2)(i). *See* section-by-section analysis of § 226.43(e)(2), below.

Proposed comment 43(d)(2)(ii)(A)–1 explains the meaning of "regular periodic payments" that do not result in an increase of the principal balance (negative amortization) or allow the consumer to defer repayment of principal (*see* proposed comment 43(e)(2)(i)–2, discussed below). The comment explains that the requirement for "regular periodic payments" means that the contractual terms of the standard mortgage must obligate the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. The comment further explains that, with the exception of payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. This comment notes that meaning of "substantially equal" is explained in proposed comment 43(c)(5)(i)–3 (discussed above in the section-by-section analysis of proposed § 226.43(c)(5)). In addition, the comment clarifies that "regular periodic payments" do not include a single-payment transaction and cross-references similar commentary on the meaning of "regular periodic payments" for the purposes of a "qualified mortgage" (proposed comment 43(e)(2)(i)–1).

Proposed comment 43(d)(2)(ii)(A)–1 also cross-references proposed comment 43(e)(2)(i)–2 to explain the prohibition on payments that "allow the consumer to defer repayment of principal." Proposed comment 43(e)(2)(i)-2 describes the meaning of this phrase in the context of defining the term "qualified mortgage" under proposed § 226.43(e); however, the phrase has the same meaning in the definition of "standard mortgage" under proposed § 226.43(d). Specifically, the comment states that deferral of principal repayment includes interest-only terms, under which one or more of the periodic payments may be applied solely to accrued interest and not to loan principal. Deferral of principal repayment also includes terms under which part of the periodic payment is applied to loan principal but is insufficient to pay off the loan amount over the loan term, requiring an increase in later periodic payments (or a balloon payment) to make up the principal shortfall of earlier payments. Graduated payment mortgages, for example, allow deferral of principal repayment in this manner and therefore generally may not be standard mortgages or qualified mortgages.

Three percent cap on points and fees. Proposed § 226.43(d)(2)(ii)(B) prohibits creditors from charging points and fees on the mortgage transaction of more than three percent of the total loan amount, with certain exceptions for small loans. Specifically, proposed § 226.43(d)(2)(ii)(B) cross-references the points and fees provisions under proposed § 226.43(e)(3), thereby applying the points and fees limitations for a "qualified mortgage" to a "standard mortgage." The points and fees limitation for a "qualified mortgage" is discussed in detail in the section-by-section analysis of proposed § 226.43(e)(3), below. In sum, under proposed § 226.43(e)(3)(i), the total points and fees payable in connection with a loan may not exceed—

Alternative 1:

- For a loan amount of $75,000 or more, 3 percent of the total loan amount;
- For a loan amount of greater than or equal to $60,000 but less than $75,000, 3.5 percent of the total loan amount;
- For a loan amount of greater than or equal to $40,000 but less than $60,000, 4 percent of the total loan amount;
- For a loan amount of greater than or equal to $ 20,000 but less than $40,000, 4.5 percent of the total loan amount; and
- For a loan amount of less than $20,000, 5 percent of the total loan amount.

Alternative 2:

- For a loan amount of $75,000 or more, 3 percent of the total loan amount;
- For a loan amount of greater than or equal to $20,000 but less than $75,000, a percent of the total loan amount not to exceed the amount produced by the following formula—
  - Total loan amount − $20,000 = $Z
  - $Z × .0036 basis points = Y basis points
  - 500 basis points − Y basis points = X basis points
  - X basis points × .01 = *Allowable points and fees as a percentage of the total loan amount.*
- For a loan amount of less than $20,000, 5 percent of the total loan amount.

For a detailed discussion of the alternative points and fees thresholds for qualified mortgages, see the section-by-section analysis of proposed § 226.43(e)(3), below.

In the Board's view, the proposed limitation on the points and fees that

may be charged on a "standard mortgage" is important for at least three reasons. First, the limitation prevents creditors from undermining the purpose of the provision—placing at-risk consumers into more affordable loans—by charging excessive points and fees for the refinance. Second, the points and fees cap helps ensure that consumers attain a net benefit in refinancing their non-standard mortgage. The higher a consumer's upfront costs to refinance a home mortgage, the longer it will take for the consumer to recoup those costs through lower payments on the new mortgage. By limiting the amount of points and fees that can be charged in a refinance covered by § 226.43(d), the proposal reduces the amount of time it will take for the consumer to recoup his transaction costs, thus increasing the likelihood that the consumer will hold the loan long enough to in fact recoup those costs. Third, this provision is consistent with the exemption from income verification requirements for streamlined refinances under Federal government programs. *See* TILA Section 129C(a)(5). The Board is not aware of any reason why points and fees should be capped for government streamlined refinances but not for private streamlined refinances.

The Board requests comment on the proposal to apply the same limit on the points and fees that may be charged for a "qualified mortgage" under § 226.43(e) to the points and fees that may be charged on a "standard mortgage" under § 226.43(d).

Loan term of no more than 40 years. Proposed § 226.43(d)(2)(ii)(C) provides that, to qualify as a standard mortgage under proposed § 226.43(d), a covered transaction may not have a loan term of more than 40 years. The Board believes that allowing a loan term of up to 40 years is consistent with the statutory goal of promoting refinances for borrowers in potential crisis, as well as with the statutory language that requires the monthly payment for the standard mortgage to be lower than the payment for the non-standard mortgage. The proposal is intended to ensure that creditors and consumers have sufficient options to refinance a 30-year loan, for example, which is unaffordable for the consumer in the near term, into a loan with lower, more affordable payments over a longer term. This flexibility may be especially important in higher cost areas where loan amounts on average exceed loan amounts in other areas. At the same time, the Board recognizes that loans of longer terms cost more over time for the consumer.

During outreach, the Board heard concerns from consumer advocates that allowing a loan term of 40 years on any mortgage is detrimental to consumers and the market as a whole. Consumer advocates argued that 40-year loans are expensive and do not save consumers sufficient money on the monthly payment to offset this expense. Among other information, consumer advocates provided an example of a $300,000 loan at an 8 percent fixed interest rate. The difference between the 20 and 30 year payment is $308.03 a month ($2,509.32 reduced to $2,201.29). The difference between the 30- and 40-year loan is $115.36 a month. Consumer advocates question the advantages of a monthly payment reduction of $115.36 per month when the loan costs an additional $208,783 over the 40 years more than the 30-year loan.

A more appropriate comparison may be the total interest paid for the two types of loans during an equal, shorter period rather than for the life of each loan. A shorter period is relevant because most loans are prepaid well before the stated end of the term. For instance, during the first year, the total interest paid on the 30-year loan would be $23,909, compared to $23,961 for the 40-year loan. Over the first five years, total interest paid on the 30-year loan would be $117,287, compared to $118,842 on the 40-year loan, which is a difference of $1,555 more for the 40-year loan. Over the first 10 years, total interest paid on the 30-year loan would be $227,329, compared to $234,591 on the 40-year loan, which is a difference of $7,262 more for the 40-year loan.

While recognizing that a 40-year mortgage is more expensive than a 30-year mortgage over the long term, the Board is reluctant to foreclose options for consumers for whom the lower payment of a 40-year loan might make the difference between defaulting and not defaulting. The Board also notes that prevalent streamlined refinance programs permit loan terms of up to 40 years and is concerned about disrupting the current mortgage market at a vulnerable time.[63] The Board requests comment on the proposal to allow a standard mortgage to have a loan term of up to 40 years.

Interest rate is fixed for the first five years. Proposed § 226.43(d)(2)(ii)(D) requires that a standard mortgage have a fixed interest rate for the first five years (60 months) after consummation. Proposed comment 43(d)(2)(ii)(D)–1 illustrates this rule for an adjustable-rate mortgage with an initial fixed interest rate for the first five years after consummation. In the example provided, the adjustable-rate mortgage consummates on August 15, 2011, and the first monthly payment is due on October 1, 2011. The first five years after consummation occurs on August 15, 2016. The first interest rate adjustment occurs on the due date of the 60th monthly payment, which is September 1, 2016. As explained in the comment, this loan meets the requirement that the rate be fixed for the first five years after consummation because the interest rate is fixed until September 1, 2016—more than five years after consummation. This comment also cross-references proposed comment 43(e)(2)(iv)–3.iii for guidance regarding step-rate mortgages. Step-rate mortgages may have a "fixed" interest rate for five years that is not the same rate for the entire five-year period.

The Board proposes a minimum five-year fixed-rate period for standard mortgages for several reasons. First, requiring a fixed rate for five years is consistent with the statutory requirement for a qualified mortgage, which requires the creditor to underwrite the mortgage based on the maximum interest rate that may apply during the first five years after consummation. See TILA Section 129C(b)(2)(A)(v); *see also* proposed § 226.43(e)(2)(iv)(A). The Board understands that Congress intended both qualified mortgages and standard mortgages to be stable loan products, and therefore believes that the required five-year fixed-rate period for qualified mortgages is an appropriate benchmark for standard mortgages as well. As a matter of policy, the Board believes that the safeguard of a fixed rate for five years after consummation is necessary to ensure that consumers refinance into products that are stable for a substantial period of time. In the Board's view, a fixed payment for five years after consummation is a significant improvement in the circumstances of a consumer who may have defaulted absent the refinance. In effect, the proposal permits so-called "5/1 ARMs," where the interest rate is fixed for the first five years, after which time the rate becomes variable. In this regard, the proposal is intended to be generally consistent with existing streamlined refinance programs.[64] The Board's understanding based on outreach is that 5/1 ARMs in existing streamlined refinance programs have performed well.

[63] *See, e.g.,* Fannie Mae, "Home Affordable Refinance—New Refinance Options for Existing Fannie Mae Loans," Announcement 09–04, p. 8 (Mar. 4, 2009) (permitting "[f]ully-amortizing fixed-rate mortgage loans with a term up to 40 years").

[64] *See, e.g., id.* (permitting "[f]ully-amortizing ARM loans with an initial fixed period of five years or greater with a term up to 40 years").

Consumer advocates have expressed the view that a longer fixed-rate period for standard mortgages is necessary, preferably at least seven years, arguing that consumers may hold their loans longer than five years and be faced with payment shock sooner than they can afford. The Board requests comment on the proposal to require that a standard mortgage under proposed § 226.43(d) have an interest rate that is fixed for at least the first five years after consummation, including on whether the rate should be required to be fixed for a shorter or longer period and data to support any alternative time period.

In addition, the Board requests comment on whether a balloon mortgage of at least five years should be considered a "standard mortgage" under the streamlined refinancing provisions of § 226.43(d). Arguably, a balloon mortgage with a fixed, monthly payment for five years would benefit a consumer who otherwise would have defaulted. Also, a five-year balloon mortgage may not be appreciably less risky for the consumer than a "5/1 ARM," which is permitted under the proposal, depending on the terms of the rate adjustment scheduled to occur in year five.

Loan proceeds used for limited purposes. Proposed § 226.43(d)(2)(ii)(E) restricts the use of the proceeds of a standard mortgage to two purposes:

- To pay off the outstanding principal balance on the non-standard mortgage; and
- To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.,* which includes amounts required to be deposited in an escrow account at or before consummation.

Proposed comment 43(d)(2)(ii)(E)–1 clarifies that if the proceeds of a covered transaction are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not meet the definition of a "standard mortgage."

This proposal is intended to ensure that the consumer does not incur additional home mortgage debt as part of a refinance designed to prevent the consumer from defaulting on an existing home mortgage. The Board believes that permitting the consumer to lose additional equity in his or her home under TILA's special refinancing provisions would undermine the financial stability of the consumer, thus contravening the purposes of the statute. The Board requests comment, however, on whether some *de minimis* amount of cash to the consumer should be permitted, either because this allowance would be operationally necessary to cover transaction costs or for other reasons, such as to reimburse a consumer for closing costs that were over-estimated but financed.

43(d)(2)(iii) Refinancing

Proposed § 226.43(d)(2)(iii) defines the term "refinancing" to have the same meaning as in § 226.20(a). Section 226.20(a) defines the term "refinancing" generally to mean a transaction in which an existing obligation is "satisfied and replaced by a new obligation undertaken by the same consumer." Official staff commentary explains that "[w]hether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law." *See* comment 20(a)–1. However, the following, among other transaction events, are not considered "refinancings": (1) A renewal of a payment obligation with no change in the original terms; and (2) a reduction in the annual percentage rate with a corresponding change in the payment schedule. *See* § 226.20(a)(1) and (a)(2), and comment 20(a)–2.

In the Board's 2010 Mortgage Proposal, the Board proposed to revise the meaning of "refinancing" in § 226.20 to include a broader range of transactions for which creditors would be required to give consumers new TILA disclosures.[65] The Board requests comment on whether the meaning of "refinancing" in § 226.43(d) should be expanded to include a broader range of transactions, similar to those covered under the proposed revisions to § 226.20, or otherwise should be defined differently or explained more fully than proposed.

43(d)(3) Exemption From Certain Repayment Ability Requirements

Under specific conditions, proposed § 226.43(d)(3) exempts a creditor in a refinancing from two of the requirements under proposed § 226.43(c) for determining a consumer's ability to repay a home mortgage. First, the creditor is not required to comply with the income and asset verification requirements of proposed § 226.43(c)(2)(i) and (c)(4). Second, the creditor is not required to comply with the payment calculation requirements of proposed § 226.43(c)(2)(iii) and (c)(5); the creditor may instead use payment calculations prescribed in proposed § 226.43(d)(5)(ii), discussed in more detail in the section-by-section analysis of that provision.

For these exemptions to apply, all of the conditions in proposed § 226.43(d)(1)(i)–(v) described above must be met. *See* proposed § 226.43(d)(3)(i). In addition, the creditor must consider whether the standard mortgage will prevent a likely default by the consumer on the non-standard mortgage when the non-standard mortgage is recast. *See* proposed § 226.43(d)(3)(ii). This proposed provision implements TILA Section 129C(a)(6)(E)(ii), which permits a creditor to "consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice." 15 U.S.C. 1639c(a)(6)(E)(ii). As clarified in proposed comment 43(d)(3)(i)–1, the Board believes that this statutory provision requires a creditor consider whether:

- the consumer is likely to default on the existing mortgage once new, higher payments are required; and
- the new mortgage will prevent the consumer's default.

Likely default. Proposed comment 43(d)(3)(i)–2 clarifies that, in considering whether the consumer's default on the non-standard mortgage is "likely," the creditor may look to widely accepted governmental and non-governmental standards for analyzing a consumer's likelihood of default. The Board does not intend to constrain servicers and other relevant parties from using other methods to determine a consumer's likelihood of default, including those tailored specifically to that servicer. Outreach participants informed the Board that servicers and others use a variety of methods for determining a consumer's likelihood of default, some of which are based on the particular servicer's historical experience with the loans it has serviced.

The Board has also considered the meaning of "imminent default" in HAMP, which, as noted, is a government program designed to assist consumers facing "imminent default" or who are in default or foreclosure. The Board's understanding, based on research and discussions with outreach participants, is that the requirements for determining what constitutes "imminent default" were not precisely defined in the HAMP rules due to the legitimate differences in servicer assessments of a consumer's likelihood of default. In addition, a servicer may use more than one method. For example, Freddie Mac representatives informed the Board that

[65] 75 FR 58539, 58594–58604, 58697–58699, 58761–58764, Sept. 24, 2010.

its tool for calculating "imminent default"—the Imminent Default Indicator or IDI—is one factor among several that Freddie Mac Seller/Servicers review in determining a consumer's likelihood of default and that these additional factors may vary depending on the type of loan and other characteristics of a particular transaction or borrower.

The Board heard from consumer advocates that "imminent default," as it has been interpreted by some to date, may be a standard that is too high for the refinancing provisions in TILA Section 129C(a)(6)(E) and could prevent many consumers from obtaining needed streamlined refinances. The proposal therefore uses the exact statutory wording—"likely default"—in implementing the provision permitting a creditor to prioritize prevention of default in underwriting a refinancing. *See* TILA Section 129C(a)(6)(E)(ii); 15 U.S.C. 1639c(a)(6)(E)(ii). In this way, the proposal is intended to distinguish the required standard for a consumer's potential default under TILA's new refinancing provisions from any particular meaning that may have been ascribed to the term "imminent default" in connection with HAMP.

The Board solicits comment on the proposal to use the term "likely default" in implementing TILA Section 129C(a)(6)(E)(ii) and on whether additional guidance is needed on how to meet the requirement that a creditor must reasonably and in good faith determine that a standard mortgage will prevent a likely default should the non-standard mortgage be recast.

Payment calculation for repayment ability determination. Proposed comment 43(d)(3)(ii)–1 explains that, if the conditions in § 226.43(d)(1) are met (discussed above), the creditor may satisfy the payment calculation requirements for determining a consumer's ability to repay the new loan by applying the calculation prescribed under § 226.43(d)(5)(ii), rather than the calculation prescribed under § 226.43(c)(2)(iii) and (c)(5). Specifically, as discussed in more detail under proposed § 226.43(d)(5)(ii) below, the creditor must calculate the standard mortgage payment based on the rate at consummation of the standard mortgage. This is the rate that will apply for the first five years after consummation; to qualify as a "standard mortgage," a mortgage must have an interest rate that is fixed for at least the first five years after consummation of the loan (*see* proposed § 226.43(d)(2)(ii)(D), discussed below). The comment explains that, as a result, if the standard mortgage is a "5/1 ARM" with a fixed rate for the first five years of payments (60 payments) followed by a variable rate, the creditor would not be required to determine the consumer's ability to repay the loan based on a payment that would result once the variable rate applies. If the loan consummates on August 15, 2011, and the first monthly payment is due on October 1, 2011, five years after consummation occurs on August 15, 2016, and the first interest rate adjustment occurs on the due date of the 60th monthly payment, which is September 1, 2016. Thus, under proposed § 226.43(d)(3)(ii), to calculate the payment required for the ability to repay rule under proposed § 226.43(c)(2)(iii), the creditor should use the payment based on the interest rate that is fixed for the first five years after consummation (from August 15, 2011, until August 15, 2016) and is not required to account for the payment resulting after the first interest rate adjustment on September 1, 2016.

The Board proposes this exemption from the general ability to repay payment calculation requirements for three reasons. First, in the Board's view, TILA Section 129C(a)(6)(E) is clearly intended to encourage creditors to refinance loans on which consumers are likely to default due to impending "payment shock." The proposal is consistent with this policy objective because underwriting a refinance based on the payment due prior to the recast means that more consumers can qualify for loans to ensure sustained homeownership. Second, the safeguards built into the definition of a "standard mortgage," discussed under the section-by-section analysis of proposed § 226.43(d)(3)(ii), mitigate risks of not accounting for the payment due after the recast in determining a consumer's ability to repay. A standard mortgage, for example, may never have negative amortization payments, interest-only payments, or a balloon payment.

Third, the statute in general seeks to ensure that consumers obtain mortgages for which the payments are affordable for a reasonable period of time. Based on the definition of a "qualified mortgage," the Board believes that Congress considered a reasonable amount of time to be the first five years after consummation of a loan. Specifically, as discussed in more detail below in the section-by-section analysis of proposed § 226.43(e)(2)(iv), an adjustable-rate mortgage is deemed to be a qualified mortgage only if, among other factors, the underwriting is based on the maximum rate permitted under the loan during the first five years. TILA Section 129C(b)(2)(A)(v), 15 U.S.C. 1639c(b)(2)(A)(v). The Board believes that the same standard is appropriately applied to determining a consumer's ability to repay a "standard mortgage" under § 226.43(d). The statute is structured to encourage creditors to make both "qualified mortgages" and "standard mortgages," consistent with congressional findings on the importance of "ensuring that responsible, affordable mortgage credit remains available to consumers." TILA Section 129B(a)(1). In particular, the statute affords creditors of both qualified mortgages and standard mortgages additional flexibility in complying with the general ability to repay underwriting requirements of TILA Section 129C(a). *See* TILA Section 129C(a)(6)(E) (for standard mortgages) and 129C(b) (for qualified mortgages), 15 U.S.C. 1639c(a)(6)(E), (b). Accordingly, the proposal requires that standard mortgages have most of the product features and restrictions assigned by Congress to qualified mortgages to ensure product stability and affordability for consumers.

Finally, the Board believes that this aspect of the proposal will facilitate compliance by allowing creditors to use a single payment calculation for determining whether: (1) The payment on the standard mortgage is "materially lower" than the payment on the non-standard mortgage; and (2) the consumer has a reasonable ability to repay the standard mortgage.

The Board requests comment on the proposal to exempt creditors of refinances that meet the conditions under proposed § 226.43(d)(1) from the income and asset verification requirements and the payment calculation requirements of the general ability-to-repay rules in proposed § 226.43(c). The Board solicits comment on whether an exemption from other ability to repay requirements under proposed § 226.43(c), such as consideration of credit history under proposed § 226.43(c)(2)(viii), may also be appropriate.

43(d)(4) Offer of Rate Discounts and Other Favorable Terms

Proposed § 226.43(d)(4) provides that a creditor making a loan under the special refinancing provisions of § 226.43(d) may offer to the consumer the same or better rate discounts and other terms that the creditor offers to any new consumer, consistent with the creditor's documented underwriting practices and to the extent not prohibited by applicable state or Federal law. This provision implements TILA Section 129C(a)(6)(E)(iii), which permits creditors of refinancings under the

special conditions of TILA Section 129C(a)(6)(E) to "offer rate discounts and other favorable terms" to the borrower "that would be available to new customers with high credit ratings based on such underwriting practice." 15 U.S.C. 1639c(a)(6)(E)(iii).

The statutory provision is consistent with the congressional goal of facilitating beneficial refinancings for borrowers facing potential payment shock; the provision allows creditors to give their refinancing customers rate discounts and favorable terms they might offer to new customers with high credit ratings. The Board recognizes that the meaning of "high credit ratings" may vary by creditor and that the underwriting practices for these types of customers may vary also, including the terms that are offered. Thus the proposal does not use the term "high credit ratings" but simply states that the rate discounts and terms offered to a consumer of a § 226.43(d) loan may be the same or better than those offered to any other consumer.

The proposal does require, however, that a creditor have "documented underwriting practices" to support the creditor's offer of rate discounts and loan terms. In this way, the proposal is intended to promote transparency for examiners and consumers in understanding the basis for any special discounts or terms that the creditor offers to borrowers refinancing their home mortgages under proposed § 226.43(d). In addition, the Board recognizes that state or Federal laws may regulate the rates and terms offered to consumers depending on various consumer characteristics or other factors. For this reason, the Board proposes that the rates and terms offered to consumers under § 226.43(d) not be prohibited by other applicable state or Federal law.

The Board requests comment on the proposed interpretation of TILA Section 129C(a)(6)(E)(iii) and whether additional guidance on the meaning of proposed § 226.43(d)(4) is needed.

43(d)(5) Payment Calculations

Proposed § 226.43(d)(5) prescribes the payment calculations that must be used to determine whether the consumer's monthly payment for a standard mortgage will be "materially lower" than the monthly payment for the non-standard mortgage, as required under proposed § 226.43(d)(1)(ii), discussed above. Proposed § 226.43(d)(5) thus complements proposed § 226.43(d)(1)(ii) in implementing the statutory provision that requires a "reduction" in the monthly payment for the existing non-standard ("hybrid") mortgage when refinanced into a standard mortgage. TILA Section 129C(a)(6)(E), 15 U.S.C. 1639c(a)(6)(E). As noted above, the payment calculation for a standard mortgage required under proposed § 226.43(d)(5)(ii) is also the payment calculation that a creditor must use to calculate the monthly payment on the standard loan in determining whether the consumer is reasonably able to repay the mortgage. *See* proposed § 226.43(c)(2)(iii).

43(d)(5)(i) Non-Standard Mortgage Payment Calculation

Proposed § 226.43(d)(5)(i) requires that the monthly payment for a non-standard mortgage be based on substantially equal, monthly, fully amortizing payments of principal and interest that would result once the mortgage is "recast," as that term is defined in § 226.43(b)(11) and discussed in the section-by-section analysis of that provision. The Board believes that comparing the payment on the standard mortgage to the payment amount on which the consumer likely would have defaulted (*i.e.,* the payment resulting on the existing non-standard mortgage once the favorable terms cease and a higher payment results) promotes needed refinances consistent with congressional intent.

In the Board's view, the payment that the consumer is currently making on the existing non-standard mortgage may be an inappropriately low payment to compare to the standard mortgage payment. The existing payments may be interest-only or negatively amortizing; these temporarily lower payment amounts would be difficult for creditors to "reduce" with a refinanced loan that has a comparable term length and principal amount. Indeed, the payment on a new loan with a fixed-rate rate and fully-amortizing payment, as is required for the payment calculation of a standard mortgage under proposed § 226.43(d)(5)(ii), for example, is likely to be higher than the interest-only or negative amortization payment. As a result, few refinancings would yield a lower monthly payment, so many consumers could not receive the benefits of refinancing into a more stable loan product. In addition, streamlined refinances by GSEs and private creditors might be severely hampered, with potentially detrimental effects on the market.

Thus the proposal requires a creditor to calculate the monthly payment for a non-standard mortgage using—

- The fully indexed rate as of a reasonable period of time before or after the date on which the creditor receives the consumer's written application for the standard mortgage;
- The term of the loan remaining as of the date of the recast, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date; and
- A remaining loan amount that is—
  - For an adjustable-rate mortgage under § 226.43(d)(2)(i)(A), the outstanding principal balance as of the date the mortgage is recast, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date;
  - For an interest-only loan under § 226.43(d)(2)(i)(B), the loan amount, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date;
  - For a negative amortization loan under § 226.43(d)(2)(i)(C), the maximum loan amount.

Proposed comment 43(d)(5)(i)–1 explains that, to determine whether the monthly periodic payment for a standard mortgage is materially lower than the monthly periodic payment for the non-standard mortgage under § 226.43(d)(1)(ii), the creditor must consider the monthly payment for the non-standard mortgage that will result after the loan is "recast," as defined in § 226.43(b)(11), assuming substantially equal payments of principal and interest that amortize the remaining loan amount over the remaining term as of the date the mortgage is recast. This comment notes that guidance regarding the meaning of "substantially equal" and "recast" is provided comment 43(c)(5)(i)–4 and § 226.43(b)(11), respectively (discussed above).

Proposed comment 43(d)(5)(i)–2 explains that the term "fully indexed rate" used in § 226.43(d)(5)(i)(A) for calculating the payment for a non-standard mortgage is generally defined in § 226.43(b)(3) and associated commentary. The comment explains an important difference between the "fully indexed rate" as defined in § 226.43(b)(3), however, and the meaning of "fully indexed rate" in § 226.43(d)(5)(i). Specifically, under § 226.43(b)(3), the fully indexed rate is calculated at the time of consummation. Under § 226.43(d)(5)(i), the fully indexed rate is calculated within reasonable period of time before or after the date on which the creditor receives the consumer's written application for the standard mortgage. Comment 43(d)(5)(i)–2 clarifies that 30 days would generally be considered a "reasonable period of time."

Proposed comment 43(d)(5)(i)–3 clarifies that the term "written application" is explained in comment 19(a)(1)(i)–3. Comment 19(a)(1)(i)–3 states that creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. In general, Regulation X defines "application" to mean the submission of a borrower's financial information in anticipation of a credit decision relating to a Federally related mortgage loan. *See* 24 CFR 3500.2(b). As explained in comment 19(a)(1)(i)–3, an application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker. This comment also cross-references comment 19(b)–3 for guidance in determining whether the transaction involves an intermediary agent or broker.

Payment calculation for an adjustable-rate mortgage with an introductory fixed rate. Proposed comments 43(d)(5)(i)–4 and –5 explain the payment calculation for an adjustable-rate mortgage with an introductory fixed rate under proposed § 226.43(d)(5)(i). Proposed comment 43(d)(5)(i)–4 clarifies that the monthly periodic payment for an adjustable-rate mortgage with an introductory fixed interest rate for a period of one or more years must be calculated based on several assumptions. First, the payment must be based on the outstanding principal balance as of the date on which the mortgage is recast, assuming all scheduled payments have been made up to that date and the last payment due under those terms is made and credited on that date. For example, assume an adjustable-rate mortgage with a 30-year loan term. The loan agreement provides that the payments for the first 24 months are based on a fixed rate, after which the interest rate will adjust annually based on a specified index and margin. The loan is recast on the due date of the 24th payment. If the 24th payment is due on September 1, 2013, the creditor must calculate the outstanding principal balance as of September 1, 2013, assuming that all 24 payments under the fixed rate terms have been made and credited on time. *See* comment 43(d)(5)(i)–4.i.

Second, the payment calculation must be based on substantially equal monthly payments of principal and interest that will fully repay the outstanding principal balance over the term of the loan remaining as of the date the loan is recast. Thus, the comment states, in the example above, the creditor must assume a loan term of 28 years (336 payments). *See* comment 43(d)(5)(i)–4.ii. Third, the payment must be based on the fully indexed rate, as defined in § 226.43(b)(3), as of the date of the written application for the standard mortgage. *See* comment 43(d)(5)(i)–4.iii.

Proposed comment 43(d)(5)(i)–5 provides an illustration of the payment calculation for an adjustable-rate mortgage with an introductory fixed rate. The example first assumes a loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted introductory interest rate of 5% that is fixed for an initial period of two years, after which the interest rate will adjust annually based on a specified index plus a margin of 3 percentage points. *See* comment 43(d)(5)(i)–5.i. Second, the example states that the non-standard mortgage is consummated on February 15, 2011, and the first monthly payment is due on April 1, 2011. The loan is recast on the due date of the 24th monthly payment, which is March 1, 2013. *See* comment 43(d)(5)(i)–5.ii. Finally, the example assumes that on March 15, 2012, the creditor receives the consumer's written application for a refinancing after the consumer has made 12 monthly on-time payments and that, on this date, the index value is 4.5%. *See* comment 43(d)(5)(i)–5.iii.

Proposed comment 43(d)(5)(i)–5 then states that, to calculate the non-standard mortgage payment that must be compared to the standard mortgage payment under § 226.43(d)(1)(ii), the creditor must use—

- The outstanding principal balance as of March 1, 2013, assuming all scheduled payments have been made up to March 1, 2013, and the last payment due under the fixed rate terms is made and credited on March 1, 2013. In this example, the outstanding principal balance is $193,948.
- The fully indexed rate of 7.5%, which is the index value of 4.5% as of March 15, 2012 (the date on which the application for a refinancing is received) plus the margin of 3%.
- The remaining loan term as of March 1, 2013, the date of the recast, which is 28 years (336 payments). *See* comment 43(d)(5)(i)–5.iv.

The comment concludes by stating that, based on the assumptions above, the monthly payment for the non-standard mortgage for purposes of determining whether the standard mortgage monthly payment is lower than the non-standard mortgage monthly payment (*see* proposed § 226.43(d)(1)(ii)) is $1,383. This is the substantially equal, monthly payment of principal and interest required to repay the outstanding principal balance at the fully-indexed rate over the remaining term. *See* comment 43(d)(5)(i)–5.v.

Payment calculation for an interest-only loan. Proposed comments 43(d)(5)(i)–6 and –7 explain the payment calculation for an interest-only loan under proposed § 226.43(d)(5)(i). Proposed comment 43(d)(5)(i)–6 clarifies that the monthly periodic payment for an interest-only loan must be calculated based on several assumptions. First, the payment must be based on the loan amount, as defined in § 226.43(b)(5) (for a loan on which only interest and no principal has been paid, the "loan amount" will be the outstanding principal balance at the time of the recast), assuming all scheduled payments are made under the terms of the legal obligation in effect before the mortgage is recast. The comment provides an example of a mortgage with a 30-year loan term for which the first 24 months of payments are interest-only. The comment then explains that, if the 24th payment is due on September 1, 2013, the creditor must calculate the outstanding principal balance as of September 1, 2013, assuming that all 24 payments under the interest-only payment terms have been made and credited. *See* comment 43(d)(5)(i)–6.i.

Second, the payment calculation must be based on substantially equal monthly payments of principal and interest that will fully repay the loan amount over the term of the loan remaining as of the date the loan is recast. Thus, in the example above, the creditor must assume a loan term of 28 years (336 payments). *See* comment 43(d)(5)(i)–6.ii. Third, the payment must be based on the fully indexed rate, as defined in § 226.43(b)(3), as of the date of the written application for the standard mortgage. *See* comment 43(d)(5)(i)–6.iii.

Proposed comment 43(d)(5)(i)–7 provides an illustration of the payment calculation for an interest-only loan. The example assumes a loan in an amount of $200,000 that has a 30-year loan term. The loan agreement provides for a fixed interest rate of 7%, and permits interest-only payments for the first two years (the first 24 payments), after which time amortizing payments of principal and interest are required. *See* comment 43(d)(5)(i)–7.i. Second, the example states that the non-standard mortgage is consummated on February 15, 2011, and the first monthly payment is due on April 1, 2011. The loan is

recast on the due date of the 24th monthly payment, which is March 1, 2013. *See* comment 43(d)(5)(i)–7.ii. Finally, the example assumes that on March 15, 2012, the creditor receives the consumer's written application for a refinancing, after the consumer has made 12 monthly on-time payments. *See* comment 43(d)(5)(i)–7.iii.

Proposed comment 43(d)(5)(i)–7 then states that, to calculate the non-standard mortgage payment that must be compared to the standard mortgage payment under § 226.43(d)(1)(ii), the creditor must use—

- The loan amount, which is the outstanding principal balance as of March 1, 2013, assuming all scheduled interest-only payments have been made and credited up to that date. In this example, the loan amount is $200,000.
- An interest rate of 7%, which is the interest rate in effect at the time of consummation of this fixed-rate non-standard mortgage.
- The remaining loan term as of March 1, 2013, the date of the recast, which is 28 years (336 payments).

The comment concludes by stating that, based on the assumptions above, the monthly payment for the non-standard mortgage for purposes of determining whether the standard mortgage monthly payment is lower than the non-standard mortgage monthly payment (*see* § 226.43(d)(1)(ii)) is $1,359. This is the substantially equal, monthly payment of principal and interest required to repay the loan amount at the fully-indexed rate over the remaining term. *See* comment 43(d)(5)(i)–7.v.

Payment calculation for a negative amortization loan. Proposed comments 43(d)(5)(i)–8 and –9 explain the payment calculation for a negative amortization loan under proposed § 226.43(d)(5)(i)(C). Proposed comment 43(d)(5)(i)–8 clarifies that the monthly periodic payment for a negative amortization loan must be calculated based on several assumptions. First, the calculation must be based on the maximum loan amount, as defined in proposed § 226.43(b)(7); The comment further states that examples of how to calculate the maximum loan amount are provided in proposed comment 43(b)(7)–3 (see the section-by-section analysis of § 226.43(b)(7), above). *See* comment 43(d)(5)(i)–8.i.

Second, the payment calculation must be based on substantially equal monthly payments of principal and interest that will fully repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast. For example, the comment states, if the loan term is 30 years and the loan is recast on the due date of the 60th monthly payment, the creditor must assume a loan term of 25 years (300 payments). *See* comment 43(d)(5)(i)–8.ii. Third, the payment must be based on the fully-indexed rate as of the date of the written application for the standard mortgage. *See* comment 43(d)(5)(i)–8.iii.

Proposed comment 43(d)(5)(i)–9 provides an illustration of the payment calculation for a negative amortization loan. The example assumes loan in an amount of $200,000 that has a 30-year loan term. The loan agreement provides that the consumer can make minimum monthly payments that cover only part of the interest accrued each month until the date on which the principal balance increases to the negative amortization cap of 115% of the loan amount, or for the first five years of monthly payments (60 payments), whichever occurs first. The loan is an adjustable-rate mortgage that adjusts monthly according to a specified index plus a margin of 3.5%. *See* comment 43(d)(5)(i)–9.i.

The example also states that the non-standard mortgage is consummated on February 15, 2011, and the first monthly payment is due on April 1, 2011. Further, the example assumes that, based on the calculation of the maximum loan amount required under § 226.43(b)(7) and associated commentary, the negative amortization cap of 115% is reached on July 1, 2013, the due date of the 28th monthly payment (*i.e.,* before the 60th payment is due). *See* comment 43(d)(5)(i)–9.ii. Finally, the example assumes that on March 15, 2012, the creditor receives the consumer's written application for a refinancing, after the consumer has made 12 monthly on-time payments. On this date, the index value is 4.5%. *See* comment 43(d)(5)(i)–9.iii.

Proposed comment 43(d)(5)(i)–9 then states that, to calculate the non-standard mortgage payment that must be compared to the standard mortgage payment under § 226.43(d)(1)(ii), the creditor must use—

- The maximum loan amount of $229,243 as of July 1, 2013.
- The fully indexed rate of 8%, which is the index value of 4.5% as of March 15, 2012 (the date on which the creditor receives the application for a refinancing) plus the margin of 3.5%.
- The remaining loan term as of July 1, 2013, the date of the recast, which is 27 years and 8 months (332 monthly payments).

See comment 43(d)(5)(i)–9.iv.

The comment concludes by stating that, based on the assumptions above, the monthly payment for the non-standard mortgage for purposes of determining whether the standard mortgage monthly payment is lower than the non-standard mortgage monthly payment (*see* § 226.43(d)(1)(ii)) is $1,717. This is the substantially equal, monthly payment of principal and interest required to repay the maximum loan amount at the fully-indexed rate over the remaining term. *See* comment 43(d)(5)(i)–9.v.

The Board requests comment on the proposed payment calculation for a non-standard mortgage and on the appropriateness and usefulness of the proposed payment calculation examples.

43(d)(5)(ii) Standard Mortgage Payment Calculation

Proposed § 226.43(d)(5)(ii) prescribes the required calculation for the monthly payment on a standard mortgage that must be compared to the monthly payment on a non-standard mortgage under proposed § 226.43(d)(1)(ii). The same payment calculation must also be used by creditors of refinances under proposed § 226.43(d) in determining whether the consumer has a reasonable ability to repay the standard mortgage, as required under proposed § 226.43(c)(2)(ii).

Specifically, the monthly payment for a standard mortgage must be based on substantially equal, monthly, fully amortizing payments using the maximum interest rate that may apply to the standard mortgage within the first five years after consummation. Proposed comment 43(d)(5)(ii)–1 clarifies that the meaning of "fully amortizing payment" is defined in § 226.43(b)(2), discussed above, and that guidance regarding the meaning of "substantially equal" may be found in proposed comment 43(c)(5)(i)–4, also discussed above. Proposed comment 43(d)(5)(ii)–1 also explains that, for a mortgage with a single, fixed rate for the first five years, the maximum rate that will apply during the first five years after consummation will be the rate at consummation. For a step-rate mortgage, however, which is a type of fixed-rate mortgage, the rate that must be used is the highest rate that will apply during the first five years after consummation. For example, if the rate for the first two years is 4%, the rate for the second two years is 5%, and the rate for the next two years is 6%, the rate that must be used is 6%.

Proposed comment 43(d)(5)(ii)–2 provides an illustration of the payment calculation for a standard mortgage. The example assumes a loan in an amount of $200,000 with a 30-year loan term. The loan agreement provides for a discounted interest rate of 6% that is fixed for an initial period of five years,

after which time the interest rate will adjust annually based on a specified index plus a margin of 3%, subject to a 2% annual interest rate adjustment cap. The comment states that, based on the above assumptions, the creditor must determine whether the standard mortgage payment is materially lower than the non-standard mortgage payment based on a standard mortgage payment of $1,199. This is the substantially equal, monthly payment of principal and interest required to repay $200,000 over 30 years at an interest rate of 6%.

The Board requests comment on the proposed payment calculation for a standard mortgage.

43(e) Qualified Mortgages

Background

The Dodd-Frank Act. TILA Section 129C(a)(1) prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the loan. TILA Section 129C(a)(1)–(4) and (6)–(9) provides that the ability-to-repay determination must be based on consideration of the following underwriting factors:

- The consumer's current income, expected income the consumer is reasonably ensured of receiving, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan;
- The consumer's employment status;
- The payment of the residential mortgage loan based on a fully amortizing payment schedule and the fully-indexed rate;
- The payment of any simultaneous liens of which the creditor knows or has reason to know;
- The payment of all applicable taxes, insurance (including mortgage guarantee insurance), and assessments;
- The consumer's current obligations;
- The consumer's debt-to-income ratio or the residual income the consumer will have after paying mortgage related obligations and current debt obligations; and
- The consumer's credit history.

The ability-to-repay requirements do not contain any limits on the features, term, or costs of the loan.

TILA Section 129C(b) provides a presumption of compliance with the ability-to-repay requirements if the loan is a "qualified mortgage." Specifically, TILA Section 129C(b)(1) provides that "[a]ny creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this title, may presume that the loan has met the requirements of subsection (a)." With respect to underwriting requirements, TILA Section 129C(b)(2) defines a "qualified mortgage" as any residential mortgage loan—

- For which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;
- For which the underwriting of the residential mortgage loan is based on a fully amortizing payment schedule and the maximum interest rate during the first 5 years, and takes into account all applicable taxes, insurance, and assessments; and
- That complies with any guidelines or regulations established by the Board relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Board may determine relevant and consistent with the purposes of TILA Section 129C(b)(3)(B)(i).

In addition, the term "qualified mortgage" contains certain limits on the features, term, and costs of the loan. Specifically, TILA Section 129C(b) provides that a "qualified mortgage" is any residential mortgage loan—

- For which the regular periodic payments may not result in an increase of the principal balance (negative amortization) or allow the consumer to defer repayment of principal (interest-only payments);
- The terms of which do not result in a balloon payment;
- For which the loan term does not exceed 30 years; and
- For which the points and fees do not exceed 3 percent of the total loan amount.

Accordingly, a qualified mortgage cannot have an increase of the principal balance, interest-only payments, balloon payments, a term greater than 30 years, or points and fees that exceed the threshold set forth in § 226.43(e)(4). However, while the term "qualified mortgage" limits the terms of loans in ways that the general ability-to-repay requirements do not, the term "qualified mortgage" omits certain underwriting factors. Specifically, the term "qualified mortgage" does *not* include the following underwriting factors that are part of the ability-to-repay requirements:

- The consumer's employment status;
- The payment of any simultaneous liens of which the creditor knows or has reason to know;
- The consumer's current obligations; and
- The consumer's credit history.

2008 HOEPA Final Rule. Sections 226.34(a)(4) and 226.35(b)(1) prohibit a creditor from extending credit that is a high-cost loan or higher-priced mortgage loan without regard to the consumer's ability to repay. Specifically, for higher-priced mortgage loans and high-cost mortgages, the creditor must follow required procedures, such as verifying the consumer's income or assets. Section 226.34(a)(4) and comments 34(a)(4)–2 and –3. The 2008 HOEPA Final Rule further provides a presumption of compliance with the ability-to-repay requirements if the creditor follows additional optional procedures regarding underwriting the loan payment, assessing the debt-to-income ratio or residual income, and limiting the features of the loan. Section 226.34(a)(4)(iii)–(iv) and comment 34(a)(4)(iii)–1. However, the 2008 HOEPA Final Rule makes clear that even if the creditor follows the required and optional criteria, the creditor has merely obtained a *presumption* of compliance with the repayment ability requirement. Comment 34(a)(4)(iii)–1. The consumer can still rebut or overcome that presumption by showing that, despite following the required and optional procedures, the creditor nonetheless disregarded the consumer's ability to repay the loan. For example, the consumer could present evidence that although the creditor assessed the creditor's debt-to-income ratio, the debt-to-income ratio was very high with little residual income. This evidence may be sufficient to overcome the presumption of compliance and demonstrate that the creditor extended credit without regard to the consumer's ability to repay the loan.

Qualified Mortgages and the Presumption of Compliance

With regard to the ability-to-repay requirement, the Dodd-Frank Act provides special protection from liability for creditors who make "qualified mortgages." However, it is unclear whether that protection is intended to be a safe harbor or a presumption of compliance with the ability-to-repay requirement. An analysis of the statutory construction and policy implications demonstrate that there are sound reasons for adopting either interpretation. For this reason, the Board is proposing two alternative definitions of a "qualified mortgage": One that operates as a safe harbor and one that operates as a presumption of compliance.

With respect to statutory construction, on the one hand, the Dodd-Frank Act states that a creditor or assignee "may presume" that a loan has met the repayment ability requirement if the loan is a qualified mortgage. TILA Section 129C(b)(1). This suggests that originating a qualified mortgage provides a presumption of compliance, which the consumer can rebut by providing evidence that the creditor did not, in fact, make a good faith and reasonable determination of the consumer's ability to repay the loan.

On the other hand, the statutory structure suggests that the "qualified mortgage" is an alternative to the general ability-to-repay standard and thus would operate as a safe harbor. First, TILA Section 129C(b)(1) states that a creditor or assignee may presume that a loan has "met the requirements of subsection (a), if the loan is a qualified mortgage." TILA Section 129C(a) contains the ability-to-repay requirement as well as all of the underwriting criteria for the general ability-to-repay standard. Rather than stating that the presumption of compliance applies only to TILA Section 129C(a)(1) for the ability-to-repay requirement, it appears Congress intended creditors who make qualified mortgages to be presumed to comply with both the ability-to-repay requirement and the underwriting criteria for the general ability-to-repay standard. Second, TILA Section 129C(b)(2) does not define a "qualified mortgage" as requiring compliance with all of the underwriting criteria of the general ability-to-repay standard. Therefore, unlike the approach found in the 2008 HOEPA Final Rule, it appears that the criteria for a "qualified mortgage" would be an *alternative* to the general ability-to-repay standard, rather than an addition to that standard.

With respect to the policy implications, there are sound reasons for interpreting a qualified mortgage as providing either a safe harbor or a presumption of compliance. On the one hand, interpreting a "qualified mortgage" as a safe harbor would provide creditors with an incentive to make qualified mortgages. That is, in exchange for limiting loan fees and features, the creditor's regulatory burden and exposure to liability would be reduced. Consumers may benefit by being provided with mortgage loans that do not have certain risky features or high costs.

However, there are at least two drawbacks to the "safe harbor" approach. First, the definition of a "qualified mortgage" is not necessarily consistent with ensuring the consumer's ability to repay the loan. Some of the key elements in the statutory definition of a qualified mortgage, while designed to ensure that qualified mortgages do not contain risky features, do not directly address whether a qualified mortgage is affordable for a particular borrower. Although the qualified mortgage limits on loan terms and costs may, in general, tend to make loans more affordable (in part because loan terms would be more transparent to consumers thus enabling consumers to more easily determine affordability for themselves), the limits on loan terms and costs would not ensure that a given consumer could necessarily afford a particular loan. Second, the "safe harbor" approach would limit the consumer's ability to challenge a creditor's determination of repayment ability. That is, creditors could not be challenged for failing to underwrite the loan based on the consumer's employment status, simultaneous loans, current debt obligations, or credit history, or for generally not making a reasonable and good faith determination of the consumer's ability to repay the loan.

On the other hand, interpreting a "qualified mortgage" as providing a rebuttable presumption of compliance would better ensure that creditors consider a consumer's ability to repay the loan. Creditors would have to make individualized determinations that the consumer has the ability to repay the loan based on all of the underwriting factors listed in the general ability-to-repay standard. This approach would require the creditor to comply with all of the ability-to-repay standards, and preserve the consumer's ability to use these standards in a defense to foreclosure or other legal action. In addition, a consumer could assert that, despite complying with the criteria for a qualified mortgage and the ability-to-repay standard, the creditor did not make a reasonable and good faith determination of the consumer's ability to repay the loan.

The drawback of treating a "qualified mortgage" as providing a presumption of compliance is that it provides little legal certainty for the creditor, and thus little incentive to make a "qualified mortgage," which limits loan fees and features. As stated above, the underwriting requirements found in the general repayment ability rule are based on individualized determinations that will vary from consumer to consumer. As such, creditors or assignees may not be able to make bright-line judgments as to whether or not a loan complies with these underwriting requirements. In many cases sound underwriting practices require judgment about the relative weight of various risk factors (such as the tradeoff between a consumer's credit history and debt-to-income ratio). These decisions are usually based on complex statistical default models or lender judgments, which will differ across originators and over time. While the Board's proposal would allow creditors to look to widely accepted underwriting standards in complying with the general ability-to-repay standard, those standards may leave room for the exercise of discretion and judgment by creditors and loan originators which could increase potential compliance and litigation risk, thus weakening the incentive to make qualified mortgages (even with a presumption of compliance for qualified mortgages). As stated above, a violation of the ability-to-repay requirement now provides a consumer with a defense to foreclosure for an unlimited amount of time. Dodd-Frank Act Section 1413; TILA Section 130(k).

The Board's Proposal

Given the statutory ambiguity and competing concerns described above, the Board proposes two alternative definitions for a qualified mortgage. Under Alternative 1, a qualified mortgage would include only the specific requirements listed in TILA Section 129C(b)(2), and would provide creditors with a safe harbor to establish compliance with the general repayment ability requirement in proposed § 226.43(c)(1). That is, a consumer would have to show that a loan was not a qualified mortgage under § 226.43(e) (*e.g.,* that the loan permits negative amortization) in order to assert that the loan violated the repayment ability requirement under § 226.43(c). Under Alternative 2, a qualified mortgage would include the specific requirements listed in the TILA Section 129C(b)(2), as well as additional requirements taken from the proposed general ability-to-repay standard in § 226.43(c)(2)–(7). Because Alternative 2 would require compliance with the general ability-to-repay standard, it would provide a presumption of compliance with the ability-to-repay requirement. However, as discussed more fully below, a consumer would be able to rebut the presumption of compliance (even if the loan was a qualified mortgage) by demonstrating that the creditor did not adequately determine the consumer's ability to repay the loan.

43(e)(1) In General

ALTERNATIVE 1

Proposed § 226.43(e)(1) would implement TILA Section 129C(b)(1) and state that the creditor or assignee complies with § 226.43(c)(1) if the covered transaction is a qualified mortgage, as defined in § 226.43(e)(2). Proposed § 226.43(e)(2) would implement TILA Section 129C(b)(2), and state that a "qualified mortgage" is a covered transaction—

- That provides for regular periodic payments that do not—
  - Result in an increase of the principal balance (negative amortization);
  - Allow the consumer to defer repayment of principal (*i.e.,* interest-only payments); or
  - Result in a balloon payment;
- For which the loan term does not exceed 30 years;
- For which the total points and fees payable in connection with the loan do not exceed the threshold set forth in § 226.43(e)(3);
- For which the creditor underwrites the loan using the following method:
  - The creditor uses a periodic payment of principal and interest based on the maximum interest rate that may apply during the first 5 years after consummation;
  - The periodic payments of principal and interest would fully repay either the loan amount over the loan term; or the outstanding principal balance as of the date the interest rate adjusts to the maximum interest rate;
  - The creditor takes into account any mortgage-related obligations; and
- For which the creditor considers and verifies the consumer's current or reasonably expected income or assets.

Alternative 1 would construe the statutory text to provide creditors with bright-line standards as an incentive to make loans without certain risky features and high costs. The statutory definition of a "qualified mortgage" includes only items which would allow creditors and assignees to easily and efficiently verify whether or not a loan is a "qualified mortgage." By confining the qualified mortgage definition to certain loan terms, features, and costs, and by requiring only that the loan be underwritten based on certain straightforward assumptions and using verified information about the consumer's income or assets, creditors and assignees can obtain a high degree of certainty that a loan is a qualified mortgage. Moreover, by clarifying that a qualified mortgage is a safe harbor for compliance with the general repayment ability rule, Alternative 1 would provide creditors and assignees with the highest level of certainty about potential legal and compliance risks and, concomitantly, the strongest incentive to make qualified mortgages.

Accordingly, proposed comment 43(e)(1)–1-Alternative 1 would clarify that a creditor assignee complies with § 226.43(c)(1) if a covered transaction meets the conditions for a "qualified mortgage" under § 226.43(e)(2) (or § 226.43(f), if applicable). That is, a creditor or assignee need not demonstrate compliance with § 226.43(c)(2)–(7) if the terms of the loan comply with § 226.43(e)(2)(i)–(ii) (or § 226.43(f), if applicable); the loan's points and fees do not exceed the limits set forth in § 226.43(e)(2)(iii); and the creditor has complied with the underwriting criteria described in § 226.43(e)(2)(iv)–(v) (or § 226.43(f), if applicable). The consumer may show the loan is not a qualified mortgage with evidence that the terms, points and fees, or underwriting not comply with § 226.43(e)(2) (or § 226.43(f), if applicable). If a loan is not a qualified mortgage (for example because the loan provides for negative amortization), then the creditor or assignee must demonstrate that loan complies with all of the requirements in § 226.43(c) (or § 226.43(d), if applicable).

Debt-to-income ratio and residual income. While consideration of a consumer's debt-to-income ratio is required under the general ability-to-repay standard, TILA Section 129C(b)(2)(A)(vi) provides that qualified mortgages must comply with any guidelines or regulations established by the Board for the consumer's DTI ratio or residual income. For several reasons, under Alternative 1 the Board is not proposing to require creditors to consider the consumer's debt-to-income ratio or residual income to make a qualified mortgage. First, the debt-to-income ratio and residual income are based on widely accepted standards, which, although flexible, do not provide certainty that a loan is a qualified mortgage. Congress seems to have intended to provide incentives to creditors to make qualified mortgages, since they have less risky terms and features. Second, because the definition of a qualified mortgage under Alternative 1 would not require consideration of current debt obligations or simultaneous loans, it would be impossible for a creditor to calculate the debt-to-income ratio or residual income without adding those requirements as well. Third, data show that the debt-to-income ratio generally does not have significant predictive power of loan performance once the effects of credit history, loan type, and loan-to-value ratio are considered.[66] Fourth, although consideration of the mortgage debt-to-income ratio, the so-called "front-end debt-to-income ratio," might help ensure that consumers receive loans on terms that reasonably reflect their ability to repay the loans, Board outreach indicated that creditors often do not find that the "front-end debt-to-income ratio" is a strong predictor of ability to repay.

Finally, the Board is concerned that the benefit of including the debt-to-income ratio or residual income in the definition of "qualified mortgage" may not outweigh the cost to certain consumers. In some cases, consumers may not meet widely accepted debt-to-income ratio standards, but may have other compensating factors, such as sufficient residual income or other resources, to be able to reasonably to afford mortgage payments. A definition of "qualified mortgage" that required creditors to consider the consumer's debt-to-income ratio or residual income could limit the availability of credit to those consumers. While some creditors may be willing to take on the potential compliance costs associated with considering compensating factors, other creditors may choose not to extend qualified mortgages to consumers who do not meet the creditor's specific thresholds.

ALTERNATIVE 2

Under Alternative 2, a qualified mortgage would include the requirements in proposed § 226.43(e)(2)–Alternative 1, as well as additional ability-to-repay requirements. Specifically, proposed § 226.43(e)(2)(v)–Alternative 2 would require the creditor (by a cross-reference to the creditor's obligations in § 226.43(c)) to consider the following under the ability-to-repay requirements: (1) The consumer's employment status, (2) any simultaneous loans, (3) the consumer's current debt obligations, and (4) the consumer's credit history. Proposed § 226.43(e)(1)–Alternative 2 would implement TILA Section 129C(b)(1), and state that a creditor or assignee of a covered transaction is presumed to have complied with the repayment ability requirement of § 226.43(c)(1) if the covered transaction is a qualified mortgage, as defined in § 226.43(e)(2).

[66] *See* Demyanyk Yuliya & Van Hemert, Otto *Understanding the Subprime Mortgage Crisis,* The Review of Financial Studies (2009); Berkovec, James A., Canner, Glenn B., Gabriel, Stuart A., and Hannan, Timothy H., *Race, Redlining, and Residential Mortgage Loan Performance.* The Journal of Real Estate Finance and Economics (2004).

As discussed further below, the Board proposes these revisions to the definition of a "qualified mortgage" under its authority under TILA Section 129C(b)(3)B)(i). The Board believes this alternative definition would further the purpose of TILA Section 129C by requiring creditors to consider specific underwriting criteria to ensure a consumer's ability to repay a qualified mortgage. In addition, proposed § 226.43(e)(2)(v)–Alternative 2 implements TILA Section 129C(b)(2)(vi) by requiring creditors to consider the consumer's monthly debt-to-income ratio or residual income, as provided in proposed § 226.43(c)(2)(vii).

Proposed comment 43(e)(1)–1–Alternative 2 provides that a creditor or assignee is presumed to have complied with the requirement of § 226.43(c)(1) if the terms of the loan comply with § 226.43(e)(2)(i)–(ii) (or § 226.43(f), if applicable); the loan's points and fees do not exceed the limit set forth in § 226.43(e)(2)(iii); and the creditor has complied with the underwriting criteria described in § 226.43(e)(2)(iv)–(v) (or § 226.43(f), if applicable). If the loan is not a qualified mortgage (for example, because the loan provides for negative amortization), then the creditor or assignee must demonstrate that the loan complies with all of the requirements of § 226.43(c) (or § 226.43(d), if applicable). However, even if the loan is a qualified mortgage, the consumer may rebut the presumption of compliance with evidence that the loan did not comply with § 226.43(c)(1). For example, evidence of a debt-to-income ratio with no compensating factors, such as adequate residual income, could be used to rebut the presumption. The Board solicits comment on this approach.

The Board solicits comments on the two proposed alternative definitions of a qualified mortgage, or other alternative definitions. The Board specifically solicits comment, including supporting data, on what criteria should be included in the definition of a qualified mortgage to ensure that the definition provides an incentive to creditors to make qualified mortgages, while also ensuring that consumers have the ability to repay qualified mortgages.

43(e)(2) Qualified Mortgage Defined

Proposed § 226.43(e)(2) implements TILA Section 129C(b)(2) and states that a "qualified mortgage" is a covered transaction—

- That provides for regular periodic payments that do not:
  - Result in an increase of the principal balance (*i.e.,* negative amortization);
  - Allow the consumer to defer repayment of principal (*i.e.,* interest-only payments); or
  - Result in a balloon payment;
- For which the loan term does not exceed 30 years;
- For which the total points and fees payable in connection with the loan do not exceed the threshold set forth in § 226.43(e)(3);
- For which the creditor underwrites the loan using the following method:
  - The creditor uses a periodic payment of principal and interest based on the maximum interest rate that may apply during the first 5 years after consummation;
  - The periodic payments of principal and interest would fully repay either the loan amount over the loan term; or the outstanding principal balance as of the date the interest adjusts to the maximum interest rate;
  - The creditor takes into account any mortgage-related obligations; and
- For which the creditor considers and verifies the consumer's current or reasonably expected income or assets.[67]

43(e)(2)(i) Limits on Periodic Payments

TILA Section 129C(b)(2)(A)(i) states that the regular periodic payments of a qualified mortgage may not result in an increase of the principal balance or allow the consumer to defer repayment of principal (except for certain balloon-payment loans, discussed below in the section-by-section analysis for § 226.43(f)). TILA Section 129C(b)(2)(A)(ii) states that the terms of a qualified mortgage may not include a balloon payment (except for certain balloon-payment loans, discussed below in the section-by-section analysis for § 226.43(f)). The statute defines "balloon payment" as "a scheduled payment that is more than twice as large as the average of earlier scheduled payments."

Proposed § 226.43(e)(2)(i) implements TILA Sections 129C(b)(2)(A)(i) and (ii). First, the proposed provision requires that a qualified mortgage provide for regular periodic payments. Proposed comment 43(e)(2)(i)–1 clarifies that, for this reason, a single-payment transaction, where no payment of principal or interest is required until maturity, may not be a qualified mortgage. Second, proposed § 226.43(e)(2)(i) provides that the regular periodic payments may not (1) result in an increase of the principal balance; (2) allow the consumer to defer repayment of principal, except as provided in § 226.43(f), discussed below; or (3) result in a balloon payment, as defined in § 226.18(s)(5)(i), except as provided in § 226.43(f), discussed below.

Proposed comment 43(e)(2)(i)–1 explains that, as a consequence of the foregoing prerequisites, a qualified mortgage must require the consumer to make payments of principal and interest, on a monthly or other periodic basis, that will fully repay the loan amount over the loan term. These periodic payments must be substantially equal except for the effect that any interest rate change after consummation has on the payment amount in the case of an adjustable-rate or step-rate mortgage. The proposed comment also notes that, because § 226.43(e)(2)(i) requires that a qualified mortgage provide for regular, periodic payments, a single-payment transaction may not be a qualified mortgage. This result would prevent potential evasion, as a creditor otherwise could structure a transaction with a single payment due at maturity (economically, a near equivalent to a balloon-payment loan) that technically would not be a balloon payment as defined in § 226.18(s)(5)(i) because it is not more than two times a regular periodic payment.

Proposed comment 43(e)(2)(i)–2 provides additional guidance on the requirement in proposed § 226.43(e)(2)(i)(B) that a qualified mortgage may not allow the consumer to defer repayment of principal. The comment clarifies that, in addition to interest-only terms, deferred principal repayment also occurs if the payment is applied to both accrued interest and principal but the consumer makes periodic payments that are less than the amount that would be required under a payment schedule that has substantially equal payments that fully repay the loan amount over the loan term. Graduated payment mortgages, for example, allow deferral of principal repayment in this manner and therefore may not be qualified mortgages.

As noted above, the statute defines "balloon payment" as "a scheduled payment that is more than twice as large as the average of earlier scheduled payments." Proposed § 226.43(e)(2)(i)(C) cross-references Regulation Z's existing definition of "balloon payment" in § 226.18(s)(5)(i). That definition provides that a balloon payment is "a payment that is more than two times a regular periodic payment." This definition is substantially similar to the statutory one, except that it uses as its benchmark any regular periodic payment rather than the average of earlier scheduled payments.

[67] As discussed below in this section-by-section analysis, in certain limited situations, a creditor may comply with the requirements of § 226.43(f) instead of certain requirements § 226.43(e).

The Board believes that, because a qualified mortgage generally must provide for substantially equal, fully amortizing payments of principal and interest, a payment that is greater than twice any one of a loan's regular periodic payments also generally will be greater than twice the average of its earlier scheduled payments. Thus, the Board believes that the difference in wording between the statutory definition and the existing regulatory definition, as a practical matter, does not yield a significant difference in what constitutes a "balloon payment" in the qualified mortgage context. Accordingly, in the interest of facilitating compliance by affording creditors a single definition within Regulation Z, the Board is proposing to cross-reference § 226.18(s)(5)(i)'s definition of "balloon payment" in § 226.43(e)(2)(i)(C). The Board proposes this adjustment to the statutory definition pursuant to its authority under TILA Section 105(a) to make such adjustments for all or any class of transactions as in the judgment of the Board are necessary or proper to facilitate compliance with TILA. 15 U.S.C. 1604(a). The class of transactions for which this adjustment is proposed is all covered transactions, *i.e.,* closed-end consumer credit transactions that are secured by a dwelling. The Board solicits comment on the appropriateness of this proposed adjustment to the definition of "balloon payment." This approach is further supported by the Board's authority under TILA Section 129B(e) to condition terms, acts or practices relating to residential mortgage loans that the Board finds necessary or proper to facilitate compliance. 15 U.S.C. 1639b(e).

The Board recognizes that some balloon-payment loans are renewable at maturity. Such loans might appropriately be eligible to be qualified mortgages, provided the terms for renewal eliminate the risk of the consumer facing a large, unaffordable payment obligation, which underlies the rationale for generally excluding balloon-payment loans from the definition of qualified mortgages. If the consumer is protected by the terms of the transaction from that risk, such a transaction might appropriately be treated as though it effectively is not a balloon-payment loan even if it is technically structured as one.

Accordingly, the Board solicits comment on whether it should include an exception providing that, notwithstanding § 226.43(e)(2)(i)(C), a qualified mortgage may provide for a balloon payment if the creditor is unconditionally obligated to renew the loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control). The Board also seeks comment on how such an exception should be structured to ensure that the large-payment risk ordinarily accompanying a balloon-payment loan is fully eliminated by the renewal terms. For example, the exception might provide that the balloon-payment loan must be renewable on terms that either (1) do not include a balloon payment; or (2) obligate the creditor unconditionally (or subject to conditions within the consumer's control) to renew the loan again upon expiration of each renewed loan term, and the loan term resulting from such multiple renewals is at least equal to the amortization period of the loan. Finally, the Board recognizes that such an exception could enable a creditor to circumvent the prohibition on qualified mortgages providing for balloon payments by structuring a balloon-payment loan as unconditionally renewable but with new terms that effectively render the loan as renewed unaffordable for the consumer, such as a substantially greater interest rate. The Board seeks comment on how such an exception might be structured to avoid the potential for such circumvention.

43(e)(2)(ii) Loan Term

TILA Section 129C(b)(2)(A)(viii) requires that a qualified mortgage must not provide for a loan term that exceeds 30 years, "except as such term may be extended under paragraph (3), such as in high-cost areas." Under TILA Section 129C(b)(3)(B)(i), the Board is authorized "to revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections."

Proposed § 226.43(e)(2)(ii) implements the 30-year maximum loan term without any exception. Based on information available through outreach and data analysis, the Board believes that mortgage loans with terms greater than 30 years are rare and, when made, generally are for the convenience of customers who could qualify for a loan with a 30-year term but prefer to spread out their payments further. Therefore, the Board believes such an exception generally is not necessary "to ensure that responsible, affordable mortgage credit remains available to consumers" in "high-cost areas." This belief is in contrast with the Board's proposal to implement TILA Section 129C(a)(6)(E) concerning refinancing of an existing hybrid loan into a standard loan, in proposed § 226.43(d). As discussed in more detail above, proposed § 226.43(d)(2) provides an exemption from certain repayment ability requirements when a creditor refinances a non-standard mortgage into a standard mortgage. Proposed § 226.43(d)(4)(ii)(C) permits a standard mortgage to have a loan term of up to 40 years. The Board believes that a 40-year loan term may be necessary to ensure affordable mortgage credit remains available for a refinancing that is being extended specifically to prevent a likely default, as provided in proposed § 226.43(d)(2)(i)(B).

The Board solicits comment on whether there are any "high-cost areas" in which loan terms in excess of 30 years are necessary to ensure that responsible, affordable credit is available and, if so, how they should be identified for purposes of such an exception. The Board also seeks comment on whether any other exceptions would be appropriate, consistent with the Board's authority in TILA Section 129C(b)(3)(B)(i).

43(e)(2)(iii) Points and Fees

TILA Section 129C(b)(2)(A)(vii) defines a "qualified mortgage" as a loan for which, among other things, the total points and fees payable in connection with the loan do not exceed three percent of the total loan amount. TILA Section 129C(b)(2)(D) requires the Board to prescribe rules adjusting this threshold to "permit lenders that extend smaller loans to meet the requirements of the presumption of compliance." The statute further requires the Board, in prescribing such rules, to "consider the potential impact of such rules on rural areas and other areas where home values are lower." Proposed § 226.43(e)(2)(iii) implements these provisions by providing that a qualified mortgage is a loan for which the total points and fees payable in connection with the loan do not exceed the amounts specified under § 226.43(e)(3). As discussed in detail in the section-by-section analysis for § 226.43(e)(3), the Board proposes two alternatives for calculating the allowable points and fees for a qualified mortgage. Proposed § 226.43(b)(9) defines "points and fees" to have the same meaning as in § 226.32(b)(1), addressed above.

43(e)(2)(iv) Underwriting of the Loan

TILA Sections 129C(b)(2)(A)(iv) and (v) provide as a condition to meeting the definition of a qualified mortgage, in addition to other criteria, that the underwriting process for a fixed-rate or adjustable-rate loan be based on "a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments." The statute further states that for an adjustable-rate loan, the underwriting must be based on "the maximum rate permitted under the loan during the first 5 years." *See* TILA Section 129C(b)(2)(A)(v). The statute does not define the terms "fixed rate," adjustable rate," or "loan term," and provides no additional set of assumptions regarding how to calculate the payment obligation.

These statutory requirements differ from the payment calculation requirements set forth under § 226.34(a)(4)(iii) of the Board's 2008 HOEPA Final Rule. Section 226.34(a)(4)(iii) states that a presumption of compliance exists where the creditor underwrites the loan using the largest payment of principal and interest scheduled in the first seven years following consummation. The existing presumption of compliance under § 226.34(a)(4)(iii) is available for all loan types, except for loans with negative amortization or balloon loans with a term less than seven years. In contrast, TILA Section 129C(b)(2)(A) provides a five-year time horizon for purposes of underwriting the loan to the maximum interest rate, and does not extend the scope of qualified mortgages to any loan that contains certain risky features or a loan term exceeding 30 years. For example, loans that permit deferral of principal or that have a term greater than 30 years would not meet the definition of a qualified mortgage. *See* proposed § 226.43(e)(2)(i) and (ii). In addition, loans with a balloon feature would not meet the definition of a qualified mortgage regardless of term length, unless made by a creditor that satisfies the conditions set forth under the proposed exception. *See* proposed § 226.43(f)(1).

The Board's Proposal

The Board proposes § 226.43(e)(2)(iv) to implement the underwriting requirements of TILA Sections 129C(b)(2)(A)(iv) and (v), as enacted by Section 1412 of the Dodd-Frank Act, for purposes of determining whether a loan meets the definition of a qualified mortgage. Under the proposal, creditors would be required to underwrite the consumer for a loan that is a fixed-, adjustable-, or step-rate mortgage using a periodic payment of principal and interest based on the maximum interest rate permitted during the first five years after consummation. The terms "adjustable-rate mortgage," step-rate mortgage," and "fixed-rate mortgage" have the meaning as in current § 226.18(s)(7)(i)–(iii), respectively.

Specifically, proposed § 226.43(e)(2)(iv) provides that meeting the definition of a qualified mortgage is contingent, in part, on creditors underwriting the loan in the following manner:

(1) First, proposed § 226.43(e)(2)(iv) requires that the creditor take into account any mortgage-related obligations when underwriting the consumer's loan.

(2) Second, proposed § 226.43(e)(2)(iv)(A) requires creditors to use the maximum interest rate that may apply during the first five years after consummation;

(3) Third, proposed § 226.43(e)(2)(iv)(B) requires that the periodic payments of principal and interest repay either the outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate that can occur during the first five years after consummation, or the loan amount over the loan term; and

These three underwriting conditions under proposed § 226.43(e)(2)(iv) are discussed below.

43(e)(2)(iv) Mortgage-Related Obligations

Proposed § 226.43(e)(2)(iv) implements TILA Section 129C(b)(2)(A)(iv) and (v), in part, and provides that the creditor underwrite the loan taking into account any mortgage-related obligations. As discussed in proposed § 226.43(b)(8), the Board proposes to use the term "mortgage-related obligations" to refer to "all applicable taxes, insurance (including mortgage guarantee insurance), and assessments." Proposed § 226.43(b)(8) would define the term "mortgage-related obligations" to mean property taxes; mortgage-related insurance premiums required by the creditor as set forth in proposed § 226.45(b)(1); homeowner association, condominium, and cooperative fees; ground rent or leasehold payments; and special assessments. Unlike the requirement under proposed § 226.43(c)(5)(v), however, creditors would not need to verify and document mortgage-related obligations for purposes of satisfying this underwriting condition. Proposed comment 43(e)(2)(iv)–6 provides cross-references to proposed § 226.43(b)(8) and associated commentary to facilitate compliance.

43(e)(2)(iv)(A) Maximum Interest Rate During First Five Years

Proposed § 226.43(e)(2)(iv)(A) implements TILA Sections 129C(b)(2)(A)(iv) and (v), in part, and provides as a condition to meeting the definition of a qualified mortgage that the creditor underwrite the loan using the maximum interest rate that may apply during the first five years after consummation. The statute does not define the term "maximum rate." In addition, the statute does not clarify whether the phrase "the maximum rate permitted under the loan during the first 5 years" means the creditor should use the maximum interest rate that occurs during the first five years of the loan beginning with the first periodic payment due under the loan, or during the first five years after consummation of the loan. The distinction between these two approaches is that the former would capture the rate reset for a 5/1 hybrid ARM that occurs on the due date of the 60th monthly payment, and the latter would not.

Maximum interest rate. The Board interprets the phrase "maximum rate permitted" as requiring creditors to underwrite the loan based on the maximum interest rate that could occur under the terms of the loan during the first five years after consummation, assuming a rising index value. *See* TILA Section 129C(b)(2)(A)(v). The plain meaning of "maximum" is to the greatest possible degree or amount. For this reason, the Board believes it is reasonable to interpret the phrase as requiring the creditor to use the maximum rate possible, assuming that the index value is increasing. *See* proposed comment 43(e)(2)(iv)–1. This interpretation is consistent with current guidance contained in Regulation Z regarding disclosure of the maximum interest rate. See MDIA Interim Rule, 75 FR 58471, Sept. 24, 2010. The Board further believes this interpretation is consistent with Congressional intent to encourage creditors to make loans to consumers that are less risky and that afford the consumer a reasonable period of time to repay (*i.e.,* 5 years) on less risky terms.

First five years after consummation. For several reasons, the Board proposes to interpret the phrase "during the first 5 years" as requiring creditors to underwrite the loan based on the maximum interest rate that may apply during the first five years *after consummation.* TILA Section 129C(b)(2)(A)(v). First, a plain reading

of the statutory language conveys that the "first 5 years" is the first five years of the loan once it comes into existence (*i.e.,* once it is consummated). Interpreting the phrase to mean the first five years beginning with the first periodic payment due under the loan would require an expansive reading of the statutory text.

Second, the Board believes the intent of this underwriting condition is to ensure that the consumer can afford the loan's payments for a reasonable amount of time. The Board believes that Congress intended for a reasonable amount of time to be the first five years after consummation, and therefore interprets the statutory text "maximum rate permitted during the first five years" accordingly.

Third, the Board believes this approach is consistent with prior iterations of this statutory text and the Board's 2008 HOEPA Final Rule. As noted above, the Dodd-Frank Act codifies many aspects of the repayment ability requirements contained in § 226.34(a)(4) of the Board's 2008 HOEPA Final Rule. Previous versions of this statutory text provided that creditors underwrite the loan using the maximum interest rate during the first seven years;[68] this time horizon parallels § 226.34(a)(4)(iii), which requires creditors to determine a consumers repayment ability using the largest payment in first seven years "*following consummation.*"

Fourth, the Board believes that interpreting the phrase "during the first five years" as including the rate adjustment at the end of the fifth year would be of limited benefit to consumers because creditors could easily structure their product offerings to avoid application of the rule. For example, a creditor could move a rate adjustment that typically occurs on the due date of the 60th monthly payment to due date of the first month that falls outside the specified time horizon, making any proposal to extend the time period in order to include the rate adjustment of diminished value.

Finally, the Board recognizes that the proposed timing of the five-year period differs slightly from the approach used under the 2010 MDIA Interim Final Rule, but believes this is appropriate given the different purposes of the rules. The Board recently amended the 2010 MDIA Interim Final Rule to require that creditors base their disclosures on the first five years after the first regular periodic payment due date rather than the first five years after consummation. *See* 75 FR 81836, Dec. 29, 2010. The revision clarifies that the disclosure requirements for 5/1 hybrid ARMs must include the rate adjustment that occurs on the due date of the 60th monthly payment, which typically occurs more than five years after consummation. The disclosure requirements under the 2010 MDIA Interim Final Rule, as revised, are intended to help make consumers aware of changes to their loan terms that may occur if they choose to stay in the loan beyond five years and therefore, helps to ensure consumers avoid the uninformed use of credit.

By contrast, consistent with statutory intent, proposed § 226.43(e)(2)(iv) seeks to ensure that the loan's payments are affordable for a reasonable period of time. For the reasons stated above, the Board believes that Congress intended the first five years after consummation to be a reasonable period of time to ensure that the consumer has the ability to repay the loan according to its terms. The Board also notes that the 2010 MDIA Interim Final Rule and 226.43(e)(2)(iv) complement, rather than conflict, with each other. That is, consistent with Congressional intent, proposed 226.43(e)(2)(iv) would ensure that a consumer could repay the loan for the first five years after consummation. For those borrowers that want to stay in the mortgage longer than five years, the disclosure required under the 2010 MDIA Interim Final Rule provides information about any potential increase in payments so that the consumer can decide whether those payments are affordable.

For these reasons, the Board believes it is appropriate to interpret the statutory text as requiring that the creditor underwrite the loan using the maximum interest rate during the first five years after consummation. The Board solicits comment on its interpretation of the phrase "first five years" and the appropriateness of this approach.

Proposed comment 43(e)(2)(iv)–1 would provide additional guidance to creditors on how to determine the maximum interest rate during the first five years after consummation. This comment would explain that creditors must use the maximum rate that could apply at any time during the first five years after consummation, regardless of whether the maximum rate is reached at the first or subsequent adjustment during such five year period. Proposed comment 43(e)(2)(iv)(A)–2 would clarify that for a fixed-rate mortgage, creditors should use the interest rate in effect at consummation, and provide a cross-reference to § 226.18(s)(7)(iii) for the meaning of the term "fixed-rate mortgage."

Proposed comment 43(e)(2)(iv)–3 would provide further guidance to creditors regarding treatment of periodic interest rate adjustment caps. This comment would explain that for an adjustable-rate mortgage, creditors should assume the interest rate increases after consummation as rapidly as possible, taking into account the terms of the legal obligation. This comment would further explain that creditors should account for any periodic interest rate adjustment cap that may limit how quickly the interest rate can increase under the terms of the legal obligation. This comment would also state that where a range for the maximum interest rate during the first five years is provided, the highest rate in that range is the maximum interest rate for purposes of this section. Finally, this comment would clarify that where the terms of the legal obligation are not based on an index plus a margin, or formula, the creditor must use the maximum interest rate that occurs during the first five years after consummation.

Proposed comment 43(e)(2)(iv)–3 provides several illustrative examples of how to determine the maximum interest rate. For example, this comment would illustrate how to determine the maximum interest rate in the first five years after consummation for an adjustable-rate mortgage with a discounted rate for three years. The example first assumes an adjustable-rate mortgage that has an initial discounted rate of 5% that is fixed for the first three years of the loan, after which the rate will adjust annually based on a specified index plus a margin of 3%. This comment assumes the index value in effect at consummation is 4.5%. This comment states that the loan agreement provides for an annual interest rate adjustment cap of 2%, and a lifetime maximum interest rate of 10%. The first rate adjustment occurs on the due date of the 36th monthly payment; the rate can adjust to no more than 7% (5% initial discounted rate plus 2% annual interest rate adjustment cap). The second rate adjustment occurs on the due date of the 48th monthly payment; the rate can adjust to no more than 9% (7% rate plus 2% annual interest rate adjustment cap). The third rate adjustment occurs on the due date of the 60th monthly payment, which occurs more than five years after consummation. This proposed comment explains that the maximum interest rate during the first five years after consummation is 9% (the rate on the due date of the 48th monthly payment).

[68] *See, e.g.,* Mortgage Reform and Anti-Predatory Lending Act, H. Rep. 111–94, p. 39 (2009).

Proposed comment 43(e)(2)(iv)–4 would further clarify the meaning of the phrase "first five years after consummation." This comment would reiterate that under proposed § 226.43(e)(2)(iv)(A), the creditor must underwrite the loan using the maximum interest rate that may apply during the first five years after consummation of the loan, and would provide the following illustrative example: Assume an adjustable-rate mortgage with an initial fixed interest rate of 5% for the first five years after consummation, after which the interest rate will adjust annually to the specified index plus a margin of 6%, subject to a 2% annual interest rate adjustment cap. The index value in effect at consummation is 5.5%. The loan consummates on September 15, 2011, and the first monthly payment is due on November 1, 2011. The first five years after consummation occurs on September 15, 2016. The first rate adjustment to no more than 7% (5% plus 2% annual interest rate adjustment cap) occurs on the due date of the 60th monthly payment, which is October 1, 2016 and therefore, the rate adjustment does not occur during the first five years after consummation. To meet the definition of qualified mortgage under § 226.43(e)(2), the creditor must underwrite the loan using a monthly payment of principal and interest based on an interest rate of 5%, which is the maximum interest rate during the first five years after consummation.

43(e)(2)(iv)(B) Amortizing Payments of Principal and Interest

Proposed § 226.43(e)(2)(iv)(B) implements TILA Section 129C(b)(2)(A)(iv) and (v), in part, and provides as a condition to meeting the definition of a qualified mortgage that the creditor underwrite the loan using periodic payments of principal and interest that will repay either (*1*) the outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate that occurs during the first five years after consummation; or (2) the loan amount over the loan term. *See* proposed § 226.43(e)(2)(iv)(B)(*1*) and (*2*).

TILA Section 129C(b)(2)(A)(iv) and (v) state that underwriting should be based "on a payment schedule that fully amortizes the loan over the loan term." The Board notes that unlike the payment calculation assumptions set forth for purposes of the general ability-to-repay rule under TILA Section 129C(a)(6), the underwriting conditions for purposes of meeting the definition of a qualified mortgage do not specify the loan amount that should be repaid, and do not define "loan term." For consistency and to facilitate compliance, the Board proposes to use the terms "loan amount" and "loan term" in proposed § 226.43(b)(5) and (b)(6), respectively, for purposes of this underwriting condition.

However, the Board believes that a loan that meets the definition of a qualified mortgage and which has the benefit of other safeguards, such as limits on loan features and fees, merits flexibility in the underwriting process. Accordingly, the Board proposes to permit creditors to underwrite the loan using periodic payments of principal and interest that will repay either the outstanding principal balance as of the date the maximum interest rate takes effect under the terms of the loan, or the loan amount as of the date of consummation. The Board believes permitting the former approach more accurately reflects the largest payment amount that the borrower would need to make under the terms of the loan during the first five years after consummation, where as the latter approach would actually overstate the payment amounts required. This approach sets a minimum standard for qualified mortgages, but affords creditors to choose either approach to facilitate compliance.

Proposed comment 43(e)(2)(iv)–5 would provide further clarification to creditors regarding the loan amount to be used for purposes of this second condition. This comment would explain that for a creditor to meet the definition of a qualified mortgage under proposed § 226.43(e)(2), the creditor must determine the periodic payment of principal and interest using the maximum interest rate permitted during the first five years after consummation that repays either (1) the outstanding principal balance as of the earliest date the maximum interest rate can take effect under the terms of the legal obligation, over the remaining term of the loan, or (2) the loan amount, as that term is defined in § 226.43(b)(5), over the entire loan term, as that term is defined in § 226.43(b)(6). This comment would provide illustrative examples for both approaches.

Proposed comment 43(e)(2)(iv)–7 provides illustrative examples of how to determine the periodic payment of principal and interest based on the maximum interest rate during the first five years after consummation under proposed § 226.43(e)(2)(iv). For example, this comment would illustrate the payment calculation rule for an adjustable-rate mortgage with discount for five years. This comment first assumes a loan in an amount of $200,000 that has a 30-year loan term. Second, the comment would assume that the loan agreement provides for a discounted interest rate of 6% that is fixed for an initial period of five years, after which the interest rate will adjust annually based on a specified index plus a margin of 3%, subject to a 2% annual interest rate adjustment cap.

The index value in effect at consummation is 4.5%. The loan consummates on March 15, 2011 and the first regular periodic payment is due May 1, 2011. Under the terms of the loan agreement, the first rate adjustment is on April 1, 2016 (the due date of the 60th monthly payment), which occurs more than five years after consummation of the loan. This proposed comment explains that the maximum interest rate under the terms of the loan during the first five years after consummation is 6%. *See* proposed comment 43(e)(2)(iv)–7.iii.

This comment concludes that the creditor will meet the definition of a qualified mortgage if it underwrites the loan using the monthly payment of principal and interest of $1,199 to repay the loan amount of $200,000 over the 30-year loan term using the maximum interest rate during the first five years of 6%.

The Board notes that in the case of an adjustable-rate mortgage with a fixed interest rate for the first five years after consummation, the creditor will use the fixed initial rate as the maximum interest rate to calculate the monthly payment using that will repay the loan amount, in accordance with requirements in proposed § 226.43(e)(2)(iv). Because the fixed initial rate does not adjust during the first five years after consummation, the outstanding principal balance at the end of the fifth year is equivalent to the balance of the loan amount, assuming the first 60 monthly payments under the loan are made as scheduled. Thus, there is no alternative calculation.

43(e)(2)(v)

Income or Assets (ALTERNATIVE 1) or Underwriting Requirements (ALTERNATIVE 2)

As discussed above, it is not clear whether the Act intends the definition of a "qualified mortgage" to be a somewhat narrowly-defined safe harbor or a more broadly-defined presumption of compliance. Thus, the Board is proposing two alternative requirements for the "qualified mortgage" definition. Under Alternative 1, the underwriting requirements for a qualified mortgage would be limited to what is contained in the statutory definition, namely, considering and verifying the

consumer's current or reasonably expected income or assets. Under Alternative 2, the qualified mortgage definition would require a creditor consider and verify all of the underwriting criteria required under the general ability-to-repay standard, namely: (1) The consumer's current or reasonably expected income, (2) the consumer's employment status, (3) the monthly payment on any simultaneous loans, (4) the consumer's current debt obligations, (5) the consumer's monthly debt-to-income ratio or residual income, and (6) the consumer's credit history.

ALTERNATIVE 1

43(e)(2)(v) Income or Assets

Under TILA Section 129C(b)(2)(A)(iii), a condition for a "qualified mortgage" is that the income and financial resources relied upon to qualify the obligors on the residential mortgage loan are verified and documented. This requirement is consistent with the repayment ability requirement to consider and verify a consumer's income or assets using third-party records, under TILA Section 129C(a)(1) and (3), as discussed above in the section-by-section analysis of proposed § 226.43(c)(2)(i) and (c)(4). Proposed § 226.43(e)(2)(v) would implement TILA Section 129C(b)(2)(A)(iii) and provides that for a covered transaction to be a "qualified mortgage," the creditor must consider and verify the consumer's current or reasonably expected income or assets to determine the consumer's repayment ability, as required by proposed § 226.43(c)(2)(i) and (c)(4). The Board believes creditors must consider and not merely verify a consumer's income or assets for a covered transaction to be a "qualified mortgage," because TILA Section 129C(b)(2)(A)(iii) integrates a requirement to consider the consumer's income or assets by referring to qualifying a consumer for a covered transaction. Qualifying a consumer for a covered transaction in general involves considering whether or not the consumer's income or assets are sufficient for the consumer to meet his payment obligations under the covered transaction. In addition, the proposal uses the term "assets" instead of "financial resources" for consistency with other provisions in Regulation Z, as discussed above in the section-by-section analysis of proposed § 226.43(c)(2)(i). Under the first alternative requirement, proposed comment 43(e)(2)(v)–1 clarifies that creditors may rely on commentary to § 226.43(c)(2)(i), (c)(3) and (c)(4) for guidance regarding considering and verifying the consumer's income or assets to satisfy the conditions under § 226.43(e)(2)(v) for a "qualified mortgage."

ALTERNATIVE 2

43(e)(2)(v)(A)–(F) Underwriting Requirements

Under Alternative 2, proposed § 226.43(e)(2)(v) would implement TILA Section 129C(b)(2)(A)(iii) and require that creditors consider and verify the consumer's current or reasonably expected income or assets to determine the consumer's repayment ability, as required by proposed § 226.43(c)(2)(i) and (c)(4). This proposed requirement, which under Alternative 2 is designated § 226.43(e)(2)(v)(A), is discussed in detail under Alternative 1 above.

In addition, proposed § 226.43(e)(2)(v)—Alternative 2 would require that creditors consider and verify the following additional underwriting requirements, which are also required under the general ability-to-repay standard: The consumer's employment status, the consumer's monthly payment on any simultaneous loans, the consumer's current debt obligations, and the consumer's credit history. Creditors could look to commentary on the general repayment ability provisions under proposed § 226.43(c)(2)(i), (ii), (iv), and (vi) through (viii), and (c)(3), (c)(4), (c)(6), and (c)(7) for guidance regarding considering and verifying the consumer's repayment ability to satisfy the conditions under § 226.43(e)(2)(v) for a "qualified mortgage." *See* proposed comment 43(e)(2)(v)–1 (Alternative 2). The Board proposes these additions pursuant to its legal authority pursuant under TILA Section 129C(b)(3)(B)(i). The Board believes that adding these requirements may be necessary to better ensure that the consumers are offered and receive loans on terms that reasonably reflect their ability to repay the loan.

The Board solicits comments on adding each of these criteria to the definition of a "qualified mortgage." Specifically, the Board solicits comment on whether, for each criterion, the inclusion of the criterion strikes the appropriate balance between ensuring the consumer's ability to repay the loan and providing creditors with an incentive to make a qualified mortgage. In addition, the Board solicits comment on whether consideration of simultaneous loans should be required for both purchase transactions and non-purchase transactions (*i.e.,* refinancings).

43(e)(2)(v)(E) Debt-to-Income Ratio or Residual Income

TILA Section 129C(b)(2)(vi) states that the term "qualified mortgage" includes any mortgage loan "that complies with any guidelines or regulations established by the Board relating to ratios of total monthly debt to monthly income or alternative measure of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Board may determine relevant and consistent with the purposes described in paragraph (3)(B)(i)." As stated above, under proposed § 226.43(e)(2)(v)—Alternative 1, creditors are not required to consider the consumer's debt-to-income ratio or residual income to make a qualified mortgage. However, under proposed § 226.43(e)(2)(v)—Alternative 2, a "qualified mortgage" is a loan for which, among other things, the creditor considers the consumer's monthly debt-to-income ratio or residual income, as required by § 226.43(c)(2)(vii) and (c)(7). Without determining the consumer's debt-to-income ratio, a creditor could originate a qualified mortgage without any requirement to consider the effect of the new loan payment on the consumer's overall financial picture. The consumer could have a very high total debt-to-income ratio under widely accepted underwriting standards, and be predicted to default soon after the first scheduled mortgage payment. Accordingly, including the debt-to-income ratio or residual income in the definition of "qualified mortgage" might ensure that the consumer has a reasonable ability to repay the loan.

The Board solicits comment on whether consideration of the debt-to-income ratio or residual income should be part of the criteria for a "qualified mortgage."

Quantitative standards. The Board is not proposing a quantitative standard for the debt-to-income ratio or residual income in the qualified mortgage definition for several reasons. First, as explained in the Board's 2008 HOEPA Final Rule, the Board is concerned that setting a specific debt-to-income ratio or residual income level could limit credit availability without providing adequate off-setting benefits. 73 FR 44550, July 30, 2008. For this proposal, the Board analyzed data from the Applied Analytics division (formerly McDash Analytics) of Lender Processing Services (LPS) for the years 2005–2008 [69] and

[69] The LPS data include mortgage underwriting and performance information. The LPS data do not include detailed information on borrower income

data from the Survey of Consumer Finances (the SCF) for the years 2005–2007.[70] Using the LPS data, the Board found that about 23 percent of all borrowers exceeded a debt-to-income ratio of 45 percent, the typical maximum permitted by creditors and the secondary market for loans that are manually underwritten. The data show that this rate was even higher for borrowers living in low-income or high-cost areas. Using the SCF data, the Board found that about 44 percent of borrowers located in low-income areas and about 31 percent of borrowers located in high-cost areas exceeded the 45 percent limit.[71] If the Board were to adopt a quantitative standard, the Board seeks comment on what exceptions may be necessary for low-income borrowers or borrowers living in high-cost areas, or for other cases.

Second, outreach conducted by the Board revealed a range of underwriting guidelines for debt-to-income ratios based on product type, whether creditors used manual or automated underwriting, and special considerations for high- and low-income borrowers. Setting a quantitative standard would require the Board to address the operational issues related to the calculation of the debt-to-income ratio or residual income. For example, the Board would need clearly to define income and current debt obligations, as well as compensating factors and the situations in which creditors may use compensating factors, In addition, the debt-to-income ratio is often a floating metric, since the percentage changes as new information about income or current debt obligations becomes available. A quantitative standard would require guidelines on the timing of the debt-to-income ratio calculation, and what circumstances would necessitate a re-calculation of the debt-to-income ratio. Furthermore, a quantitative standard may also need to provide tolerances for mistakes made in calculating the debt-to-income ratio. The rule would also need to address the use of automated underwriting systems in determining the debt-to-income ratio or residual income.

Finally, setting a quantitative standard for residual income could prove particularly challenging. Except for one small creditor and the Department of Veterans' Affairs, the Board is not aware of any creditors that routinely use residual income in underwriting, other than as a compensating factor.[72] As noted in the supplementary information to the 2008 HOEPA Final Rule, the residual income guidelines of the Department of Veterans' Affairs may be appropriate for the limited segment of the mortgage market this agency is authorized to serve, but they are not necessarily appropriate for the large segment of the mortgage market this regulation will cover. 73 FR 44550, July 30, 2008. Moreover, the residual income guidelines developed by the Department of Veterans' Affairs have not been updated since 1997. It is not clear that such guidelines would be appropriate or provide sufficient flexibility for consumers outside the market served by the Department of Veterans' Affairs.

For these reasons, the Board is not proposing a quantitative standard for the debt-to-income ratio or residual income. The Board recognizes, however, that creditors, and ultimately consumers, may benefit from a higher degree of certainty surrounding the qualified mortgage definition that a quantitative standard could provide. Therefore, the Board solicits comment on whether and how it should prescribe a quantitative standard for the debt-to-income ratio or residual income for the qualified mortgage definition.

43(e)(3) Limits on Points and Fees for Qualified Mortgages

Proposed § 226.43(e)(3) sets forth two alternative proposals establishing the points and fees that a creditor may charge on a qualified mortgage:

Alternative 1

- For a loan amount of $75,000 or more, 3 percent of the total loan amount;
- For a loan amount of greater than or equal to $60,000 but less than $75,000, 3.5 percent of the total loan amount;
- For a loan amount of greater than or equal to $40,000 but less than $60,000, 4 percent of the total loan amount;
- For a loan amount of greater than or equal to $20,000 but less than $40,000, 4.5 percent of the total loan amount; and
- For a loan amount of less than $20,000, 5 percent of the total loan amount.

Alternative 2

- For a loan amount of $75,000 or more, 3 percent of the total loan amount;
- For a loan amount of greater than or equal to $20,000 but less than $75,000, a percent of the total loan amount not to exceed the percentage of the total loan amount yielded by the following formula—
  - Total loan amount − $20,000 = $Z
  - $Z × .0036 basis points = Y basis points
  - 500 basis points − Y basis points = X basis points
  - X basis points × .01 = *Allowable points and fees as a percentage of the total loan amount.*
- For a loan amount of less than $20,000, 5 percent of the total loan amount.

For both alternatives, Proposed comment 43(e)(3)(i)–1 cross-references comment 32(a)(1)(ii)–1 for an explanation of how to calculate the "total loan amount" under this provision. Proposed comment 43(e)(3)(i)–2 also clarifies that a creditor must determine which category the loan falls into based on the face amount of the note (the "loan amount"), but must apply the allowable points and fees percentage to the "total loan amount," which may be an amount that is different than the face amount of the note. Specifically, the comment explains that a creditor must calculate the allowable amount of points and fees for a qualified mortgage as follows:

- First, the creditor must determine the "tier" into which the loan falls based on the loan amount. The loan amount is the principal amount the consumer will borrow as reflected in the promissory note or loan contract. *See* § 226.43(b)(5). For example, if the loan amount is $75,000, the loan falls into the tier for loans of $75,000 or more, to which a three percent cap on points and fees applies.
- Second, the creditor must determine the "total loan amount" based on the calculation for the "total loan amount" under comment 32(a)(1)(ii)–1. If the loan amount is $75,000, for

and on other debts the borrower may have in addition to the mortgage.

[70] The SCF is conducted every three years by the Board, in cooperation with the U.S. Department of Treasury, to provide detailed information on the finances of U.S. families. The SCF collects information on the balance sheet, pension, income, and other demographic characteristics of U.S. families. To ensure the representativeness of the study, respondents are selected randomly using a scientific sampling methodology that allows a relatively small number of families to represent all types of families in the nation. Additional information on the SCF is available at *http://www.federalreserve.gov/pubs/oss/oss2/method.html.*

[71] *See also* Wardrip, Keith, *An Annual Look at the Housing Affordability Challenges of America's Working Households* (Center for Housing Policy 2011) (showing that just over 20 percent of working households, defined as households that report household members working at least 20 hours per week, on average, with incomes no higher than 120 percent of the median income in their area, who own a home spend more than half its income on housing costs).

[72] *See also* Stone, Michael E., *What is Housing Affordability? The Case for the Residual Income Approach,* 17 Housing Policy Debate 179 (Fannie Mae 2006) (advocating use of a residual income approach but acknowledging that it "is neither well known, particularly in this country, nor widely understood, let alone accepted").

example, the "total loan amount" may be a different amount, such as $73,000.

• Third, the creditor must apply the percentage cap on points and fees to the "total loan amount." For example, for a loan of $75,000 where the "total loan amount" is $73,000, the allowable points and fees is three percent of $73,000 or $2,190.

For a discussion of the Board's proposed revisions to the "total loan amount" calculation, see the section-by-section analysis of § 226.32(a)(1)(ii), above.

Discussion

The Board proposes the two alternative calculations for the qualified mortgage points and fees test to implement TILA Section 129C(b)(2)(A)(vii), which requires that the points and fees of a qualified mortgage may not exceed three percent of the total loan amount. 15 U.S.C. 1639c(b)(2)(A)(vii). Proposed § 226.43(e)(3) is also intended to implement TILA Section 129C(b)(2)(D), which requires the Board to adjust this three percent points and fees limit for "smaller loans" and also requires that, "[i]n prescribing such rules, the Board * * * consider the potential impact of such rules on rural areas and other areas where home values are lower." 15 U.S.C. 1639C(b)(2)(D). The statute does not define, and the legislative history does not provide guidance on, the terms "smaller loan" or the phrase "rural areas and other areas where home values are lower."

Therefore, to gather information on how best to implement the statutory requirement that the Board "adjust" the points and fees threshold for "smaller loans," Board staff consulted with consumer advocates and numerous types of creditors, including representatives of banks and credit unions in rural areas, as well as manufactured home loan creditors. In addition, Board staff also examined recent data on loan size distributions for home purchase loans and refinances by county and based on whether the loan was a conventional mortgage or a mortgage secured by manufactured homes. The Board also considered that creditors can, to some extent, increase the interest rate to offset limits on points and fees. The Board recognizes that loan pricing is typically a blend of points and fees and interest rate and that limits on points and fees tend to drive loan costs into the rate.

As an initial matter, the Board considered a few options for implementing the statutory mandate to "adjust[] the criteria" of the three percent points and fees cap—namely, narrowing the charges required to be included in the "points and fees" calculation, raising the percentage cap, or a combination of both. Outreach participants generally disfavored an approach that would require different ways of calculating points and fees depending on loan size. Industry representatives in particular raised concerns about compliance burden and the increased risk of error resulting from a more complex rule. The Board believes that requiring separate ways of calculating points and fees is unnecessary to effect the statutory mandate to "adjust the criteria" for the qualified mortgage three percent points and fees threshold. The proposal therefore simply would set higher percentage caps on points and fees for loans of less than $75,000.

Outreach participants had varying views on appropriate loan size thresholds for an alternative points and fees limitation applicable to "smaller loans." Industry representatives shared a concern that loans below a certain size could not meet the three percent points and fees cap because the minimum costs to originate any loan would exceed three percent of loans of that size. While recognizing that loan costs can be covered in part by charging a higher interest rate, creditors were concerned that for smaller loans, the needed rate increase might result in loan becoming a high-cost mortgage; as a result, creditors would be reluctant to make these loans and credit availability would be compromised. Based on calculations using loans in their own portfolios, some creditors indicated that the point at which minimum loan origination costs exceed three percent of the total loan amount is $50,000 to $75,000. At least one creditor indicated that, in addition, for loans of $40,000 or less, the creditor would be unable to meet a four percent cap on points and fees. Others suggested $100,000 as the appropriate "smaller loan" threshold, while still others recommended that the Board propose a "smaller loan" threshold of greater than $100,000, such as at least $150,000. Community bank representatives in particular raised concerns that they would be unable to retain profitability without an adjustment to the points and fees cap for loans of less than $100,000. They argued that the sizes of loans originated by community banks and other institutions in less populated areas are "small" on average, leaving less opportunity for community banks than larger institutions to make up any losses on originations of small loans through originations of larger loans.

Industry representatives also generally expressed concerns about limiting the availability of credit to low-income or rural borrowers if the points and fees cap for qualified mortgages were too low with respect to "smaller loans." If creditors could not meet the qualified mortgage points and fees cap, these loans would not meet the definition of a "qualified mortgage" and creditors therefore would be less likely to make these loans.

Consumer advocates generally favored a narrower exception to the three percent qualified mortgage points and fees threshold for "smaller loans," recommending a "smaller loan" size of no higher than $50,000 and preferably lower. They questioned industry concerns that the three percent threshold would limit the availability of credit for borrowers of comparatively low loan amounts. Instead, they emphasized the importance of ensuring that qualified mortgages are affordable because, depending on the Board's interpretation of the statute, these loans potentially would not be subject to some or all of the specific repayment ability requirements in TILA Section 129C(a) (*see* proposed § 226.43(c)). (For a detailed discussion of the Board's alternative proposals regarding which of the general repayment ability requirements apply to creditors of qualified mortgages, see the section-by-section analysis of proposed § 226.43(e), above.) In their view, the three percent points and fees cap is a centerpiece of ensuring affordability and should be relaxed only in very limited circumstances.

The Board's Proposal

Based on outreach and the Board's research, the Board is issuing two alternative proposals to implement the points and fees limitation on qualified mortgages. The first consists of five "tiers" of loan sizes and corresponding limits on points and fees. The second consists of three "tiers," with the middle tier of allowable points and fees based on a formula yielding a greater allowable percentage of the total loan amount to be charged in points and fees for each dollar increase in loan size.

The Board proposes a "tiered" approach, rather than a single "smaller loan" threshold and a single alternate points and fees cap for loans at or below that amount, for several reasons. First, the Board understands that most creditors have a minimum cost for originating a mortgage loan of any size and that this cost may vary somewhat by creditor. If a single minimum origination cost is assumed, that cost will obviously comprise a different percentage of a loan depending on its size. Total points and fees of $2,500 will

obviously be a smaller percentage of a loan of $100,000 (2.5%) than for a loan of $50,000 (5%), for example. A single threshold therefore may not be sufficiently flexible to allow loans of a full range of sizes to be deemed qualified mortgages.

In addition, the Board believes that a rule allowing for incremental increases in the points and fees cap for several ranges of loan sizes will help mitigate market distortions that might otherwise result. For example, a rule setting a five percent points and fees cap for all loans less than $75,000 would create a significant disparity between the amount of points and fees that could be charged on loans of substantially equal amounts. For a loan of $75,000, for instance, a creditor could charge up to $2,250 (3% of $75,000). But for a loan of $74,000, a creditor could charge as much as $3,700 (5% of $74,000). As a result, loans slightly above the threshold at which a five percent cap applies—for example, from $75,000 to $85,000—might be less likely to be made at all.

Finally, the Board is reluctant to require a single threshold due to limitations inherent in available data on origination costs. Various resources that track points and fees in loan originations tend to use different methods for calculating the points and fees and to date do not include all items that must be counted as points and fees under TILA as amended by the Dodd-Frank Act. *See* TILA Section 103(aa)(4); 15 U.S.C. 1602(aa)(4). *See also* section-by-section analysis of § 226.32, above.

Alternative 1. The five-tiered approach proposed as Alternative 1 is intended to facilitate compliance by setting clear categories based on loan size to which specific points and fees thresholds apply. The Board derived the loan size ranges for each category (with corresponding points and fees thresholds of three percent, 3.5 percent, four percent, 4.5 percent, and five percent of the "total loan amount," respectively) based on a calculation that would generally achieve a "sliding scale" points and fees cap from three to five percent for loans from $20,000 to $75,000. To make the proposal more straightforward, the Board chose increments of .5% and rounded the loan size ranges proposed for each category. Thus, for example:

- An $80,000 loan would fall into the category for loans of $75,000 or more, to which a three percent points and fees rate cap applies. Assuming that the "total loan amount" for the loan is also $80,000, the dollar amount of allowable points and fees for this loan would be $2,400.
- A $60,000 loan would fall into the category for loans of $60,000 but less than $75,000, to which a 3.5 percent points and fees rate cap applies. Assuming that the "total loan amount" for the loan is also $60,000, the dollar amount of allowable points and fees for this loan would be $2,100.
- A $40,000 loan would fall into the category for loans of $40,000 but less than $60,000, to which a four percent points and fees rate cap applies. Assuming that the "total loan amount" for the loan is also $40,000, the dollar amount of allowable points and fees for this loan would be $1,600.
- A $20,000 loan would fall into the category for loans of $20,000 but less than $40,000, to which a 4.5 percent points and fees rate cap applies. Assuming that the "total loan amount" for the loan is also $40,000, the dollar amount of allowable points and fees for this loan would be $900.
- A $10,000 loan would fall into the category for loans of less than $20,000, to which a five percent points and fees rate cap applies. Assuming that the "total loan amount" for the loan is also $10,000, the dollar amount of allowable points and fees for this loan would be $500.

Proposed alternative comment 43(e)(3)(i)–3 provides the following illustration of how to calculate the allowable points and fees for a $50,000 loan with a $48,000 total loan amount: A covered transaction with a loan amount of $50,000 falls into the third points and fees tier, to which a points and fees cap of 3.5 percent of the total loan amount applies. *See* § 226.43(e)(3)(i)(C). If a $48,000 total loan amount is assumed, the allowable points and fees for this loan is 3.5 percent of $48,000 or $1,920.

One concern is that this approach yields anomalous results in some instances—namely, that a greater dollar amount of points and fees would be allowable on some loans than on other loans of a larger size. For example, the allowable points and fees that could be charged on a loan of $40,000 (also assuming in this example a "total loan amount" of $40,000) would be $1,600—four percent of the total loan amount. At the same time, the allowable points and fees that could be charged on a loan of $38,000 (also assuming in this example a "total loan amount" of $38,000) would be $1,710—4.5 percent of the total loan amount. The Board considered and could revise the first alternative to solve the anomalies mathematically, but not without adding significant complexity to the regulation, which in turn would increase the risk of compliance errors. For these reasons, the Board is also proposing the alternative discussed below.

Alternative 2. The Board proposes an alternative with three tiers that incorporates a formula designed to ensure that allowable points and fees as a dollar amount will increase as the loan amount increases, thus eliminating the anomalies resulting from the proposed five-tier approach. Specifically, as noted, for a loan amount of $75,000 or more, allowable points and fees would be 3 percent of the total loan amount. For a loan amount of less than $20,000, allowable points and fees would be 5 percent of the total loan amount. These two categories correspond with the first and last tiers of the five-tiered approach discussed above.

For a loan amount of greater than or equal to $20,000 but less than $75,000, however, the allowable points and fees would be a percentage of the total loan amount not to exceed the amount yielded by the following formula—

- Total loan amount − $20,000 = $Z
- $Z × .0036 = Y basis points
- 500 basis points − Y basis points = X basis points
- X basis points × .01 = *Allowable points and fees as a percentage of the total loan amount.*

In effect, for every dollar increase in the total loan amount, the allowable points and fees would increase by .0036 basis points. Proposed alternative comment 43(e)(3)(i)–3 provides the following illustration of how to apply this formula: Assume a loan amount of $50,000 with a "total loan amount" of $48,000. The amount of $20,000 must be subtracted from $48,000 to yield the number of dollars to which the .0036 basis points multiple must be applied—in this case, $28,000. $28,000 must be multiplied by .0036 basis points—in this case resulting in 100.8 basis points.

This amount must be subtracted from the maximum allowable points and fees on any loan, which, under the proposed rule, is 500 basis points. (Five percent of the total loan amount for loans of less than $20,000 is the maximum allowable points and fees on any loan. Five percent expressed in basis points is 500.) Five hundred minus 100.8 equals 399.2 basis points: This is the allowable points and fees in basis points. Translating basis points into a percentage of the total loan amount requires multiplying 399.2 by .01—resulting, in this case, in 3.99 percent. Allowable points and fees for this loan as a dollar figure is therefore 3.99 percent of $48,000 (*i.e.,* the total loan amount), or $1,915.20.

The Board recognizes that a formula is potentially more complex for

creditors to comply with than the multiple tiers proposed under the first alternative. In particular, the Board requests comment on whether a formula would be difficult for smaller creditors to integrate into their lending operations.

Three to five percent cap. The upper end of the points and fees cap for smaller loans is proposed to be five percent for loans of less than $20,000. One reason for the maximum cap of five percent for loans of less than $20,000 is to achieve general consistency with the Dodd-Frank Act amendments to the points and fees thresholds for high-cost mortgages.[73] Specifically, TILA now defines a high-cost mortgage as one for which the points and fees equal five percent of the total transaction amount if the transaction is $20,000 or more and, if the transaction is less than $20,000, the lesser of eight percent of the total transaction amount or $1,000. *See* TILA Section 103(aa)(1)(A)(ii)(I) and (II); 15 U.S.C. 1602(aa)(1)(A)(ii)(I) and (II).

The proposal seeks to ensure that if a loan is a qualified mortgage, it would not also be a high-cost mortgage based on the points and fees, and therefore subject to the more stringent high-cost mortgage rules of TILA Section 129 (as amended by the Dodd-Frank Act).[74] For example, five percent of a loan of $19,999 is $999.95. Thus, for this loan to meet the points and fees test for qualified mortgages, the maximum points and fees that could be charged would be $999.95. If the maximum points and fees that could be charged on this loan under the qualified mortgage test were $1,000, this loan would also be a high-cost mortgage.

As discussed earlier, the Board believes that the statute is designed to reduce the compliance burden on creditors when they make qualified mortgages, in order to encourage creditors to make loans with stable, understandable loan features. Creating points and fees thresholds for small loans that might result in qualified mortgages also being high-cost mortgages would discourage creditors from making qualified mortgages because the requirements and limitations of high-cost loans are generally more stringent than for other loans. High-cost mortgages, for example, are subject to a cap on the late fees that may be imposed and timing restrictions regarding when the fee may be imposed, but other mortgages are not subject to these and several other rules applicable solely to high-cost mortgages. *See* TILA Section 129(k); 15 U.S.C. 1639(k). They also require that the consumer obtain "pre-loan counseling" not required for other mortgages. *See* TILA Section 129(u); 15 U.S.C. 1639(u).

Three percent cap for loans of $75,000 or greater. The Board proposes a loan size of $75,000 as the point at which the statutory three percent points and fees cap begins to apply for several reasons. First, the Board believes that Congress intended the exception to the qualified mortgage points and fees cap to affect more than a minimal—although still limited—proportion of home-secured loans. The 2008 Home Mortgage Disclosure Act[75] (HMDA) data show that 8.4 percent of first-lien, home-purchase (site-built) mortgages had a loan amount of $74,000 or less.[76] That percentage significantly drops for loans of $49,000 or less, to 2.8 percent, with only .5 percent of all loans at $24,000 or less. The percentage of first-lien, home-purchase (site-built) mortgages of $100,000 or less is significantly higher than 8.4 percent, however—totaling 16 percent of the market.

Similarly, in 2009, the percentage of first-lien *home-purchase* (site-built) mortgages was 9.7 percent, with a significant drop for loans of $50,000 or less to 3.3 percent of the total market and .3 percent for loans of $20,000 or less.[77] Again, however, the percentage of first-lien home-purchase (site-built) mortgages jumps substantially—from 9.7 percent to 18.5 percent—for loans of $100,000 or less. Parallel results occurred for first-lien *refinances* secured by site-built homes.[78]

Thus, the Board believes that a loan size of less than $75,000 would capture a material portion of the first-lien home-purchase (site-built) mortgage market (close to 10 percent), but would not undermine the statute by creating an exception that might be over-broad.[79]

Second, Board outreach and research indicate that $2,250—three percent of $75,000—is within range of average costs to originate a first-lien home mortgage. Thus $75,000 appears to be an appropriate benchmark for applying the three percent limit, with a higher percent limit applying to loans below that amount to afford creditors of these loans a reasonable opportunity to recoup their origination costs. The sliding scale approach to loans below $75,000 is intended in part to help ensure that creditors of these loans would not have to add a significant amount to the rate to recoup their origination costs and thus cannot be classified as high-cost mortgages. In addition, the Board seeks to limit compensating rate increases because it recognizes that increasing the rate is not necessarily in the consumer's interest—for example, a loan with a higher rate can be costly for a consumer who plans to stay in the home (and loan) for a long time. Higher rates also can decrease credit access because some consumers may not be able to make the resulting payments over time, but may have the cash to pay the costs upfront.

Third, the Board interprets Congress's express concern for "loans in areas where home values are lower" to encompass not only geographic areas but also "areas" of mortgage lending generally—in particular, property types such as manufactured homes, which tend to be less expensive than site-built homes. Regarding property types, the Board focused on manufactured homes and found that, in 2009, 74.8 percent of all first-lien home-purchase loans secured by manufactured homes were $75,000 or less, while 61.8 percent of all first-lien refinances secured by manufactured homes were $75,000 or less. Thus the Board believes that the proposal would appropriately address Congress's concern with the "lower" home values typical of manufactured homes. The Board considers manufactured homes to be an important homeownership option for many consumers and intends through this proposal to protect manufactured home loan consumers from excessive costs, while allowing more of these loans to be deemed qualified mortgages.

In general, the Board is reluctant to propose an adjustment to the three percent qualified mortgage points and fees cap based on geographic area alone. Property values shift over time, and in some cases, properties in what today are

[73] Public Law 111–203, 124 Stat. 1376, Title XIV, § 1431.

[74] *Id.* § 1432, 1433.

[75] 12 U.S.C. 2801 *et seq.*

[76] *See* The 2008 HMDA Data: The Mortgage Market during a Turbulent Year, *Federal Reserve Bulletin,* vol. 95, p. A201 (April 2010).

[77] *See* HMDA data for 2009 is available at Federal Financial Institutions Examination Council, *http://www.ffiec.gov.hmda/hmdaproducts.htm.*

[78] *See* The 2008 HMDA Data: The Mortgage Market during a Turbulent Year, *Federal Reserve Bulletin,* vol. 95, p. A201 (April 2010); Federal Financial Institutions Examination Council, *http://www.ffiec.gov/hmda/hmdaproducts.htm*

[79] The proposed loan size threshold would have applied to the majority of second-lien home-purchase and refinance loans secured by site-built homes in 2008 and 2009. In 2008, 78.3 percent of all second-lien home-purchase (site-built) mortgages were $74,000 or less and 75.3 percent of all second-lien refinances (site-built) were $74,000 or less. *See* The 2008 HMDA Data: The Mortgage Market during a Turbulent Year, *Federal Reserve Bulletin,* vol. 95, p. A201 (April 2010). In 2009, 85.1 percent of all second-lien home-purchase (site-built) and 78.1 percent of all second-lien refinance (site-built) mortgages were in an amount of $75,000 or less. *See* Federal Financial Institutions Examination Council, *http://www.ffiec.gov/hmda/hmdaproducts.htm.*

remote, inexpensive areas may become more populated and costly over time. The Board considered imposing an alternate points and fees threshold for defined geographic areas such as "non-MSA" areas. However, even within those areas, origination costs and loan sizes may vary widely, so the Board believes that an inadequate basis exists for such a proposal.

Nevertheless, regarding whether loan sizes are "lower" on average in some geographic areas than others, the Board has conducted preliminary research on loan size by county. HMDA data indicate that in 2009, for example, there were eight counties in which loans under $75,000 comprised more than 90 percent of all first-lien mortgages made in those counties, and 1,366 counties in which loans under $75,000 comprised more than 90 percent of all second-lien loans made in those counties.[80] The Board also noted that counties in which at least 70 percent of second-lien mortgages made were under $75,000 (2,616 counties) accounted for 91 percent of the entire second-lien mortgage market for loans of under $75,000. These data suggest that the proposal may affect access to credit differently across the country.

The Board requests comment on the proposed alternative loan size ranges and corresponding points and fees caps for qualified mortgages. The Board encourages commenters to provide specific data to support their recommendations. The Board also solicits comment on whether the proposal should index the loan size ranges for inflation and periodically change them by regulation. In addition, the Board requests comment on the potential impact of the proposal on access to credit, particularly on how the impact may vary based on geographic area.

43(e)(3)(ii) Exclusions From Points and Fees for Qualified Mortgages

Proposed § 226.43(e)(3)(ii) excludes three types of charges from the points and fees calculation for qualified mortgages:

- Any bona fide third party charge not retained by the creditor, loan originator, or an affiliate of either, subject to the limitations under proposed § 226.32(b)(1)(i)(B), which requires that premiums for private mortgage insurance be included in points and fees under certain circumstances, even if they are not retained by the creditor, loan originator, or an affiliate of either.
- Up to two bona fide discount points paid by the consumer in connection with the covered transaction, but only if certain conditions are met (discussed below).
- Up to one bona fide discount point paid by the consumer in connection with the covered transaction, but only if certain conditions are met (discussed below).

See proposed § 226.43(e)(3)(ii)(A)–(C).

43(e)(3)(ii)(A) Bona Fide Third Party Charges

Proposed § 226.43(e)(3)(ii)(A) excludes from "points and fees" for qualified mortgages "any bona fide third party charge not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included in 'points and fees' under § 226.32(b)(1)(i)(B)." This provision would implement TILA Section 129C(b)(2)(C), which defines "points and fees" for qualified mortgages to have the same meaning as "points and fees" for high-cost mortgages (TILA Section 103(aa)(4)), but expressly excludes "bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator." 15 U.S.C. 1602(aa)(4), 1639c(b)(2)(C). With the following example, proposed comment 43(e)(3)(ii)–1 clarifies the meaning of "retained by" the loan originator, creditor, or an affiliate of either: If a creditor charges a consumer $400 for an appraisal conducted by a third party not affiliated with the creditor, pays the third party appraiser $300 for the appraisal, and retains $100, the creditor may exclude $300 of this fee from "points and fees" but must count the $100 it retains in "points and fees."

Proposed § 226.43(e)(3)(ii)(A) would also implement TILA Section 103(aa)(1)(C), which requires that premiums for private mortgage insurance be included in "points and fees" as defined in TILA Section 103(aa)(4) under certain circumstances. 15 U.S.C. 1602(aa)(1)(C). Applying general rules of statutory construction, the Board believes that the more specific provision on private mortgage insurance supersedes the more general provision permitting any bona fide third party charge not retained by the creditor, mortgage originator, or an affiliate of either to be excluded from "points and fees." Thus, comment 43(e)(3)(ii)–2 explains that § 226.32(b)(1)(i)(B) requires creditors to include in "points and fees" premiums or charges payable at or before closing for any private guaranty or insurance protecting the creditor against the consumer's default or other credit loss to the extent that the premium or charge exceeds the amount payable under policies in effect at the time of origination under Section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)). These premiums or charges must also be included if the premiums or charges are not required to be refundable on a pro-rated basis, or the refund is not automatically issued upon notification of the satisfaction of the underlying mortgage loan. The comment clarifies that, under these circumstances, even if the premiums and charges are not retained by the creditor, loan originator, or an affiliate of either, they must be included in the "points and fees" calculation for qualified mortgages. The comment also cross-references comments 32(b)(1)(i)–3 and –4 for further discussion of including upfront private mortgage insurance premiums in the points and fees calculation.

For a detailed discussion of the Board's proposal to apply the Dodd-Frank Act provisions on mortgage insurance to the meaning of "points and fees" for qualified mortgages, see the section-by-section analysis of proposed § 226.32(b)(1)(i) (implementing TILA Section 103(aa)(1)(C)).

43(e)(3)(ii)(B) and 43(e)(3)(ii)(C) Bona Fide Discount Points

Proposed § 226.43(e)(3)(ii)(B) and (e)(3)(ii)(C) permit a creditor to exclude a limited number of discount points from the calculation of points and fees under specific circumstances. These provisions are proposed to implement TILA Section 129C(b)(2)(C)(ii), (iii), and (iv), and mirror the statutory language with minor clarifying revisions. 15 U.S.C. 1639c(b)(2)(C)(ii), (iii), and (iv).

Exclusion of up to two bona fide discount points. Specifically, proposed § 226.43(e)(3)(ii)(B) permits a creditor to exclude from points and fees for a qualified mortgage up to two bona fide discount points paid by the consumer in connection with the covered transaction, provided that the following conditions are met—

- The interest rate before the rate is discounted does not exceed the average prime offer rate, as defined in § 226.45(a)(2)(ii),[81] by more than one percent; and
- The average prime offer rate used for purposes of paragraph 43(e)(3)(ii)(B)(*1*) is the same average prime offer rate that applies to a comparable transaction as of the date

[80] *See* Federal Financial Institutions Examination Council, *http://www.ffiec.gov/hmda/hmdaproducts.htm.*

[81] *See* 76 FR 11319, March 2, 2011 (2011 Jumbo Loan Escrow Final Rule).

the discounted interest rate for the covered transaction is set.

Proposed comment 43(e)(3)(ii)–3 provides the following example to illustrate this rule: Assume a covered transaction that is a first-lien, purchase money home mortgage with a fixed interest rate and a 30-year term. Assume also that the consumer locks in an interest rate of 6.00 percent on May 1, 2011, that was discounted from a rate of 6.50 percent because the consumer paid two discount points. Finally, assume that the average prime offer rate (APOR) as of May 1, 2011 for first-lien, purchase money home mortgages with a fixed interest rate and a 30-year term is 5.50 percent.

In this example, the creditor may exclude two discount points from the "points and fees" calculation because the rate from which the discounted rate was derived exceeded APOR for a comparable transaction as of the date the rate on the covered transaction was set by only one percent.

Exclusion of up to one bona fide discount point. Proposed § 226.43(e)(3)(ii)(C) permits a creditor to exclude from points and fees for a qualified mortgage up to one bona fide discount point paid by the consumer in connection with the covered transaction, provided that the following conditions are met—

- The interest rate before the discount does not exceed the average prime offer rate, as defined in § 226.45(a)(2)(ii),[82] by more than two percent;
- The average prime offer rate used for purposes of § 226.43(e)(3)(ii)(C)(*1*) is the same average prime offer rate that applies to a comparable transaction as of the date the discounted interest rate for the covered transaction is set; and
- Two bona fide discount points have not been excluded under § 226.43(e)(3)(ii)(B) of this section.

Proposed comment 43(e)(3)(ii)–4 provides the following example to illustrate this rule: Assume a covered transaction that is a first-lien, purchase money home mortgage with a fixed interest rate and a 30-year term. Assume also that the consumer locks in an interest rate of 6.00 percent on May 1, 2011, that was discounted from a rate of 7.00 percent because the consumer paid four discount points. Finally, assume that the average prime offer rate (APOR) as of May 1, 2011 for first-lien, purchase money home mortgages with a fixed interest rate and a 30-year term is 5.00 percent.

In this example, the creditor may exclude one discount point from the "points and fees" calculation because the rate from which the discounted rate was derived (7.00 percent) exceeded APOR for a comparable transaction as of the date the rate on the covered transaction was set (5.00 percent) by only two percent.

Comparable transaction. Both proposed exclusions for bona fide discount points require the creditor to determine the APOR for a "comparable transaction." Comment 43(e)(3)(ii)–5 clarifies that the APOR table published by the Board indicates how to identify the comparable transaction.[83] This comment also cross-references proposed comment 45(a)(2)(ii)–2 contained in the 2011 Escrow Proposal (*see also* existing comment 35(a)(2)–2), which makes the same clarification in a different context. Currently, the APOR table published by the Board indicates that one loan characteristic on which the APOR may vary is whether the rate is fixed or adjustable. Another variable is the length of the loan term. For a fixed-rate mortgage, the relevant term is the length of the entire contractual obligation, such as 30 years. For an adjustable-rate mortgage, the relevant term is the length of the initial fixed-rate period. The examples provided in proposed comments 43(e)(3)(ii)–3 and –4 are based on a fixed-rate mortgage with a 30-year term and accordingly refer to the APOR for a fixed-rate mortgage with a 30-year term.

Risk-based price adjustments. The Board is aware that, in setting the purchase price for specific loans, Fannie Mae and Freddie Mac make loan-level price adjustments (LLPAs) to compensate offset added risks, such as a high LTV or low credit score, among many other risk factors.[84] Creditors may, but are not required to, pass the resulting costs directly through to the consumer in the form of points. During outreach, some creditors argued that these points should not be counted in points and fees for qualified mortgages under the exclusion for "bona fide third party charges not retained by the loan originator, creditor, or an affiliate of either." Proposed § 226.43(e)(3)(ii)(A); TILA Section 129C(b)(2)(C).

The Board understands creditors' concerns about exceeding the qualified mortgage points and fees thresholds due to LLPAs required by the GSEs. At the same time, the Board questions whether an exemption for LLPAs is consistent with congressional intent in limiting points and fees for qualified mortgages. Points charged to meet GSE risk-based price adjustment requirements are arguably no different than other points charged on loans sold to any secondary market purchaser to compensate that purchaser for added loan-level risks. Congress clearly contemplated that discount points generally should be included in points and fees for qualified mortgages; as discussed above, the Dodd-Frank Act exempts from the qualified mortgage points and fees calculation up to only two discount points, and under limited circumstances. *See* TILA Section 129C(b)(2)(C)(ii), (iii), and (iv), proposed to be implemented in new § 226.43(e)(3)(ii)(B) and (e)(3)(ii)(C).

An exclusion for points charged by creditors in response to secondary market LLPAs also raises questions about the appropriate treatment of points charged by creditors to offset loan-level risks on mortgage loans that they hold in portfolio. Under normal circumstances, these points are retained by the creditor, so an argument that they should be excluded from points and fees under the "bona fide third party charge" exclusion (see above) seems inapt. Yet requiring that these points be included in points and fees, when similar charges on loans sold into the secondary market are excluded, may create undesirable market imbalances between loans sold to the secondary market and loans held in portfolio.

Creditors may offset risks on their portfolio loans (or on loans sold into the secondary market) by charging a higher rate rather than additional points and fees; however, the Board recognizes the limits of this approach to loan-level risk mitigation due to concerns such as exceeding high-cost mortgage rate thresholds. Nonetheless, in practice, an exclusion from the qualified mortgage points and fees calculation for all points charged to offset loan-level risks may create compliance and enforcement difficulties. The Board questions whether meaningful distinctions between points charged to offset loan-level risks and other points and fees charged on a loan can be made clearly and consistently. In addition, such an exclusion could be overbroad and inconsistent with Congress's intent that points generally be counted toward the points and fees threshold for qualified mortgages.

The Board requests comment on whether and on what basis the final rule should exclude from points and fees for qualified mortgages points charged to meet risk-based price adjustment requirements of secondary market purchasers and points charged to offset

[82] *See id.*

[83] Federal Financial Institutions Examination Council (FFIEC), "FFIEC Rate Spread Calculator," *http://www.ffiec.gov/ratespread/newcalc.aspx.*

[84] *See e.g.,* Fannie Mae, "Loan-Level Price Adjustment (LLPA) Matrix and Adverse Market Delivery Charge (AMDC) Information," *Selling Guide* (Dec. 23, 2010).

loan-level risks on mortgages held in portfolio.

43(e)(3)(iii) Definition of Loan Originator

Proposed § 226.43(e)(3)(iii) defines the term "loan originator" in § 226.43(e)(3) to have the same meaning as in § 226.36(a)(1). For a discussion of the Board's proposal to use the term "loan originator" as defined in § 226.36(a)(1) rather than the statutory term "mortgage originator," see the section-by-section analysis of proposed § 226.32(b)(1)(ii).

43(e)(3)(iv) Definition of Bona Fide Discount Point

Proposed § 226.43(e)(3)(iv) defines the term "bona fide discount point" as used in the exclusions of certain "bona fide discount points" from "points and fees" for qualified mortgages described above. This provision is intended to implement TILA Section 129C(b)(2)(C)(iii), which defines the term "bona fide discount point," as well as TILA Section 129C(b)(2)(C)(iv), which limits the types of discount points that may be excluded from "points and fees" to those for which "the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary market transactions." 15 U.S.C. 1639c(b)(2)(C)(iii) and (iv).

Thus, "bona fide discount point" is proposed to be defined as "any percent of the loan amount" paid by the consumer that reduces the interest rate or time-price differential applicable to the mortgage loan by an amount based on a calculation that—

- Is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer; and
- Accounts for the amount of compensation that the creditor can reasonably expect to receive from secondary market investors in return for the mortgage loan.

Consistent with the express statutory language, the Board's proposal requires that the creditor be able to show a relationship between the amount of interest rate reduction purchased by a discount point to the value of the transaction in the secondary market. Based on outreach with representatives of creditors and government-sponsored enterprises (GSEs) in particular, the Board understands that the value of a rate reduction in a particular mortgage transaction on the secondary market is based on many complex factors, which interact in a variety of complex ways. These factors may include, among others:

- The product type, such as whether the loan is a fixed-rate or adjustable-rate mortgage, or has a 30-year term or a 15-year term.
- How much the mortgage-backed securities (MBS) market is willing to pay for a loan at that interest rate and the liquidity of an MBS with loans at that rate.
- How much the secondary market is willing to pay for excess interest on the loan that is available for capitalization outside of the MBS market.
- The amount of the guaranty fee required to be paid by the creditor to the investor.

The proposal therefore is intended to facilitate compliance by affording flexibility, while still requiring, as mandated by the statute, that the amount of discount points paid by consumers for a particular interest rate reduction be tied to the capital markets. The Board is concerned that a more prescriptive interpretation would be operationally unworkable for most creditors and would lead to excessive legal and regulatory risk. In addition, the Board recognizes that, due to the variation in inputs described above, a more prescriptive rule likely would require continual updating, creating additional compliance burden and potential confusion.

Concerns have been raised that small creditors such as community banks that often hold loans in portfolio rather than sell them on the secondary market may have difficulty complying with this requirement. The Board requests comment on whether any exemptions from the requirement that the interest rate reduction purchased by a "bona fide discount point" be tied to secondary market factors are appropriate.

43(f) Balloon-Payment Qualified Mortgages Made by Certain Creditors

As discussed above, under this proposal, a qualified mortgage generally may not provide for a balloon payment. TILA Section 129C(b)(2)(E), however, authorizes the Board to permit qualified mortgages with balloon payments, provided the loans meet four conditions. Those conditions are that (1) the loan meets all of the criteria for a qualified mortgage, with certain exceptions discussed in the more detailed section-by-section analysis, below; (2) the creditor makes a determination that the consumer is able to make all scheduled payments, except the balloon payment, out of income or assets other than the collateral; (3) the loan is underwritten based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance, and assessments; and (4) the creditor meets four prescribed qualifications. Those four qualifications are that the creditor (1) operates predominantly in rural or underserved areas; (2) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Board; (3) retains the balloon-payment loans in portfolio; and (4) meets any asset-size threshold and any other criteria the Board may establish.

Based on outreach, certain community banks appear to originate balloon-payment loans to hedge against interest rate risk, rather than making adjustable-rate mortgages. The Board understands that the community banks hold these balloon-payment loans in portfolio virtually without exception because they are not eligible for sale in the established secondary market. The Board believes Congress enacted the exception in TILA Section 129C(b)(2)(E) to ensure access to credit in rural and underserved areas where consumers may be able to obtain credit only from such community banks offering these balloon-payment loans. Accordingly, proposed § 226.43(f) implements TILA Section 129C(b)(2)(E) by providing an exception to the general provision that a qualified mortgage may not provide for a balloon payment.

Proposed § 226.43(f)(1) sets forth the four statutory conditions described above, as well as an additional condition that the loan term be five years or longer, which the Board is proposing pursuant to its authority to "revise, add to, or subtract from the criteria that define a qualified mortgage" under TILA Section 129C(b)(3)(B)(i). Proposed § 226.43(f)(2) provides definitions of "rural" and "underserved" for use in determining whether the creditor satisfies the first qualification that it "operates predominantly in rural or underserved areas." These proposed provisions are discussed in greater detail below.

43(f)(1) Exception

43(f)(1)(i) Criteria for a Qualified Mortgage

Proposed § 226.43(f)(1)(i) implements TILA Section 129C(b)(2)(E)(i) by providing that a balloon-payment qualified mortgage must meet all of the criteria for a qualified mortgage except those requiring that the loan (1) not provide for deferral of principal repayment, (2) not provide for a balloon payment, and (3) be underwritten based on a fully amortizing payment schedule

that takes into account all mortgage-related obligations and using the maximum interest rate that may apply during the first five years after consummation. Proposed comment 43(f)(1)(i)–1 clarifies that a balloon-payment qualified mortgage under this exception therefore must provide for regular periodic payments that do not result in an increase of the principal balance as required by § 226.43(e)(2)(i)(A), must have a loan term that does not exceed 30 years as required by § 226.43(e)(2)(ii), must have total points and fees that do not exceed specified thresholds pursuant to § 226.43(e)(2)(iii), and must satisfy the consideration and verification requirements in § 226.43(e)(2)(v).

Under this provision, in accordance with the statutory provisions, the exception would excuse balloon-payment qualified mortgages from the requirement in proposed § 226.43(e)(2)(i)(B) that a qualified mortgage not allow the consumer to defer repayment of principal. As noted above, deferred principal repayment may occur if the payment is applied to both accrued interest and principal but the consumer makes periodic payments that are less than the amount that would be required under a payment schedule that has substantially equal payments that fully repay the loan amount over the loan term. The scheduled payments that fully repay a balloon-payment loan over the loan term include the balloon payment itself and, therefore, are not substantially equal. Thus, balloon-payment loans permit the consumer to defer repayment of principal. The Board believes that Congress excused balloon-payment qualified mortgages from the restriction on principal repayment deferral for this reason. That rationale, however, does not necessarily extend to loans that permit principal repayment deferral by providing for interest-only payments. The Board solicits comment on whether the exception should provide that balloon-payment qualified mortgages may permit only principal repayment deferral resulting from the use of an amortization period that exceeds the loan term, as balloon-payment loans commonly do, but may not permit principal repayment deferral resulting from interest-only payments.

43(f)(1)(ii) Underwriting Using Scheduled Payments

Proposed § 226.43(f)(1)(ii) implements TILA Section 129C(b)(2)(E)(ii) by providing that, to make a balloon-payment qualified mortgage, a creditor must determine that the consumer can make all of the scheduled payments under the terms of the legal obligation, except the balloon payment, from the consumer's current or reasonably expected income or assets other than the dwelling that secures the loan. Proposed comment 43(f)(1)(ii)–1 provides the following example to illustrate the calculation of the monthly payment on which this determination must be based: Assume a loan in an amount of $200,000 that has a five-year loan term, but is amortized over 30 years. The loan agreement provides for a fixed interest rate of 6%. The loan consummates on March 15, 2011, and the monthly payment of principal and interest scheduled for the first five years is $1,199, with the first monthly payment due on May 1, 2011. The balloon payment of $187,308 is required on the due date of the 60th monthly payment, which is April 1, 2016. The loan remains a qualified mortgage if the creditor underwrites the loan using the scheduled principal and interest payment of $1,199 (plus all mortgage-related obligations, pursuant to § 226.43(f)(1)(iii)(B)).

Proposed comment 43(f)(1)(ii)–2 provides additional clarification on how a creditor may make the required determination that the consumer is able to make all scheduled payments other than the balloon payment. It states that a creditor must determine that the consumer is able to make all scheduled payments other than the balloon payment to satisfy § 226.43(f)(1)(ii), but the creditor is not required to meet the repayment ability requirements of § 226.43(c)(2)–(7) because those requirements apply only to covered transactions that are not qualified mortgages. Nevertheless, a creditor satisfies § 226.43(f)(1)(ii) if it complies with the requirements of § 226.43(c)(2)–(7). A creditor also may make the determination that the consumer is able to make the scheduled payments (other than the balloon payment) by other means. For example, a creditor need not determine that the consumer is able to make the scheduled payments based on a payment amount that is calculated in accordance with § 226.43(c)(5)(ii)(A) or may choose to consider a debt-to-income ratio that is not determined in accordance with § 226.43(c)(7).

43(f)(1)(iii) Calculation of Scheduled Payments

TILA Section 129C(b)(2)(E)(iii) provides that a balloon-payment qualified mortgage must be underwritten based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance, and assessments. To implement this provision, proposed § 226.43(f)(1)(iii) requires that the scheduled payments on which the determination required by § 226.43(f)(1)(ii) is based are calculated using an amortization period that does not exceed 30 years and include all mortgage-related obligations. The Board believes that the underwriting referenced in TILA Section 129C(b)(2)(E)(iii) corresponds to the determination of the consumer's repayment ability referenced in TILA Section 129C(b)(2)(E)(ii).

Further, the Board believes that the statutory reference to "a payment schedule that fully amortizes the loan over a period of not more than 30 years" refers to the amortization period used to determine the scheduled periodic payments (other than the balloon payment) under the legal obligation and not to the actual loan term of the obligation, which often is considerably shorter for a balloon-payment loan. Proposed comment 43(f)(1)(iii)–1 clarifies that balloon payments often result when the periodic payment would fully repay the loan amount only if made over some period that is longer than the loan term. The Board believes this type of transaction was the reason for the statutory exception for certain balloon-payment loans.

43(f)(1)(iv) Loan Term

As noted above, the Board is proposing to add a condition for a balloon-payment qualified mortgage that is not established by TILA Section 129C(b)(2)(E). Proposed § 226.43(f)(1)(iv) provides that a balloon-payment qualified mortgage must have a loan term of five years or longer. The Board makes this proposal pursuant to TILA Section 129C(b)(3)(B)(i), which authorizes the Board "to revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and Section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections." The purpose of TILA Section 129C is to ensure that consumers are offered and receive loans on terms that they are reasonably able to repay. TILA Section 129B(a)(2). The Board believes that a minimum loan term for balloon-payment loans is necessary and appropriate both to effectuate the purposes of TILA Section 129C and to

prevent circumvention or evasion thereof.

The Board believes that the exception should be structured to prevent balloon-payment loans with very short loan terms from being qualified mortgages because such loans would present certain risks to consumers. A consumer with a loan term of less than five years, particularly where the amortization period is especially long, would face a balloon payment soon after consummation, in an amount virtually equal to the original loan amount. The consumer would establish little equity in the property under such terms, and if the pattern is repeated the consumer may never make any significant progress toward owning the home unencumbered. Thus, the greater the difference between a balloon-payment loan's amortization period and its loan term, the more likely the consumer would face this problem. The Board's proposal to require a minimum term therefore complements the 30-year maximum amortization period prescribed by TILA Section 129C(b)(2)(E)(iii).

In addition, the Board believes that some consumers may obtain balloon-payment loans as a temporary solution when they cannot afford a longer-term, fully amortizing loan. That is, because the interest rate is likely to be lower on a shorter-term obligation, a consumer may use a balloon-payment loan for more affordable financing currently, intending to refinance into a longer-term, fully amortizing loan once either the consumer's financial condition has improved or current market rates have become more favorable, or both. The Board believes that the proposed five-year minimum loan term would help ensure that qualified mortgages with balloon payments provide consumers an adequate time window in which to refinance into longer-term loans. Thus, the Board believes that the purpose of ensuring that consumers are offered and receive affordable loan terms would be served by requiring that balloon-payment qualified mortgages have a minimum loan term of five years.

The Board notes that the statute requires underwriting for an adjustable-rate qualified mortgage to be based on the maximum interest rate permitted during the first five years. TILA Section 129C(b)(2)(A)(v). Therefore, proposed § 226.43(f)(1)(iv) reflects the statutory intent that five years is a reasonable period to repay a loan.

For the foregoing reasons, the Board believes that proposed § 226.43(f)(1)(iv), in limiting the exception for balloon-payment qualified mortgages to covered transactions with loan terms of at least five years and thus ensuring that such products truly support mortgage affordability, would effectuate the purposes of TILA Section 129C and prevent circumvention or evasion thereof. The Board solicits comment on the appropriateness of this proposed additional condition as well as on the proposed use of five years as the minimum loan term.

43(f)(1)(v) Creditor Qualifications

TILA Section 129C(b)(2)(E)(iv) includes among the conditions for a balloon-payment qualified mortgage that the creditor (1) operates predominantly in rural or underserved areas; (2) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Board; (3) retains the balloon-payment loans in portfolio; and (4) meets any asset-size threshold and any other criteria as the Board may establish. These four creditor qualifications are similar to the conditions for an exemption from the requirement that an escrow account be established for certain mortgages set forth in TILA Section 129D(c), as enacted by Section 1461 of the Dodd-Frank Act. The Board proposed to implement the escrow exemption in the 2011 Escrow Proposal. The provisions of proposed § 226.43(f)(1)(v), which implement TILA Section 129C(b)(2)(E)(iv), differ in some respects from the provisions of proposed § 226.45(b)(2)(iii) in the 2011 Escrow Proposal because of differences in the rationales underlying the two exceptions.

Proposed § 226.43(f)(1)(v) implements TILA Section 129C(b)(2)(E)(iv) by providing that a balloon-payment loan may be a qualified mortgage if the creditor (1) makes most of its balloon-payment loans in counties designated by the Board as "rural or underserved," (2) together with all affiliates extended only limited covered transactions, (3) has not sold, assigned, or otherwise transferred ownership of its balloon-payment loans, and (4) has total assets that do not exceed a threshold established and published annually by the Board, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers. These qualifications are discussed in more detail in the following parts of this section-by-section analysis.

"Operates Predominantly in Rural or Underserved Areas"

Under TILA Section 129C(b)(2)(E)(iv)(I), to qualify for the exception, a creditor must "operate predominantly in rural or underserved areas." To implement this provision, proposed § 226.43(f)(1)(v)(A) provides that, during the preceding calendar year, a creditor must have made more than 50% of its total balloon-payment loans in counties designated by the Board as "rural or underserved." Proposed comment 43(f)(1)(v)–1.i states that the Board publishes annually a list of counties that qualify as "rural" or "underserved." The Board's annual determinations would be based on the criteria set forth in proposed § 226.43(f)(2), discussed below.

"*Areas*." In determining what is a rural or underserved area, the Board is proposing to use counties as the relevant area. The Board believes that the county level is the most appropriate area for this purpose, even though the sizes of counties can vary. In determining the relevant area for consumers who are shopping for mortgage loans, census tracts would be too small, while states generally would be too large. Because a single standard nationwide would facilitate compliance, the Board is proposing to use counties for all geographic areas. The Board seeks comment on the appropriateness of this approach.

"*Operates predominantly*." As noted, the proposed rule requires a creditor to have made during the preceding calendar year more than 50% of its total balloon-payment loans in "rural or underserved" counties. The Board believes that "predominantly" indicates a portion greater than half, hence the proposed regulatory requirement of more than 50%. The Board proposes to implement "operates" consistently with the scope of the relevant qualified mortgage provision. Thus, because the definition of qualified mortgage generally excludes balloon-payment loans, *see* proposed § 226.43(e)(2)(i)(C), only those loans would be counted toward this element of the exception. The Board solicits comment on the appropriateness of both of these proposed approaches to implementing the phrase, "operates predominantly."

Total Annual Residential Mortgage Loan Originations

Under TILA Section 129C(b)(2)(E)(iv)(II), to qualify for the exception, the creditor and all affiliates together must have total annual residential mortgage loan originations that do not exceed a limit set by the Board. The Board has identified two primary issues presented in implementing this provision: (1) Whether total annual originations should be measured by number of loans or by aggregate dollar volume; and (2)

the appropriate threshold under either measure.

The Board has only limited information on which to base the foregoing determinations. Thrift Financial Reports provide limited data concerning thrifts' balloon-payment loan originations; other types of depository institutions do not identify which of their mortgage originations are balloon-payment loans. Moreover, the balloon-payment loans reported by thrifts include some unknown number of commercial-purpose loans, which would not be subject to Regulation Z. Based on the limited thrift data available from 2009, the Board estimates that a threshold of $100 million in annual aggregate loan amounts originated would make approximately two-thirds of all thrifts eligible for the exception (assuming they also meet the other qualifications), and those thrifts are responsible for approximately 10% of all thrift-originated balloon-payment loans. Thus, at least among thrifts, the vast majority of balloon-payment loans are made by a minority of creditors with relatively large overall mortgage origination volumes. It is not clear, however, that 10% is the correct percentage of all balloon-payment loans to be eligible for the exception.

In light of these uncertainties, the Board is not proposing a specific threshold. To implement TILA Section 129C(b)(2)(E)(iv)(II), the Board is proposing two alternative versions of § 226.43(f)(1)(v)(B). Alternative 1 would require that, during the preceding calendar year, the creditor together with all affiliates have extended covered transactions with principal amounts that in the aggregate total a to-be-determined dollar amount or less. Alternative 2 would require that, during the preceding calendar year, the creditor together with all affiliates have extended a to-be-determined number of covered transactions or fewer. The Board is soliciting comment on both which alternative is more appropriate and the correct dollar amount or number of loans, as applicable. For example, should the threshold be 100 loans per year, something greater, or something less? Alternatively, should the threshold be $100 million in aggregate covered-transaction loan amounts per year, something greater, or something less? The Board also requests that commenters explain their rationales for any suggested thresholds. In particular, how would a specific threshold correlate with the size and scope of activity of creditors that, in the absence of the exception, would be likely to cease offering balloon-payment loans and consequently leave consumers in their markets with limited access to responsible, affordable mortgage credit? The Board also requests that commenters share any data on which their recommendations are based.

Retention of Balloon-Payment Loans in Portfolio

Under TILA Section 129C(b)(2)(E)(iv)(III), to qualify for the exception, the creditor must "retain[] the balloon loans in portfolio." Read as literally as possible, this requirement would apply to all balloon-payment loans ever made by the creditor, even those made prior to the enactment of the statute. The Board believes, however, that very few creditors, if any, would be eligible for the exception under such a reading. Therefore, the Board is proposing two alternative versions of § 226.43(f)(1)(v)(C) to implement this provision, both of which would require that the creditor not have sold, assigned, or otherwise transferred legal title to the debt obligation for any balloon-payment loan. The difference between the two alternatives lies entirely in the period during which any such transfer may not occur.

Alternative 1 would provide that the creditor must not sell any balloon-payment loan on or after the effective date of the final rule made pursuant to this proposal. This approach would implement the statute's language requiring that the creditor "retain[] the balloon loans in portfolio." The Board recognizes, however, that even this approach may be unduly limited as a practical matter; once a creditor sold even one balloon-payment loan after the effective date, it would become permanently ineligible for the exception. By contrast, Alternative 2 would limit the period during which the creditor must not have sold any balloon-payment loan to the preceding and current calendar years.

The Board solicits comment on the relative merits of Alternatives 1 and 2. The Board also seeks comment on whether, under either alternative, some *de minimis* number of transfers that may be made without losing eligibility for the exception, such as two per calendar year, would be appropriate. Finally, the Board seeks comment on whether there are any other situations in which creditors should be permitted to transfer balloon-payment loans without becoming ineligible for the exception, such as troubled institutions that need to raise capital by selling assets or institutions that enter into mergers or acquisitions.

Asset-Size Threshold

Under TILA Section 129C(b)(2)(E)(iv)(IV), to qualify for the exception, a creditor must meet any asset-size threshold established by the Board. Accordingly, proposed § 226.43(f)(1)(v)(D) requires the creditor to have total assets as of December 31 of the preceding calendar year that do not exceed an asset threshold established and published annually by the Board. The threshold dollar amount would be adjusted annually based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. Comment 43(f)(1)(v)–1.iv would be updated each December to publish the applicable threshold for the following calendar year. The comment would clarify that creditors that had total assets at or below the threshold on December 31 of the preceding year satisfy this criterion for purposes of the exception during the current calendar year.

This proposal would set the threshold for calendar year 2011 at $2 billion. Thus, a creditor would satisfy this element of the test if it had total assets of $2 billion or less on December 31, 2010. This number is based on the limited data available to the Board through Thrift Financial Reports, noted above, and information from commercial banks' Consolidated Reports of Condition and Income. Because of the limited information available on originations of balloon-payment loans, the Board cannot identify which creditors make more than 50% of such loans in "rural" or "underserved" counties. The Board can identify, however, the institutions that likely conduct the majority of their overall business in such locations by reference to their office locations and to the origins of their deposits. The Board believes that the locations in which creditors have offices and from which they draw their deposits likely correlate with the locations in which they extend balloon-payment loans. Of those institutions that either have over 50% of their office locations in or derive over 50% of their deposits from "rural" or "underserved" counties (under the proposed definitions of those terms, discussed below), none had total assets as of the end of 2009 greater than $2 billion.

The Board believes that Congress's intent in authorizing the Board to establish an asset-size test is to ensure that only smaller institutions that serve areas with otherwise limited credit

options may qualify for the exception. At the same time, the Board believes that the asset-size test should not exclude creditors that otherwise probably are the type of community bank for which the exception is intended, *i.e.,* those engaged primarily in serving rural or underserved areas. Accordingly, the Board is proposing to set the asset-size threshold at the highest level currently held by any of the institutions that appear to meet that description. The annual adjustment to the threshold would ensure that institutions growing at a pace consistent with inflation continue to be eligible for the exception. If an institution should grow substantially beyond the rate of inflation, however, it would effectively "outgrow" the exception, consistent with Congress's intent to restrict the exception to relatively small creditors. The Board seeks comment on the appropriateness of the proposed $2 billion asset-size threshold and of the proposed annual adjustments thereto.

TILA Section 129C(b)(2)(E)(iv)(IV) authorizes but does not require an asset-size test. The Board recognizes that the other qualifications that a creditor must satisfy, discussed above, likely would be satisfied only by relatively small creditors. Thus, there may be no need for a separate asset-size test, and the exception may be as readily implemented with lesser burden to creditors by omitting such a test. Moreover, in the parallel provisions of the 2011 Escrow Proposal, the Board proposed no asset-size test on the belief that it would be unnecessary. Accordingly, the Board seeks comment on whether an asset-size test is necessary to this exception. The Board also seeks comment on what threshold is appropriate, and why, if an asset-size test is necessary. The Board requests that commenters provide any data they have underlying their recommendations on these questions.

43(f)(2) "Rural" and "Underserved" Defined

Proposed § 226.43(f)(2) sets out the criteria for a county to be designated by the Board as "rural or underserved" for purposes of proposed § 226.43(f)(1)(v)(A), discussed above. Under that section, a creditor's balloon-payment loan originations in all counties designated as "rural or underserved" during a calendar year are measured as a percentage of the creditor's total balloon-payment loan originations during that calendar year to determine whether the creditor may be eligible for the exemption during the following calendar year. If the creditor's balloon-payment loan originations in "rural or underserved" counties during a calendar year exceeded 50% of the creditor's total balloon-payment loan originations in that calendar year, the creditor would satisfy § 226.43(f)(1)(v)(A) for purposes of the following calendar year.

Proposed § 226.43(f)(2) establishes separate criteria for both "rural" and "underserved," thus a county could qualify for designation by the Board under either definition. Under proposed § 226.43(f)(2)(i), a county is designated as "rural" during a calendar year if it is not in a metropolitan statistical area or a micropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget, and either (1) it is not adjacent to any metropolitan or micropolitan area; or (2) it is adjacent to a metropolitan area with fewer than one million residents or adjacent to a micropolitan area, and it contains no town with 2,500 or more residents. Under proposed § 226.43(f)(2)(ii), a county is designated as "underserved" during a calendar year if no more than two creditors extend covered transactions five or more times in that county.

These two definitions, discussed in more detail below, parallel the definitions of the same terms as they are used in proposed § 226.45(b)(2)(iv) as set forth in the Board's 2011 Escrow Proposal. *See* proposed § 226.45(b)(2)(iv), 76 FR 11598, 11621; March 2, 2011. Both sets of proposed regulatory definitions are for purposes of implementing identical statutory provisions, thus the Board believes consistent definitions are appropriate. *See* TILA Sections 129C(b)(2)(E)(iv)(I) and 129D(c)(1) ("operates predominantly in rural or underserved areas").

"Rural"

The Board is proposing to limit the definition of "rural" areas to those areas most likely to have only limited sources of mortgage credit because of their remoteness from urban centers and their resources. The test for "rural" in proposed § 226.43(f)(2)(i), described above, is based on the "urban influence codes" numbered 7, 10, 11, and 12, maintained by the Economic Research Service (ERS) of the United States Department of Agriculture. The ERS devised the urban influence codes to reflect such factors as counties' relative population sizes, degrees of "urbanization," access to larger communities, and commuting patterns.[85] The four codes captured in the proposed "rural" definition represent the most remote rural areas, where ready access to the resources of larger, more urban communities and mobility are most limited. Proposed comment 43(f)(2)–1 states that the Board classifies a county as "rural" if it is categorized under ERS urban influence code 7, 10, 11, or 12. The Board seeks comment on all aspects of this approach to designating "rural" counties, including whether the definition should be broader or narrower, as well as whether the designation should be based on information other than the ERS urban influence codes.

"Underserved"

In determining what areas should be considered "underserved," the Board has considered the minimum number of creditors that must be engaged in significant mortgage operations in an area for consumers to have meaningful access to mortgage credit. The test for "underserved" in proposed § 226.43(f)(2)(ii), described above, is based on the Board's judgment that, where no more than two creditors are significantly active (measured by extending mortgage credit at least five times in a year), the unwillingness of one creditor to offer a balloon-payment loan would be detrimental to consumers with otherwise limited credit options. Thus, proposed § 226.43(f)(2)(ii) designates a county as "underserved" during a calendar year if no more than two creditors extend covered transactions five or more times in that county. Proposed comment 43(f)(2)–1 states that the Board bases its determinations of whether counties are "underserved" for purposes of § 226.43(f)(1)(v)(A) by reference to data submitted by mortgage lenders under the Home Mortgage Disclosure Act (HMDA).

The Board believes the purpose of the exception is to permit creditors that rely on certain balloon-payment loan products to continue to offer credit to consumers, rather than leave the mortgage loan market, if such creditors' withdrawal would significantly limit consumers' ability to obtain mortgage credit. In light of this rationale, the Board believes that "underserved" should be implemented in a way that protects consumers from losing meaningful access to mortgage credit. The Board is proposing to do so by designating as "underserved" only those areas where the withdrawal of a creditor from the market could leave no meaningful competition for consumers' mortgage business. The Board seeks comment on the appropriateness of both the proposed use of two or fewer

[85] *See http://www.ers.usda.gov/briefing/Rurality/UrbanInf/.*

existing competitors to delineate areas that are "underserved" and the proposed use of five or more covered transaction originations to identify competitors with a significant presence in a market.

43(g) Prepayment Penalties

Proposed § 226.43(g) would implement TILA Section 129C(c), which establishes certain limits on prepayment penalties for covered transactions. Specifically, TILA Section 129C(c) provides that:

- Only a covered transaction that is a qualified mortgage may contain a prepayment penalty;
- A qualified mortgage with a prepayment penalty may not have an adjustable rate and may not have an annual percentage rate that exceeds the threshold for a higher-priced mortgage loan;
- The prepayment penalty may not exceed three percent of the outstanding balance during the first year after consummation, two percent during the second year after consummation, and one percent during the third year after consummation;
- There can be no prepayment penalty after the end of the third year after consummation; and
- A creditor may not offer a consumer a loan with a prepayment penalty without offering the consumer a loan that does not include a prepayment penalty.[86]

The Board's proposal to implement TILA Section 129C(c) is discussed in detail below. The Board at this time does not propose to implement limitations on prepayment penalties the Dodd-Frank Act adds under other TILA provisions, also discussed below.

Limitations for higher-priced mortgage loans. Currently, § 226.35(b)(2) prohibits a prepayment penalty for higher-priced mortgage loans, unless certain conditions are met. In particular, the prepayment penalty must not apply after the two-year period following consummation, and the amount of the periodic payment of principal and interest or both must not change during the four-year period following consummation. New TILA Section 129C(c), as added by Section 1414 of the Dodd-Frank Act, establishes limitations on prepayment penalties that apply to all covered transactions. Thus, TILA Section 129C(c) renders superfluous the limitations on prepayment penalties with higher-priced mortgage loans adopted in the Board's 2008 HOEPA Final Rule. *See* 15 U.S.C. 1639(c), (*l*); § 226.35(b)(2). The Board accordingly proposes to remove the limitations on prepayment penalties for higher-priced mortgage loans under § 226.35(b)(2) and other requirements under § 226.35, as discussed in detail above in the section-by-section analysis of proposed § 226.35.

Limitations for high-cost mortgages. Section 1432(a) of the Dodd-Frank Act prohibits prepayment penalties with high-cost mortgages by removing TILA Section 129(c)(2), which had allowed prepayment penalties with high-cost mortgages in certain circumstances. Currently, § 226.32(d)(7) implements TILA Section 129(c)(2). At this time, the Board does not propose to remove § 226.32(d)(7) because the proposal in general does not propose to implement the other revisions to the high-cost mortgage requirements under Section 1431 of the Act. Nevertheless, under the proposal, a high-cost mortgage can include a prepayment penalty only if the high-cost mortgage meets the conditions under both current § 226.32(d)(7) and proposed § 226.43(g)(1). The joint operation of those two sets of conditions significantly limits the circumstances in which a high-cost mortgage may have a prepayment penalty.[87]

Scope; reverse mortgages. Proposed § 226.43(g) implements TILA Section 129C(c), which applies to a "residential mortgage loan," that is, to a consumer credit transaction secured by a dwelling, other than an open-end credit plan or a transaction secured by a consumer's interest in a timeshare plan. *See* TILA Section 103(cc)(5). In contrast with the exclusions for open-end credit plans and transactions secured by timeshares from coverage by ability-to-repay requirements, neither the definition of "residential mortgage loan" nor the prepayment penalty provision excludes reverse mortgages or temporary or "bridge" loans with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling. *See* TILA Sections 103(cc)(5), 129C(a)(8), 129C(c). Accordingly, the prepayment penalty requirements in proposed § 226.43(g) apply to such transactions. *See* proposed § 226.43(a)(3).

A covered transaction may include a prepayment penalty only if the transaction is a qualified mortgage. *See* TILA Section 129C(c)(1)(A); *see also* proposed § 226.43(g)(1)(ii)(B). Among other limitations, a qualified mortgage may not have a prepayment penalty if the transaction provides for an increase in the principal balance. Reverse mortgages provide for interest and fees to be added to the principal balance and thus could not include a prepayment penalty. However, the Board has authority to define a category of "qualified" closed-end reverse mortgages that can include a prepayment penalty if certain other conditions are met, pursuant to authority under TILA Sections 129C(b)(2)(A)(ix) and 129C(b)(3)(B).[88] Section 129C(b)(2)(A)(ix) authorizes the Board to define a "qualified" reverse mortgage that "meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes" of TILA Section 129C(b). Also, TILA Section 129C(b)(3)(B) authorizes the Board to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are (1) necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of Section 129C(b), or (2) necessary and appropriate to effectuate the purposes of Sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

The Board does not propose to exclude "qualified" reverse mortgages from the coverage of the prepayment penalty requirements, for two reasons. First, the Board does not believe that such exclusion is necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers. The overwhelming majority of reverse mortgages to date have been insured by the Federal Housing Administration, which does not allow reverse mortgages to contain prepayment penalties.[89] The Board believes that most proprietary reverse mortgages also do not contain prepayment penalties. Accordingly, the Board believes that applying prepayment penalty requirements under TILA Section 129C(c) to closed-end reverse mortgages would have little or no effect on the availability of reverse

[86] Also, TILA Section 129C(c)(2) requires weekly publication of the "average prime offer rate" used to determine if a transaction is a "higher-priced mortgage loan."

[87] In particular, the high-cost mortgage cannot be a higher-priced mortgage loan. *See* proposed § 226.43(g)(1)(ii)(C). Also, the prepayment penalty must be permitted by applicable law. *See* § 226.32(d)(7); proposed § 226.43(g)(1)(i).

[88] Open-end credit plans are excluded from the definition of "residential mortgage loan," and thus open-end reverse mortgages are not subject to the prepayment penalty requirements under TILA Section 129C(c). TILA Section 103(cc)(5).

[89] *See* Hui Shan, "Reversing the Trend: The Recent Expansion of the Reverse Mortgage Market Finance and Economics Discussion Series," Board of Governors of the Federal Reserve System, 2009–42 (2009), available at *http://www.federalreserve.gov/pubs/feds/2009/200942/200942pap.pdf.;* 24 CFR 209(a).

mortgages. Second, the Board believes that excluding "qualified" reverse mortgages from coverage of the prepayment penalty requirements is not necessary or appropriate to effectuate the purposes of TILA Section 129C, because the Board is unaware of a reason why such exclusion would "assure that consumers are offered and receive residential mortgage loans on terms that reasonably affect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive." *See* TILA Section 129B(a)(2).

Only a qualified mortgage may have a prepayment penalty, and reverse mortgages typically do not satisfy the qualified mortgage conditions. In particular, a qualified mortgage may not provide for an increase in the transaction's principal balance. *See* TILA Section 129C(b)(2)(A)(i). However, a reverse mortgage provides for interest and fees to be added to the loan balance, instead of providing for the consumer to make payments during the loan term. Also, creditors do not consider a consumer's repayment ability for a reverse mortgage because the consumer does not make payments. Thus, because the proposal does not establish special conditions for reverse mortgages to be qualified mortgages, closed-end reverse mortgages likely may not have prepayment penalties.[90] *See* TILA Section 129C(c)(1)(A).

The Board requests comment on whether special rules should be created to permit certain reverse mortgages to have prepayment penalties. In particular, the Board requests comment on how applying such conditions would be consistent with the purposes of the alternative requirements for qualified mortgages under TILA Section 129C(b). The Board also requests comment and any supporting data on the prepayment rates for reverse mortgages.

43(g)(1) When Permitted

TILA Section 129C(c)(1)(A) provides that a covered transaction must not include a penalty for paying all or part of the principal balance after consummation unless the transaction is a qualified mortgage as defined in TILA Section 129C(b)(2). TILA Section 129C(c)(1)(B) provides that, for purposes of TILA Section 129C(c), a qualified mortgage does not include a covered transaction that has an adjustable rate or a covered transaction that has an APR that exceeds the average prime offer rate for a comparable transaction, as of the date the rate is set, by a specified number of percentage points. The applicable APR threshold depends on whether a first lien or subordinate lien secures the transaction and whether or not the transaction's original principal obligation exceeds the maximum principal obligation for a loan eligible for purchase by Freddie Mac, that is, whether or not the covered transaction is a "jumbo" loan. Specifically, the APR threshold is: (1) 1.5 percentage points above the average prime offer rate, for a first-lien, non-"jumbo" loan; (2) 2.5 percentage points above the average prime offer rate, for a first-lien "jumbo" loan; and (3) 3.5 percentage points above the average prime offer rate, for a subordinate-lien loan. These thresholds also are used for purposes of escrow account requirements for "higher-priced mortgage loans," as discussed in the 2011 Escrow Proposal.[91] Proposed § 226.43(g)(1) would implement TILA Section 129C(c)(1) and provides that a covered transaction may not include a prepayment penalty unless the prepayment penalty is otherwise permitted by law, and the transaction: (1) Has an APR that cannot increase after consummation; (2) is a qualified mortgage, as defined in proposed § 226.43(e) or (f); and (3) is not a higher-priced mortgage loan, as defined in proposed § 226.45(a).

43(g)(1)(i) Permitted by Applicable Law

Under proposed § 226.43(g)(1)(i), a prepayment penalty must be otherwise permitted by applicable law. The Board believes that TILA Section 129C(c) limits, but does not specifically authorize, including a prepayment penalty with a covered transaction. That is, TILA Section 129C(c) does not override other applicable laws, such as state laws, that may be more restrictive. Thus, a prepayment penalty would not be permitted if otherwise prohibited by applicable law. This approach is consistent with prepayment penalty requirements for high-cost mortgages and higher-priced mortgage loans. *See* § 226.32(d)(7)(i), 226.35(b)(2)(i).

43(g)(1)(ii) Transaction Conditions

43(g)(1)(ii)(A) APR Cannot Increase After Consummation

TILA Section 129C(c)(1)(B)(i) provides that a covered transaction may not include a prepayment penalty if the transaction has an "adjustable rate." The statute differs from the Board's 2008 HOEPA Final Rule, in which a high-cost mortgage or a higher-priced mortgage loan may not include a prepayment penalty if the periodic *payment* of principal or interest may change during the first four years after consummation. *See* § 226.32(d)(7)(iv), 226.35(b)(2)(C). TILA Section 129C(c)(1)(B)(i) does not specify whether the term "adjustable rate" refers to the transaction's interest rate or annual percentage rate. Rules under Regulation Z for closed-end transactions generally categorize transactions based on the possibility of APR changes rather than interest rate changes.[92] This distinction is relevant because covered transactions may have an APR that cannot increase after consummation even though the interest rate or payments may increase after consummation. For example, the APR for a "step-rate mortgage" without a variable rate feature does not change after consummation, because the rates that will apply and the periods for which they will apply are known at consummation. *Cf.* § 226.18(s)(7)(ii) (defining "step-rate mortgage" for purposes of transaction-specific interest rate and payment disclosures).

The Board proposes to interpret the prohibition on a prepayment penalty with a covered transaction that has an "adjustable rate" in TILA Section 129C(c)(1)(B)(i) to apply to covered transactions for which the APR can increase after consummation, to facilitate creditors' compliance with the various rate-related requirements under Regulation Z. Accordingly, to implement TILA Section 129C(c)(1)(B)(i), proposed § 226.43(g)(1)(ii)(A) provides that a covered transaction cannot include a prepayment penalty unless the transaction's APR cannot increase after consummation. Thus, under the Board's proposal a fixed-rate mortgage or a step-rate mortgage may have a prepayment penalty, but an adjustable-rate mortgage may not have a prepayment penalty. *See* § 226.18(s)(7)(i)–(iii) (defining "fixed-rate mortgage," "step-rate mortgage," and "adjustable-rate mortgage"). The Board solicits comment on this approach.

43(g)(1)(ii)(B) Qualified Mortgage

Under TILA Section 129C(c)(1)(A), a covered transaction may not include a prepayment penalty unless the transaction is a qualified mortgage under TILA Section 129C(b)(2). Proposed § 226.43(g)(1)(ii)(B) would implement TILA Section 129C(c)(1)(A)

[90] Open-end credit plans are excluded from the definition of "residential mortgage loan," and thus open-end reverse mortgages are not subject to the prepayment penalty requirements under TILA Section 129C(c). TILA Section 103(cc)(5).

[91] 76 FR 11598, 11608, Mar. 2, 2011 (discussing proposed new § 226.45(a)).

[92] *See, e.g.,* § 226.18(f) (requiring disclosures regarding APR increases), 226.18(s)(7)(i)–(iii) (categorizing disclosures for purposes of interest rate and payment disclosures), 226.36(e)(2)(i)–(ii) (categorizing transactions for purposes of the safe harbor for the anti-steering requirement under § 226.36(e)(1)).

and provides that a covered transaction must not include a prepayment penalty unless the transaction is a qualified mortgage under § 226.43(e) or (f). To be a qualified mortgage, a covered transaction in general may not have a balloon payment. However, a covered transaction with a balloon payment may be a qualified mortgage if the creditor originates covered transactions primarily in "rural" or "underserved" areas, as discussed in detail above in the section-by-section analysis of § 226.43(f). Thus, there are certain situations in which a consumer could face a prepayment penalty if she attempts to refinance out of a balloon-payment qualified mortgage before the balloon payment is due. The Board solicits comment on whether it would be appropriate to use legal authority under TILA Sections 105(a) and 129B(e) to provide that a balloon-payment qualified mortgage may not have a prepayment penalty in any case.

43(g)(1)(ii)(C) Threshold for a Higher-Priced Mortgage Loan

Under TILA Section 129C(c)(1)(B), a covered transaction may not include a prepayment penalty unless the transaction's APR is below specified thresholds. Accordingly, to implement TILA Section 129C(c)(1)(B), proposed § 226.43(g)(1)(ii)(C) provides that a consummated covered transaction must not include a prepayment penalty unless the transaction is not a higher-priced mortgage loan, as defined in proposed § 226.45(a) of the 2011 Escrow Proposal.

Under the Board's 2010 Mortgage Proposal, creditors would determine whether a transaction is a higher-priced mortgage loan by comparing the transaction's "transaction coverage rate," rather than APR, to the average prime offer rate, as discussed in detail in that proposal.[93] Under the 2010 Mortgage Proposal, the transaction coverage rate is a transaction-specific rate that is used solely for coverage determinations and would not be disclosed to consumers. The creditor would calculate the transaction coverage rate based on Regulation Z's rules for calculating the APR, except the creditor would make the calculation using a modified value for the prepaid finance charge. In summary, the Board explained that using the APR as the coverage metric for requirements for higher-priced mortgage loans poses a risk of over-inclusive coverage beyond the subprime market.[94] The Board noted that the average prime offer rate is based on Freddie Mac's Primary Mortgage Market Survey® of the contract interest rates and points of loans offered to consumers with low-risk transaction terms and credit profiles. APRs, however, are based on a broader set of charges, including some third-party charges such as mortgage insurance premiums. The Board also recognized that, under the Board's 2009 Closed-End Mortgage Proposal, the APR would be based on a finance charge that includes most third-party fees in addition to points, origination fees, and any other fees the creditor retains. Thus, the 2009 Closed-End Mortgage Proposal would expand the existing difference between fees included in the APR and fees included in the average prime offer rate.

To address this concern, the Board proposed in the 2010 Mortgage Proposal to require creditors to compare the transaction coverage rate, rather than the APR, to the average prime offer rate to determine whether a transaction is covered by the protections for higher-priced mortgage loans. The Board also proposed to use the transaction coverage rate for the definition of a higher-priced mortgage loan in the 2011 Escrow Proposal.[95] Similarly, under the present proposal, creditors would determine whether a transaction is a higher-priced mortgage loan based on the transaction coverage rate rather than the APR, for purposes of the prepayment penalty restriction. The Board solicits comment on this approach.

43(g)(2) Limits on Prepayment Penalties

TILA Section 129C(c)(3) provides that a prepayment penalty may not be imposed more than three years after the covered transaction is consummated and limits the maximum amount of the prepayment penalty. Specifically, a prepayment penalty is limited to (1) three percent of the outstanding principal balance during the first year following consummation; (2) two percent during the second year following consummation; and (3) one percent during the third year following consummation.

Proposed § 226.43(g)(2) would implement and is substantially similar to TILA Section 129C(c)(3). However, under proposed § 226.43(g)(2) the maximum penalty amount is determined based on the amount of the outstanding loan balance prepaid, rather than the entire outstanding loan balance, because the requirements under TILA Section 129C(c) apply if a penalty is imposed for either partial or full prepayment. Thus, for example, if the outstanding loan balance is $100,000 when the consumer prepays $20,000 eleven months after consummation, the maximum prepayment penalty is $600 (three percent of $20,000), rather than $3,000 (three percent of $100,000). The Board proposes this adjustment pursuant to the Board's authority under TILA Section 105(a) to issue regulations with such requirements, classifications, differentiations, or other provisions, and that provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Board are necessary and proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. 15 U.S.C. 1604(a). The Board believes that calculating the maximum prepayment penalty based on the amount of the outstanding loan balance that is prepaid, rather than the entire outstanding loan balance, would effectuate the purposes of TILA Section 129C(c) to facilitate partial (and full) prepayment by limiting the amount of a prepayment penalty. The Board believes it would be inconsistent with congressional intent, for example, for a consumer that makes several partial prepayments to pay a percentage of the outstanding loan balance each time. The Board also believes that the proposed adjustment would facilitate compliance, because determining the maximum prepayment penalty is simpler if the calculation is based on the amount of the outstanding balance prepaid in all cases, whether the consumer prepays in full or in part.

Proposed comment 43(g)(2)–1 clarifies that a covered transaction may include a prepayment penalty that may be imposed only during a shorter period or in a lower amount than provided in proposed § 226.43(g)(2). Proposed comment 43(g)(2)–1 provides the example of a prepayment penalty that a creditor may impose for two years after consummation that is limited to two percent of the amount prepaid.

The Board recognizes that two other sections of TILA may limit the maximum amount of the prepayment penalty. First, TILA Section 129C(b)(2)(A)(vii) indirectly limits the maximum amount of a prepayment penalty with a qualified mortgage, by limiting the maximum "points and fees" for a qualified mortgage, which include prepayment penalties, to three percent of the total loan amount. *See also* proposed § 226.43(e)(2)(iii), discussed above. The definition of "points and fees" includes the maximum

[93] *See* 74 FR 58539, 58709–58710, Sept. 24, 2010 (proposing revisions to the definition of "higher-priced mortgage loan" under § 226.35(a)).

[94] *See* 74 FR at 58660–58662.

[95] *See* 75 FR 11598, 11620, Mar. 2, 2011 (proposing a new § 226.45(a)).

prepayment penalty that may be charged, as well as any prepayment penalty incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor. *See* TILA Section 103(aa)(4)(E) and proposed § 226.32(b)(1), discussed above. Thus, if a creditor wants to include the maximum three percent prepayment penalty as a term of a qualified mortgage, it generally would have to forego any other charges that are included in the definition of points and fees.

Second, TILA Section 103(aa)(1)(A)(iii) defines a "high-cost mortgage" as any loan secured by the consumer's principal dwelling in which the creditor may charge prepayment fees or penalties more than 36 months after the closing of the transaction, or in which the fees or penalties exceed, in the aggregate, more than two percent of the amount prepaid. In turn, a high-cost mortgage may not contain a prepayment penalty under TILA Section 129(c), as amended by Section 1432 of the Dodd-Frank Act. At this time, the Board is not proposing to implement these limitations on prepayment penalties. The Board nevertheless solicits comment on whether proposed § 226.43(g)(2) should incorporate the limitation of prepayment penalty amounts to two percent of the amount prepaid, as provided under TILA Section 103(aa)(1)(A)(iii), or some other threshold to account for the limitation of points and fees, including prepayment penalties, for "qualified mortgages," under TILA Section 129C(b)(2)(A)(vii) and proposed § 226.43(e)(2)(iii).

43(g)(3) Alternative Offer Required

Under TILA Section 129C(c)(4), if a creditor offers a consumer a covered transaction with a prepayment penalty, the creditor also must offer the consumer a covered transaction without a prepayment penalty. As discussed in detail below, proposed § 226.43(g)(3) would implement TILA Section 129C(c)(4) and includes additional conditions: The alternative covered transaction without a prepayment penalty must (1) have an APR that cannot increase after consummation and the same type of interest rate as the covered transaction with a prepayment penalty (that is, both must be fixed-rate mortgages or both must be step-rate mortgages); (2) have the same loan term as the covered transaction with a prepayment penalty; (3) satisfy the periodic payment conditions for qualified mortgages; and (4) satisfy the points and fees conditions for qualified mortgages. The proposed additional conditions are intended to ensure that the alternative covered transactions offered have substantially similar terms. Also, proposed § 226.43(g)(3) requires that the alternative covered transaction be a transaction for which the consumer likely qualifies.

The Board proposes these additional requirements pursuant to the Board's authority under TILA Section 105(a) to prescribe regulations that contain such additional requirements, classifications, differentiations, or other provisions, or provide for such adjustments or exceptions for all or any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. 15 U.S.C. 1604(a). The Board believes that requirements designed to ensure that the alternative covered transaction with and without a prepayment penalty are substantially similar would effectuate the purposes of TILA Section 129C(c)(4), by enabling consumers to focus on a prepayment penalty's risks and benefits without having to consider or evaluate other differences between the alternative covered transactions. For example, a consumer would compare a fixed-rate mortgage with a prepayment penalty with a fixed-rate mortgage without a prepayment penalty, not with a step-rate mortgage without a prepayment penalty. Also, the Board believes that requiring the alternative covered transaction without a prepayment penalty be one for which the consumer likely qualifies would effectuate the purposes of and prevent circumvention of TILA Section 129C(c)(4), by providing for consumers to be able to choose between options that likely are available. Finally, proposed comment 43(g)(3)–1 cross-references comment 25(a)–7, discussed above, for guidance on the requirements for retaining records as evidence of compliance with § 226.43(g)(3).

Higher-priced mortgage loans. Under the proposal, a covered transaction cannot have a prepayment penalty if the transaction is a higher-priced mortgage loan. However, the requirement to offer an alternative covered transaction without a prepayment penalty is not similarly restricted. Although the Board believes the covered transaction with a prepayment penalty and the alternative covered transaction without a prepayment penalty must be substantially similar, the Board also believes a higher-priced mortgage loan without a prepayment penalty should be a permissible alternative transaction for a non-higher-priced mortgage loan with a prepayment penalty, for two reasons. First, the Board believes TILA Section 129C(c)(4) is intended to ensure consumers have a choice whether or not to obtain a covered transaction with a prepayment penalty, not to limit the pricing of the alternative covered transaction without a prepayment penalty that the creditor must offer.

Second, the Board is concerned about the likely consequences of restricting the pricing of the required alternative covered transaction without a prepayment penalty. If the alternative covered transaction must not be a higher-priced mortgage loan, the creditor may choose not to offer the consumer a loan at all, or to offer the consumer only a higher-priced mortgage loan. For example, assume that the higher-priced mortgage loan coverage threshold for a 30-year, non-jumbo, fixed-rate covered transaction is 6.50 percent, and that the creditor charges 0.25 percentage points more in interest for a covered transaction without a prepayment penalty. Assume further that the creditor would make such a loan to a consumer in a covered transaction either (1) with a prepayment penalty and with a transaction coverage rate of 6.45 percent (Transaction A); or (2) without a prepayment penalty and with a transaction coverage rate of 6.70 percent (Transaction B). However, if offering Transaction A means the creditor must offer the consumer an alternative covered transaction without a prepayment penalty that is not a higher-priced mortgage loan, the creditor may choose not to offer the consumer a covered transaction at all. Alternatively, the creditor might elect to offer the consumer only Transaction B, which is a higher-priced mortgage loan. For the foregoing reasons, under proposed § 226.43(g)(3) if a creditor offers a covered transaction with a prepayment penalty, which may not be a higher-priced mortgage loan, the creditor may offer the consumer an alternative covered transaction without a prepayment penalty that is a higher-priced mortgage loan.

Timing of offer. Proposed § 226.43(g)(3) does not require that the creditor offer an alternative covered transaction without a prepayment penalty at or by a particular time. This is consistent with § 226.36(e)(2) and (3), which provide a safe harbor for the anti–steering requirement if a loan originator presents certain loan options to the consumer, but do not contain a timing requirement. The Board recognizes that there may be costs and benefits to this approach.

On the one hand, a timing requirement could ensure that

consumers can consider an offer of an alternative covered transaction without a prepayment penalty before committing to a transaction, for example, by requiring that creditors present such an offer before the consumer pays a non–refundable fee, other than a fee for obtaining the consumer's credit history.[96] Alternatively, consumers might benefit from being offered an alternative covered transaction without a prepayment penalty later in the lending process, after the creditor has underwritten the loan and determined the terms on which it would originate an alternative covered transaction to the consumer. On the other hand, timing requirements might unduly limit creditors' flexibility to determine the terms on which they will offer a particular consumer an alternative covered transaction without a prepayment penalty. In addition, there may be operational difficulties in determining exactly when a creditor offered the alternative covered transaction (for example, when a consumer accesses options for covered loans via the Internet) and how to cure a violation if the creditor offers the required alternative after the required time.

The Board solicits comment on whether it would be appropriate to require that creditors offer the alternative covered transaction without a prepayment penalty during a specified time period, for example, before the consumer pays a non–refundable fee or at least fifteen calendar days before consummation. If a timing requirement is included for purposes of proposed § 226.43(g)(3), the Board also solicits comment on whether a timing requirement should be included under the safe harbor for the anti–steering requirement under § 226.36(e)(2) and (3), for consistency.

43(g)(3)(i) APR Cannot Increase After Consummation

Under proposed § 226.43(g)(1)(i), a covered transaction with an APR that can increase after consummation may not have a prepayment penalty. Proposed § 226.43(g)(3)(i) provides that, if a creditor offers a covered transaction with a prepayment penalty, the creditor must offer an alternative covered transaction without a prepayment penalty and with an APR that cannot increase after consummation, to ensure consumers are able to choose between substantially similar alternative transactions. *See* proposed § 226.43(g)(1)(ii)(A). Proposed § 226.43(g)(3)(i) also requires that the covered transaction with a prepayment penalty and the alternative covered transaction without a prepayment penalty have the same type of interest rate. For purposes of proposed § 226.43(g)(3)(i), the term "type of interest rate" means whether the covered transaction is a fixed–rate mortgage, as defined in § 226.18(s)(7)(iii), or a step–rate mortgage, as defined in § 226.18(s)(7)(ii).[97] Proposed comment 43(g)(3)(i)-1 clarifies that the covered transaction with a prepayment penalty and the alternative covered transaction without a prepayment penalty must either both be fixed-rate mortgages or both be step-rate mortgages.

43(g)(3)(ii) Through (iv) Criteria for a Qualified Mortgage

As discussed above, proposed § 226.43(g)(1)(ii)(A) provides that a covered transaction with a prepayment penalty must be a qualified mortgage, as defined under proposed § 226.43(e)(2) or (f). The Board also proposes to require that an alternative covered transaction offered without a prepayment penalty must meet three conditions for qualified mortgages, so that consumers may choose between alternative covered transactions that are substantially similar. Accordingly, proposed § 226.43(g)(3)(ii) through (iv) provide that an alternative covered transaction without a prepayment penalty must: (1) Have the same loan term as the covered transaction with a prepayment penalty; (2) satisfy the periodic payment conditions in § 226.43(e)(2)(i); and (3) satisfy the points and fees condition under § 226.43(e)(2)(iii), based on the information known to the creditor at the time the transaction is offered. Proposed comment 43(g)(3)(iv)-1 provides guidance for cases where a creditor offers a consumer an alternative covered transaction without a prepayment penalty under proposed § 226.43(g)(3) and knows only some of the points and fees that will be charged for the loan. For example, a creditor may not know that a consumer intends to buy single-premium credit unemployment insurance, which would be included in the points and fees for the covered transactions. Proposed comment 43(g)(3)(iv)-1 clarifies that the points and fees condition is satisfied if the creditor reasonably believes, based on the information known to the creditor at the time the offer is made, that the amount of points and fees to be charged for an alternative covered transaction without a prepayment penalty will be less than or equal to the amount of points and fees allowed for a qualified mortgage under § 226.43(e)(2)(iii).

43(g)(3)(v) Likely Qualifies

Proposed § 226.43(g)(3)(v) provides that the alternative covered transaction without a prepayment penalty must be a transaction for which the creditor has a good faith belief that the consumer likely qualifies, as determined based on the information known to the creditor at the time the creditor offers the alternative covered transaction. Proposed comment 43(g)(3)(v)-1 provides an example where the creditor has a good faith belief the consumer can afford monthly payments of up to $800. The proposed comment clarifies that, if the creditor offers the consumer a fixed-rate mortgage with a prepayment penalty for which monthly payments are $700 and an alternative covered transaction without a prepayment penalty for which monthly payments are $900, the requirements of § 226.43(g)(3)(v) are not met. Proposed comment 43(g)(3)(v)-1 also clarifies that, in making the determination the consumer likely qualifies for the alternative covered transaction, the creditor may rely on information provided by the consumer, even if the information subsequently is determined to be inaccurate. Proposed § 226.43(g)(3)(v) and proposed comment 43(g)(3)(v)-1 are substantially similar to § 226.36(e)(3)(ii), which provides a safe harbor for the anti-steering requirements if, among other things, a loan originator presents the consumer with loan options for which the consumer likely qualifies. *See also* comment 36(e)(3)-4 (providing guidance on information used to determine whether or not a consumer likely qualifies for a transaction).

43(g)(4) Offer Through a Mortgage Broker

The requirement to offer an alternative covered transaction without a prepayment penalty applies to a "creditor." *See* TILA Section 129C(c)(4). TILA Section 103(f), in relevant part, defines "creditor" to mean a person who

[96] Under the Board's 2010 Mortgage Proposal, a non–refundable fee could be imposed no earlier than three business days after a consumer receives the early disclosures that creditors must provide soon after receiving the consumer's application (within three business days). *See* 75 FR 58539, 58696–58697, Sept. 24, 2010 (proposing a new § 226.19(a)(1)(iv)).

[97] Under § 226.18(s)(7)(i)–(iii), a transaction secured by real property or a dwelling is (1) an "adjustable-rate mortgage" if the APR may increase after consummation, (2) a "step-rate mortgage" if the interest rate will change after consummation, and the rates that will apply and the periods for which they will apply are known at consummation, or (3) a "fixed-rate mortgage," if the transaction is not an adjustable-rate mortgage or a step-rate mortgage.

both (1) regularly extends consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness (or, if there is no such evidence of indebtedness, by agreement). 15 U.S.C. 1602(f); § 226.2(a)(17). The Board proposes special rules where a creditor offers a covered transaction with a prepayment penalty through a mortgage broker, as defined in § 226.36(a)(2), to account for operational differences in offering a covered transaction through the wholesale channel versus through the retail channel.[98] As discussed below in the section-by-section analysis of proposed § 226.43(g)(5), the Board proposes special rules for cases where a creditor in a table-funded transaction also is a "loan originator," as defined in § 226.36(a)(1), because those creditors generally present to consumers loan options offered by multiple persons that provide table-funding. The Board does not propose special rules for cases where the loan originator is the creditor's employee, because the Board believes that in such cases the employee likely can present alternative covered transactions with and without a prepayment penalty to the consumer without significant operational difficulties.

The Board believes the requirement to offer an alternative covered transaction without a prepayment penalty properly is applied to creditors and not to mortgage brokers, because creditors "offer" covered transactions, even if mortgage brokers present those offers to consumers. Further, the Board believes that if Congress had intended to apply TILA Section 129C(c)(4) to mortgage brokers, Congress explicitly would have applied that provision to "mortgage originators" in addition to creditors. TILA Section 103(cc), as added by Section 1401 of the Dodd-Frank Act, defines "mortgage originator" to mean any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation of gain, takes a residential mortgage loan application, assists a consumer in obtaining or applying to obtain a residential mortgage loan, or offers or negotiates terms of a residential mortgage loan. 15 U.S.C. 1602(cc). The term "mortgage originator" is used, for example, for purposes of the anti-steering requirement added to TILA by Section 1403 of the Dodd-Frank Act. *See* TILA Section 129B(c).

The Board also believes that requiring mortgage brokers to present to consumers a creditor's alternative covered transaction without a prepayment penalty could confuse consumers if they are presented with numerous other loan options. Presenting a consumer more than four loan options for each type of transaction in which the consumer expresses an interest may not help the consumer to make a meaningful choice. When compared with other loan options a mortgage broker presents to a consumer, a creditor's covered transaction without a prepayment penalty might not have the lowest interest rate (among transactions either with or without risky features, such as a prepayment penalty) or the lowest total dollar amount of origination points or fees and discount points, and thus might not be among the loan options most important for consumers to evaluate. Also, the Board is concerned that creditors may have operational difficulties in confirming whether or not a mortgage broker has presented to the consumer the alternative covered transaction without a prepayment penalty.

Accordingly, proposed § 226.43(g)(4) provides that, if a creditor offers a covered transaction to a consumer through a mortgage broker, as defined in § 226.36(a)(2), the creditor must present to the mortgage broker an alternative covered transaction without a prepayment penalty that meets the conditions under § 226.43(g)(3). Proposed § 226.43(g)(4) also provides that the creditor must establish, by agreement, that the mortgage broker must present the consumer an alternative covered transaction without a prepayment penalty that meets the conditions under § 226.43(g)(3) offered by (1) the creditor, or (2) another creditor, if the transaction has a lower interest rate or a lower total dollar amount of origination points or fees and discount points. By providing for the presentation of a loan option with a lower interest rate or a lower total dollar amount of origination points or fees and discount points than the loan option offered by the creditor, proposed § 226.43(g)(4) facilitates compliance with proposed § 226.43(g)(3) and with the safe harbor for the anti-steering requirement in connection with a single covered transaction. *See* § 226.36(e)(3)(i).[99] Proposed § 226.43(g)(4) does not affect the conditions that a a loan originator must meet to take advantage of the safe harbor for the anti-steering requirement, however. Thus, if loan originators choose to use the safe harbor, they must present the consumer the loan option with (1) the lowest interest rate overall, (2) the loan option with the lowest interest rate without certain risky features, including a prepayment penalty, and (3) the loan option with the lowest total origination points or fees and discount points. *See* § 226.36(e)(3)(i).

Proposed comment 43(g)(4)–1 clarifies that the creditor may satisfy the requirement to present the mortgage broker such alternative covered transaction without a prepayment penalty by providing the mortgage broker a rate sheet that states the terms of such an alternative covered transaction without a prepayment penalty. Proposed comment 43(g)(4)–2 clarifies that the creditor's agreement with the mortgage broker may provide for the mortgage broker to present both the creditor's covered transaction and a covered transaction offered by another creditor with a lower interest rate or a lower total dollar amount of origination points or fees and discount points. Proposed comment 43(g)(4)–2 also cross-references comment 36(e)(3)–3 for guidance in determining which step-rate mortgage has a lower interest rate. Proposed comment 43(g)(4)–3 clarifies that a creditor's agreement with a mortgage broker for purposes of proposed § 226.43(g)(4) may be part of another agreement with the mortgage broker, for example, a compensation agreement. The proposed comment clarifies that the creditor thus need not enter into a separate agreement with the mortgage broker with respect to each covered transaction with a prepayment penalty.

The Board solicits comment on the approach proposed under § 226.43(g)(4) for offering an alternative covered transaction without a prepayment penalty through a mortgage broker. In particular, the Board solicits comment on whether additional guidance is needed regarding offers of covered transactions through mortgage brokers that use the safe harbor for the anti-

[98] For ease of discussion, the terms "mortgage broker" and "loan originator" as used in this discussion have the same meaning as under the Board's requirements for loan originator compensation. *See* § 226.36(a)(1), (2).

[99] Current § 226.36(e) provides that a loan originator for a dwelling-secured consumer credit transaction must not direct or "steer" a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered the consumer, unless the consummated transaction is in the consumer's interest.

steering requirement, under § 226.36(e)(2) and (3).

43(g)(5) Creditor That Is a Loan Originator

Proposed § 226.43(g)(5) addresses cases where a creditor does not provide the funds for a covered transaction out of its own resources but rather obtains funds from another person and, immediately after consummation, assigns the note, loan contract, or other evidence of the debt obligation to the other person. Such creditors generally present to consumers loan options offered by other persons and are loan originators subject to the anti-steering requirements under § 226.36(e). *See* § 226.36(a)(1); comment 36(a)(1)–1. Like other loan originators, such creditors may use the safe harbor for the anti-steering requirements under § 226.36(e)(2) and (3). Proposed § 226.43(g)(5) provides that, if the creditor is a loan originator, as defined in § 226.36(a)(1), and the creditor presents a consumer a covered transaction with a prepayment penalty offered by a person to which the creditor would assign the covered transaction after consummation, the creditor may present the consumer an alternative covered transaction without a prepayment penalty offered by (1) the assignee, or (2) another person, if the transaction offered by the other person has a lower interest rate or a lower total dollar amount of origination points or fees and discount points. Thus, proposed § 226.43(g)(5) provides flexibility with respect to the presentation of loan options, which facilitates compliance with proposed § 226.43(g)(3) and with the safe harbor for the anti-steering requirement in connection with the same covered transaction. *See* § 226.36(e)(3)(i). Like proposed § 226.43(g)(4), however, proposed § 226.43(g)(5) does not affect the conditions that a creditor that is a loan originator must meet to take advantage of the safe harbor for the anti-steering requirement. Accordingly, if creditors that are loan originators choose to use the safe harbor, they must present the consumer the loan option with (1) the lowest interest rate overall, (2) the loan option with the lowest interest rate without certain risky features, including a prepayment penalty, and (3) the loan option with the lowest total origination points or fees and discount points. *See* § 226.36(e)(3)(i).

Proposed comment 43(g)(5)–1 clarifies that a loan originator includes any creditor that satisfies the definition of the term but makes use of "table-funding" by a third party. *See* § 226.36(a)(1), comment 36(a)–1.i, –1.ii. Proposed comment 43(g)(5)–2 cross-references guidance in comment 36(e)(3)–3 on determining which step-rate mortgage has a lower interest rate.

43(g)(6) Applicability

Proposed § 226.43(g)(6) provides that proposed § 226.43(g) applies only if a transaction is consummated with a prepayment penalty and is not violated if (1) a covered transaction is consummated without a prepayment penalty or (2) the creditor and consumer do not consummate a covered transaction. Proposed § 226.43(g)(2) limits the period during which a prepayment penalty may be imposed and the amount of any prepayment penalty. Those limitations apply only if a covered transaction with a prepayment penalty is consummated. Proposed § 226.43(g)(3) requires creditors that offer a consumer a covered transaction with a prepayment penalty offer the consumer an alternative covered transaction without a prepayment penalty, and proposed § 226.43(g)(4) and (5) establish requirements for creditors to comply with proposed § 226.43(g)(3) if they (1) offer covered transactions with a prepayment penalty through a mortgage broker or (2) are loan originators, respectively. Where a consumer consummates a covered transaction without a prepayment penalty, it is unnecessary to require that the creditor offer the consumer an alternative covered transaction without a prepayment penalty. Further, if the creditor does not consummate a covered transaction with the consumer, the issue is irrelevant; the purpose of the requirement to offer an alternative covered transaction without a prepayment penalty is for consumers not to have to accept a covered transaction with a prepayment penalty. Accordingly, proposed § 226.43(g) applies only if the consumer consummates a covered transaction with a prepayment penalty. In particular, proposed comment 25(a)–7 clarifies that, if a creditor offers the consumer a covered transaction with a prepayment penalty but a covered transaction is consummated without a prepayment penalty or if the creditor and consumer do not consummate a covered transaction, the creditor need not maintain records that document compliance with the requirement that the creditor offer an alternative covered transaction without a prepayment penalty under proposed § 226.43(g)(2) through (5), as discussed above in the section-by-section analysis of proposed § 226.25(a).

43(h) Evasion; Open-End Credit

As discussed above, TILA Section 129C, which addresses the repayment ability requirements and qualified mortgages, applies only to residential mortgage loans. TILA Section 103(cc)(5) defines "residential mortgage loans" as excluding open-end credit plans, such as HELOCs. The Board recognizes that the exclusion of open-end credit plans could lead some creditors to attempt to evade the requirements of TILA Section 129C by structuring credit as open-end instead of closed-end. Sections 226.34(b) and 226.35(b)(4) address this risk by prohibiting structuring a transaction that does not meet the definition of "open-end credit" as a HELOC to evade the repayment ability and other requirements for high-cost mortgages and higher-priced mortgage loans. The Board proposes to extend this approach to new § 226.43, which would implement TILA Section 129C. Proposed § 226.43(h) prohibits a creditor from structuring a transaction that does not meet the definition of open-end credit in § 226.2(a)(20) as a HELOC to evade the requirements of proposed § 226.43. Proposed comment 43(h)–1 clarifies that where a loan is documented as open-end credit but the features and terms or other circumstances demonstrate that it does not meet the definition of open-end credit, the loan is subject to the rules for closed-end credit, including § 226.43. The Board proposes this provision using its authority under TILA Sections 105(a) and 129B(e) to prevent circumvention or evasion.

As noted in the **SUPPLEMENTARY INFORMATION** to the Board's 2008 HOEPA Final Rule, the Board recognizes that consumers may prefer HELOCs to closed-end home equity loans because of the added flexibility HELOCs provide them. *See* 73 FR 1697, Jan. 9, 2008. It is not the Board's intention to limit consumers' ability to choose between these two ways of structuring home equity credit. An overly broad anti-evasion rule could potentially limit consumer choices by casting doubt on the validity of legitimate open-end plans. The Board seeks comment on the extent to which the proposed anti-evasion rule could have this consequence, and solicits suggestions for a more narrowly tailored rule. For example, the primary concern would appear to be with HELOCs that are substituted for closed-end home purchase loans and refinancings, which are usually first-lien loans, rather than with HELOCs taken for home improvement or other consumer purposes. The Board seeks comment on

whether it should limit an anti-evasion rule to HELOCs secured by first liens where the consumer draws down all or most of the entire line of credit immediately after the account is opened, and whether such a rule would be effective in preventing evasion.

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 proposed rule under the authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information under the PRA. *See* 44 U.S.C. 3502(3). Accordingly, there is no paperwork burden associated with the rule.

VII. Initial Regulatory Flexibility Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration (SBA), an entity is considered "small" if it has $175 million or less in assets for banks and other depository institutions, and $7 million or less in revenues for non-bank mortgage lenders and loan servicers.[100]

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Board requests public comment in the following areas.

A. Reasons for the Proposed Rule

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. As a result, TILA contains procedural and substantive protections for consumers, and also directs the Board to prescribe regulations to carry out the purposes of the statute. TILA is implemented by the Board's Regulation Z.

The proposed amendments to Regulation Z implement certain amendments to TILA as a result of the Dodd-Frank Act. Sections 1411 and 1412 of the Dodd-Frank Act amend TILA to prohibit a creditor from making any "residential mortgage loan"[101] unless the creditor makes a reasonable and good faith determination that the consumer has a reasonable ability to repay the loan. A creditor complies with this requirement by: (i) Making a residential mortgage loan that satisfies the ability-to-repay provisions, which include certain underwriting criteria; (ii) refinancing a "non-standard mortgage" into a "standard mortgage"; (iii) making a "qualified mortgage," which is defined by prohibiting certain terms, limiting certain costs, and using certain underwriting criteria; or (iv) making a balloon-payment qualified mortgage. In addition, Section 1414 of the Dodd-Frank Act amends TILA to add new restrictions on prepayment penalties that may be imposed on residential mortgage loans.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** contains the statement of objectives and legal basis for the proposed rule. In summary, the proposed amendments to Regulation Z are designed to: (1) Add new § 226.43(a)–(f) to require creditors to determine a consumer's repayment ability prior to making any residential mortgage loan; (2) provide a presumption of compliance with the repayment ability requirement or safe harbor from the repayment ability requirement for qualified mortgages in new § 226.43(e); (3) add new § 226.43(g) regarding prepayment penalty requirements for residential mortgage loans; and (4) provide record retention requirements in § 226.25(a) that evidence compliance with proposed § 226.43.

The legal basis for the proposed rule is in Sections 105(a), 129B(e) and 129C(b)(3)(B)(i) of TILA. 15 U.S.C. 1604(a), 1639b(e) and 1639c(b)(3)(B)(i). A more detailed discussion of the Board's rulemaking authority is set forth in part III of the **SUPPLEMENTARY INFORMATION**.

C. Description of Small Entities to Which the Proposed Rule Would Apply

The proposed regulations would apply to all institutions and entities that engage in originating or extending home-secured credit. The Board is not aware of a reliable source for the total number of small entities likely to be affected by the proposal, and the credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that originate and extend even small numbers of home-secured credit. *See* § 226.1(c)(1).[102] All small entities that originate or extend closed-end loans secured by a dwelling are potentially subject to at least some aspects of the proposed rule.

The Board can, however, identify through data from Reports of Condition and Income ("Call Reports") approximate numbers of small depository institutions that would be subject to the proposed rule. Based on December 2010 Call Report data, approximately 8,579 small institutions would be subject to the proposed rule. Approximately 15,217 depository institutions in the United States filed Call Report data, approximately 10,816 of which had total domestic assets of $175 million or less and thus were considered small entities for purposes of the RFA. Of 3,749 banks, 502 thrifts[103] and 6,565 credit unions that filed Call Report data and were considered small entities, 3,621 banks, 477 thrifts, and 4,481 credit unions, totaling 8,579 institutions, originated or extended mortgage credit.

The Board cannot identify with certainty the number of small non-depository institutions that would be subject to the proposed rule. Home Mortgage Disclosure Act (HMDA)[104]

[100] 13 CFR 121.201; *see also* SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.*

[101] TILA Section 103(cc) generally defines "residential mortgage loan" to mean any consumer credit transaction secured by a mortgage, deed of trust, or other equivalent consensual security interest on "a dwelling or on residential real property that includes a dwelling." The term does not include an open-end credit plan or an extension of credit relating to a timeshare plan, for purposes of the repayment ability provisions. *See* TILA Section 103(cc)(5).

[102] Regulation Z generally applies to "each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly, (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments, and (iv) the credit is primarily for personal, family, or household purposes." Section 226.1(c)(1).

[103] For purposes of this analysis, thrifts include savings banks, savings and loan entities, co-operative banks, and industrial banks.

[104] The 8,022 lenders (both depository institutions and mortgage companies) covered by HMDA in 2009 accounted for the majority of home lending in the United States. Under HMDA, lenders use a "loan/application register" (HMDA/LAR) to report information annually to their Federal supervisory agencies for each application and loan acted on during the calendar year. Only lenders that have offices (or, for non-depository institutions, lenders that are deemed to have offices) in

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data indicate that 870 non-depository institutions filed HMDA reports in 2009.[105] Based on the small volume of lending activity reported by these institutions, most are likely to be small.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the proposed rule are described in part V of the **SUPPLEMENTARY INFORMATION**. The effect of the proposed revisions to Regulation Z on small entities is unknown. Some small entities would be required, among other things, to modify their underwriting practices to account for the repayment ability analysis for covered transactions in order to comply with the revised rule. The precise costs to small entities of modifying their underwriting practices are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the current practices used by such entities to collect and analyze consumer income, asset, and liability information, the complexity of the terms of credit products that they offer, and the range of such product offerings. The proposed rule would provide small entities the option of offering only qualified mortgages, which will enjoy either a presumption of compliance with respect to the repayment ability requirement or a safe harbor from the repayment ability requirement, thus reducing litigation risks and costs for small entities.

The proposed rule also requires creditors to determine a consumer's repayment ability using a payment schedule based on monthly, fully-amortizing payments at the fully-indexed rate or introductory rate, whichever is greater. Under the proposed rule, special payment calculation rules apply to loans with a balloon payment, interest-only loans, and negative amortization loans. The proposed rule may therefore increase compliance costs for small entities, particularly for creditors that offer products that contain balloon payments, interest-only loans, and negative amortization loans. The precise costs to small entities of updating their processes and systems to account for these additional calculations are difficult to predict, but these costs are mitigated, in some circumstances, by the proposed presumption of compliance or safe harbor for qualified mortgages.

Under the proposed rule, creditors must retain evidence of compliance with proposed § 226.43 for three years after the consummation of a covered transaction. Currently, § 226.25(a) requires that creditors retain evidence of compliance with Regulation Z for two years after disclosures must be made or an action must be taken, though § 226.25(a) also clarifies that administrative agencies responsible for enforcing Regulation Z may require creditors to retain records for a longer period if necessary to carry out their enforcement responsibilities. While increasing the period creditors must retain certain records from two to three years would increase creditors' compliance burden, the precise costs to small entities is difficult to predict. However, the Board believes many creditors will retain such records for at least three years, in an abundance of caution, which would minimize the overall burden increase. The compliance burden is also mitigated by proposed comment 25(a)–6, which clarifies that creditors need not retain actual paper copies of the documentation used to underwrite a transaction. Furthermore, the proposal to extend the required retention period for evidence of compliance with proposed § 226.43 would not affect the retention period for other requirements under Regulation Z.

The Board believes that costs of the proposed rule as a whole will have a significant economic effect on small entities, including small mortgage creditors. 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 businesses.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules Other Federal Rules

The Board has not identified any Federal rules that conflict with the proposed revisions to Regulation Z.

F. Identification of Duplicative, Overlapping, or Conflicting State Laws State Equivalents to TILA

Many states regulate consumer credit through statutory disclosure schemes similar to TILA. Under TILA Section 111, the proposed rule would not preempt such state laws except to the extent they are inconsistent with the proposal's requirements. 15 U.S.C. 1610.

The Board is also aware that some states regulate mortgage loans under ability-to-repay laws that resemble the proposed rule, and that many states regulate only high-cost or high-priced mortgage loans under ability-to-repay laws. The proposed rule would not preempt such state laws except to the extent they are inconsistent with the proposal's requirements. *Id.*

The Board seeks comment regarding any state or local statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

G. Discussion of Significant Alternatives

The steps the Board has taken to minimize the economic impact and compliance burden on small entities, including the factual, policy, and legal reasons for selecting the alternatives adopted and why each one of the other significant alternatives was not accepted, are described above in the **SUPPLEMENTARY INFORMATION**. The Board has provided an exception to the general provision that a qualified mortgage may not provide for a balloon payment for loans that are originated by certain small creditors and that meet specified criteria, as the Board understands that community banks originate balloon-payment loans to hedge against interest rate risk, rather than making adjustable-rate mortgages, and that community banks hold these balloon-payment loans in portfolio virtually without exception because they are not eligible for sale in the secondary market. The Board believes that this exception will decrease the economic impact of the proposed rules on small entities.

The Board welcomes comments on any significant alternatives consistent with the provisions of Sections 1411, 1412, and 1414 of the Dodd-Frank Act that would minimize the impact of the proposed regulations on small entities.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in Lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted in shown inside bold brackets.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 is revised to read as follows:

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metropolitan areas are required to report under HMDA. However, if a lender is required to report, it must report information on all of its home loan applications and loans in all locations, including non-metropolitan areas.

[105] *The 2009 HMDA Data, available at http://www.ffiec.gov/hmda/default.htm.*

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Sec. 2, Pub. L. 111–24, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

Subpart D—Miscellaneous

2. Section 226.25 is amended by revising paragraph (a) to read as follows:

§ 226.25 Record retention.

(a) *General rule.* A creditor shall retain evidence of compliance with [this regulation]►§ 226.43 of this regulation for 3 years after consummation of a transaction covered by that section and shall retain evidence of compliance with all other sections of this regulation◄ (other than advertising requirements under §§ 226.16 and 226.24) for 2 years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing the regulation may require creditors under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 108 of the act.

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Subpart E—Special Rules for Certain Home Mortgage Transactions

3. Section 226.32 is amended by revising paragraph (b) to read as follows:

§ 226.32 Requirements for certain closed-end home mortgages.

* * * * *

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) For purposes of paragraph (a)(1)(ii) of this section, *points and fees* means:

(i) All items ►considered to be a finance charge◄ [required to be disclosed] under § 226.4(a) and 226.4(b), except ►—◄ [interest or the time-price differential]

►(A) Interest or the time-price differential;

(B) Any premium or other charge for any guaranty or insurance protecting the creditor against the consumer's default or other credit loss to the extent that the premium or charge is—

(*1*) Assessed in connection with any Federal or state agency program;

(*2*) Not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium or charge is required to be refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; or

(*3*) Payable after the loan closing.◄

(ii) All compensation paid [to mortgage brokers] ►directly or indirectly by a consumer or creditor to a loan originator, as defined in § 226.36(a)(1), including a loan originator that is also the creditor in a table-funded transaction;◄

(iii) All items listed in § 226.4(c)(7) (other than amounts held for future payment of taxes) ►payable at or before closing of the mortgage loan,◄ unless—[the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and]

►(A) The charge is reasonable;

(B) The creditor receives no direct or indirect compensation in connection with the charge; and

(C) The charge is not paid to an affiliate of the creditor; ◄

(iv) ►Premiums or other charges payable at or before closing of the mortgage loan for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract.◄ [Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.]

►(v) The maximum prepayment penalty, as defined in § 226.43(b)(10), that may be charged or collected under the terms of the mortgage loan; and

(vi) The total prepayment penalty, as defined in § 226.43(b)(10), incurred by the consumer if the mortgage loan is refinanced by the current holder of the existing mortgage loan, a servicer acting on behalf of the current holder, or an affiliate of either.

(2) For purposes of paragraph (b)(1)(ii) of this section, the term *points and fees* does not include compensation paid to—

(i) An employee of a retailer of manufactured homes who does not take a residential mortgage loan application, offer or negotiate terms of a residential mortgage loan, or advise a consumer on loan terms (including rates, fees, and other costs) but who, for compensation or other monetary gain, or in expectation of compensation or other monetary gain, assists a consumer in obtaining or applying to obtain a residential mortgage loan;

(ii) A person that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless such person is compensated by a creditor or loan originator, as defined in § 226.36(a)(1), or by any agent of the creditor or loan originator; or

(iii) A servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a covered transaction for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

(3)◄[(2)] Affiliate means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

* * * * *

4. Section 226.34, is amended by removing paragraph (a)(4).

§ 226.34 Prohibited acts or practices in connection with credit subject to § 226.32.

(a) * * *

[(4) *Repayment ability.* Extend credit subject to § 226.32 to a consumer based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including the consumer's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations.

(i) *Mortgage-related obligations.* For purposes of this paragraph (a)(4), mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor as set forth in § 226.35(b)(3)(i), and similar expenses.

(ii) *Verification of repayment ability.* Under this paragraph (a)(4) a creditor must verify the consumer's repayment ability as follows:

(A) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

(B) Notwithstanding paragraph (a)(4)(ii)(A), a creditor has not violated paragraph (a)(4)(ii) if the amounts of income and assets that the creditor relied upon in determining repayment ability are not materially greater than

the amounts of the consumer's income or assets that the creditor could have verified pursuant to paragraph (a)(4)(ii)(A) at the time the loan was consummated.

(C) A creditor must verify the consumer's current obligations.

(iii) *Presumption of compliance.* A creditor is presumed to have complied with this paragraph (a)(4) with respect to a transaction if the creditor:

(A) Verifies the consumer's repayment ability as provided in paragraph (a)(4)(ii);

(B) Determines the consumer's repayment ability using the largest payment of principal and interest scheduled in the first seven years following consummation and taking into account current obligations and mortgage-related obligations as defined in paragraph (a)(4)(i); and

(C) Assesses the consumer's repayment ability taking into account at least one of the following: The ratio of total debt obligations to income, or the income the consumer will have after paying debt obligations.

(iv) *Exclusions from presumption of compliance.* Notwithstanding the previous paragraph, no presumption of compliance is available for a transaction for which:

(A) The regular periodic payments for the first seven years would cause the principal balance to increase; or

(B) The term of the loan is less than seven years and the regular periodic payments when aggregated do not fully amortize the outstanding principal balance.

(v) *Exemption.* This paragraph (a)(4) does not apply to temporary or "bridge" loans with terms of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months.]

* * * * *

§ 226.35 [Removed and reserved]

5. Section 226.35 is removed and reserved.

6. Add § 226.43 to read as follows:

►§ 226.43 Minimum standards for transactions secured by a dwelling.

(a) *Scope.* This section applies to any consumer credit transaction that is secured by a dwelling, as defined in § 226.2(a)(19), other than:

(1) A home equity line of credit subject to § 226.5b;

(2) A mortgage transaction secured by a consumer's interest in a timeshare plan, as defined in 11 U.S.C. 101(53(D)); or

(3) For purposes of paragraphs (c) through (f) of this section—

(i) A reverse mortgage subject to § 226.33; or

(ii) A temporary or "bridge" loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling.

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

(1) *Covered transaction* means a consumer credit transaction that is secured by a dwelling, as defined in § 226.2(a)(19), other than a transaction exempt from coverage under paragraph (a) of this section.

(2) *Fully amortizing payment* means a periodic payment of principal and interest that will fully repay the loan amount over the loan term.

(3) *Fully indexed rate* means the interest rate calculated using the index or formula at the time of consummation and the maximum margin that can apply at any time during the loan term.

(4) *Higher-priced covered transaction* means a covered transaction with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, or by 3.5 or more percentage points for a subordinate-lien covered transaction.

(5) *Loan amount* means the principal amount the consumer will borrow as reflected in the promissory note or loan contract.

(6) *Loan term* means the period of time to repay the obligation in full.

(7) *Maximum loan amount* means the loan amount plus any increase in principal balance that results from negative amortization, as defined in § 226.18(s)(7)(v), based on the terms of the legal obligation assuming—

(i) The consumer makes only the minimum periodic payments for the maximum possible time, until the consumer must begin making fully amortizing payments; and

(ii) The maximum interest rate is reached at the earliest possible time.

(8) *Mortgage-related obligations* mean property taxes; mortgage-related insurance premiums required by the creditor as set forth in § 226.45(b)(1); homeowner's association, condominium, and cooperative fees; ground rent or leasehold payments; and special assessments.

(9) *Points and fees* has the same meaning as in § 226.32(b)(1).

(10) *Prepayment penalty* means a charge imposed for paying all or part of a covered transaction's principal before the date on which the principal is due. For purposes of this section—

(i) The following are examples of prepayment penalties:

(A) A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such "balance," even if the charge results from the interest accrual amortization method used for other payments in the transaction; and

(B) A fee, such as a loan closing cost, that is waived unless the consumer prepays the covered transaction.

(ii) A prepayment penalty does not include fees imposed for preparing and providing documents when a loan is paid in full, whether or not the loan is prepaid, such as a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan.

(11) *Recast* means—

(i) For an adjustable-rate mortgage, as defined in § 226.18(s)(7)(i), the expiration of the period during which payments based on the introductory fixed interest rate are permitted under the terms of the legal obligation;

(ii) For an interest-only loan, as defined in § 226.18(s)(7)(iv), the expiration of the period during which interest-only payments are permitted under the terms of the legal obligation; and

(iii) For a negative amortization loan, as defined in § 226.18(s)(7)(v), the expiration of the period during which negatively amortizing payments are permitted under the terms of the legal obligation.

(12) *Simultaneous loan* means another covered transaction or home equity line of credit subject to § 226.5b that will be secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction.

(13) *Third-party record* means—

(i) A document or other record prepared or reviewed by a person other than the consumer, the creditor, or the mortgage broker, as defined in § 226.36(a)(2), or an agent of the creditor or mortgage broker;

(ii) A copy of a tax return filed with the Internal Revenue Service or a state taxing authority;

(iii) A record the creditor maintains for an account of the consumer held by the creditor; or

(iv) If the consumer is an employee of the creditor or the mortgage broker, a document or other record maintained by the creditor or mortgage broker regarding the consumer's employment status or employment income.

(c) *Repayment ability*—(1) *General requirement.* A creditor shall not make a loan in a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability, at the time of consummation, to repay the loan according to its terms, including any mortgage-related obligations.

(2) *Basis for determination.* Except as provided otherwise in paragraphs (d), (e), and (f) of this section, in making the repayment ability determination required under paragraph (c)(1) of this section, a creditor must consider the following:

(i) The consumer's current or reasonably expected income or assets, other than the value of the dwelling that secures the loan;

(ii) If the creditor relies on income from the consumer's employment in determining repayment ability, the consumer's current employment status;

(iii) The consumer's monthly payment on the covered transaction, calculated in accordance with paragraph (c)(5) of this section;

(iv) The consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, calculated in accordance with paragraph (c)(6) of this section;

(v) The consumer's monthly payment for mortgage-related obligations;

(vi) The consumer's current debt obligations;

(vii) The consumer's monthly debt-to-income ratio, or residual income in accordance with paragraph (c)(7) of this section; and

(viii) The consumer's credit history.

(3) *Verification using third-party records.* A creditor must verify a consumer's repayment ability using reasonably reliable third-party records, except that—

(i) For purposes of paragraph (c)(2)(ii) of this section, a creditor may verify a consumer's employment status orally if the creditor prepares a record of the information obtained orally; and

(ii) For purposes of paragraph (c)(2)(vi) of this section, if a creditor relies on a consumer's credit report to verify a consumer's current debt obligations and a consumer's application states a current debt obligation not shown in the consumer's credit report, the creditor need not independently verify such obligation.

(4) *Verification of income or assets.* A creditor must verify the amounts of income or assets it relies on to determine a consumer's ability to repay a covered transaction using third-party records that provide reasonably reliable evidence of the consumer's income or assets. A creditor may verify the consumer's income using a tax-return transcript issued by the Internal Revenue Service (IRS). Examples of other records the creditor may use to verify the consumer's income or assets include:

(i) Copies of tax returns the consumer filed with the Internal Revenue Service or a state taxing authority;

(ii) IRS Form W–2s or similar IRS forms used for reporting wages or tax withholding;

(iii) Payroll statements, including military Leave and Earnings Statements;

(iv) Financial institution records;

(v) Records from the consumer's employer or a third-party that obtained information from the employer;

(vi) Records from a Federal, state, or local government agency stating the consumer's income from benefits or entitlements;

(vii) Receipts from the consumer's use of check cashing services; and

(viii) Receipts from the consumer's use of a funds transfer service.

(5) *Payment calculation*—(i) *General rule.* Except as provided in paragraph (c)(5)(ii) of this section, a creditor must make the determination required under paragraph (c)(2)(iii) using—

(A) The fully indexed rate or any introductory interest rate, whichever is greater; and

(B) Monthly, fully amortizing payments that are substantially equal.

(ii) *Special rules for loans with a balloon payment, interest-only loans, and negative amortization loans.* A creditor must make the determination required under paragraph (c)(2)(iii) for—

(A) A loan with a balloon payment, as defined in § 226.18(s)(5)(i), using—

(*1*) The maximum payment scheduled during the first five years after consummation for a loan that is not a higher-priced covered transaction; or

(*2*) The maximum payment in the payment schedule, including any balloon payment, for a higher-priced covered transaction;

(B) An interest-only loan, as defined in § 226.18(s)(7)(iv), using—

(*1*) The fully indexed rate or any introductory interest rate, whichever is greater; and

(*2*) Substantially equal, monthly payments of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast.

(C) A negative amortization loan, as defined in § 226.18(s)(7), using—

(*1*) The fully indexed rate or any introductory interest rate, whichever is greater; and

(*2*) Substantially equal, monthly payments of principal and interest that will repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast.

(6) *Payment calculation for simultaneous loans.* For purposes of making the determination required under paragraph (c)(2)(iv) of this section, a creditor must consider a consumer's payment on a simultaneous loan that is—

(i) A covered transaction, by following paragraphs (c)(5)(i)–(ii) of this section; or

(ii) A home equity line of credit subject to § 226.5b, by using the periodic payment required under the terms of the plan and the amount of credit drawn at consummation of the covered transaction.

(7) *Monthly debt-to-income ratio or residual income*—(i) *Definitions.* For purposes of this paragraph, the following definitions apply—

(A) *Total monthly debt obligations.* The term *total monthly debt obligations* means the sum of: the payment on the covered transaction, as required to be calculated by paragraphs (c)(2)(iii) and (c)(5) of this section; simultaneous loans, as required by paragraphs (c)(2)(iv) and (c)(6) of this section; mortgage-related obligations, as required by paragraph (c)(2)(v) of this section; and current debt obligations, as required by paragraph (c)(2)(vi) of this section.

(B) *Total monthly income.* The term *total monthly income* means the sum of the consumer's current or reasonably expected income, including any income from assets, as required paragraphs (c)(2)(i) and (c)(4) of this section.

(ii) *Calculations.* (A) *Monthly debt-to-income ratio.* For purposes of considering the consumer's monthly debt-to-income ratio under paragraph (c)(2)(vii) of this section, the creditor must consider the ratio of the consumer's total monthly debt obligations to total monthly income.

(B) *Monthly residual income.* For purposes of considering the consumer's monthly residual income under paragraph (c)(2)(vii) of this section, the creditor must consider the consumer's remaining income after subtracting the consumer's total monthly debt obligations from the total monthly income.

(d) *Refinancing of non-standard mortgages*—(1) *Scope.* The provisions of this paragraph (d) apply to the refinancing of a non-standard mortgage into a standard mortgage when the following conditions are met—

(i) The creditor for the standard mortgage is the current holder of the existing non-standard mortgage or the servicer acting on behalf of the current holder.

(ii) The monthly payment for the standard mortgage is materially lower than the monthly payment for the non-standard mortgage, as calculated under paragraph (d)(5) of this section.

(iii) The creditor receives the consumer's written application for the standard mortgage before the non-standard mortgage is recast.

(iv) The consumer has made no more than one payment more than 30 days late on the non-standard mortgage during the 24 months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage.

(v) The consumer has made no payments more than 30 days late during the six months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage.

(2) *Definitions.* For purposes of this paragraph (d), the following definitions apply:

(i) *Non-standard mortgage.* The term *non-standard mortgage* means a covered transaction that is—

(A) An adjustable-rate mortgage, as defined in § 226.18(s)(7)(i), with an introductory fixed interest rate for a period of one year or longer;

(B) An interest-only loan, as defined in § 226.18(s)(7)(iv); or

(C) A negative amortization loan, as defined in § 226.18(s)(7)(v).

(ii) *Standard mortgage.* The term *standard mortgage* means a covered transaction—

(A) That provides for regular periodic payments that do not:

(*1*) Cause the principal balance to increase;

(*2*) Allow the consumer to defer repayment of principal; or

(*3*) Result in a balloon payment, as defined in § 226.18(s)(5)(i);

(B) For which the total points and fees payable in connection with the transaction do not exceed the amounts specified in paragraph (e)(3) of this section;

(C) For which the term does not exceed 40 years;

(D) For which the interest rate is fixed for at least the first five years after consummation; and

(E) For which the proceeds from the loan are used solely for the following purposes—

(*1*) To pay off the outstanding principal balance on the non-standard mortgage; and

(*2*) To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*

(iii) *Refinancing.* The term *refinancing* has the same meaning as in § 226.20(a).

(3) *Exemption from certain repayment ability requirements.* (i) A creditor is not required to comply with the income and asset verification requirements of paragraphs (c)(2)(i) and (c)(4) of this section or the payment calculation requirements under paragraphs (c)(2)(iii) and (c)(5) of this section if—

(A) The conditions in paragraph (d)(1) of this section are met; and

(B) The creditor has considered whether the standard mortgage will prevent a likely default by the consumer on the non-standard mortgage at the time of its recast.

(ii) If the conditions in paragraph (d)(3)(i) of this section are met, the creditor shall satisfy the requirements under paragraphs (c)(2)(iii) and (c)(5) of this section for the standard mortgage by using the payment calculation prescribed under paragraph (d)(5)(ii) of this section.

(4) *Offer of rate discounts and other favorable terms.* A creditor making a covered transaction under this paragraph (d) may offer to the consumer the same or better rate discounts and terms that the creditor offers to new consumers, consistent with the creditor's documented underwriting practices and to the extent not prohibited by applicable state or Federal law.

(5) *Payment calculations.* For purposes of determining whether the consumer's monthly payment for a standard mortgage will be materially lower than the monthly payment for the non-standard mortgage, the following provisions shall be used:

(i) *Non-standard mortgage.* The monthly payment for a non-standard mortgage must be based on substantially equal, monthly, fully amortizing payments of principal and interest using—

(A) The fully indexed rate as of a reasonable period of time before or after the date on which the creditor receives the consumer's written application for the standard mortgage;

(B) The term of the loan remaining as of the date on which the recast occurs, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date; and

(C) A remaining loan amount that is—

(*1*) For an adjustable-rate mortgage under paragraph (d)(2)(i)(A) of this section, the outstanding principal balance as of the date of the recast, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date;

(*2*) For an interest-only loan under paragraph (d)(2)(i)(B) of this section, the loan amount, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date;

(*3*) For a negative amortization loan under paragraph (d)(2)(i)(C) of this section, the maximum loan amount.

(ii) *Standard mortgage.* The monthly payment for a standard mortgage must be based on substantially equal, monthly, fully amortizing payments based on the maximum interest rate that may apply during the first five years after consummation.

(e) *Qualified mortgages.*

Alternative 1—Paragraph (e)(1)

(1) *Safe harbor.* A creditor or assignee of a covered transaction complies with the repayment ability requirement of paragraph (c)(1) of this section if the covered transaction is a qualified mortgage, as defined in paragraph (e)(2) of this section.

Alternative 2—Paragraph (e)(1)

(1) *Presumption of compliance.* A creditor or assignee of a covered transaction is presumed to have complied with the repayment ability requirements of paragraph (c)(1) of this section if the covered transaction is a qualified mortgage, as defined in paragraph (e)(2) of this section.

(2) *Qualified mortgage defined.* A qualified mortgage is a covered transaction—

(i) That provides for regular periodic payments that do not—

(A) Result in an increase of the principal balance;

(B) Allow the consumer to defer repayment of principal, except as provided in paragraph (f) of this section; or

(C) Result in a balloon payment, as defined in § 226.18(s)(5)(i), except as provided in paragraph (f) of this section;

(ii) For which the loan term does not exceed 30 years;

(iii) For which the total points and fees payable in connection with the loan do not exceed the amounts specified in paragraph (e)(3) of this section;

(iv) For which the creditor underwrites the loan, taking into account any mortgage-related obligations, using—

(A) The maximum interest rate that may apply during the first five years after consummation; and

(B) Periodic payments of principal and interest that will repay either—

(*1*) The outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate set forth in paragraph (e)(2)(iv)(A) of this section; or

(*2*) The loan amount over the loan term.

Alternative 1—Paragraph (e)(2)(v)

(v) For which the creditor considers and verifies the consumer's current or reasonably expected income or assets to determine the consumer's repayment ability, as required by paragraphs (c)(2)(i), (c)(3), and (c)(4) of this section.

Alternative 2—Paragraph (e)(2)(v)

(v) For which the creditor considers and verifies, in accordance with paragraph (c)(3) of this section, the following:

(A) The consumer's current or reasonably expected income or assets other than the value of the dwelling that secures the loan, in accordance with paragraphs (c)(2)(i) and (c)(4) of this section;

(B) If the creditor relies on income from the consumer's employment in determining repayment ability, the consumer's current employment status, in accordance with paragraph (c)(2)(ii) of this section;

(C) The consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with paragraphs (c)(2)(iv) and (c)(6) of this section;

(D) The consumer's current debt obligations, in accordance with paragraph (c)(2)(vi) of this section;

(E) The consumer's monthly debt-to-income ratio, or residual income, in accordance with paragraphs (c)(2)(vii) and (c)(7) of this section; and

(F) The consumer's credit history, in accordance with paragraph (c)(viii) of this section.

(3) *Limits on points and fees for qualified mortgages.*

Alternative 1—Paragraph (e)(3)(i)

(i) A covered transaction is not a qualified mortgage unless the total points and fees payable in connection with the loan do not exceed—

(A) For a loan amount of $75,000 or more, three percent of the total loan amount;

(B) For a loan amount of greater than or equal to $60,000 but less than $75,000, 3.5 percent of the total loan amount;

(C) For a loan amount of greater than or equal to $40,000 but less than $60,000, four percent of the total loan amount;

(D) For a loan amount of greater than or equal to $20,000 but less than $40,000, 4.5 percent of the total loan amount; and

(E) For a loan amount of less than $20,000, five percent of the total loan amount.

Alternative 2—Paragraph (e)(3)(i)

(i) A covered transaction is not a qualified mortgage unless the total points and fees payable in connection with the loan do not exceed—

(A) For a loan amount of $75,000 or more, three percent of the total loan amount;

(B) For a loan amount of greater than or equal to $20,000 but less than $75,000, a percentage of the total loan amount resulting from the following formula—

(*1*) Total loan amount − $20,000 = $Z;

(*2*) $Z × .0036 = Y;

(*3*) 500 − Y = X; and

(*4*) X × .01 = Allowable points and fees as a percentage of the total loan amount; and

(C) For a loan amount of less than $20,000, five percent of the total loan amount.

(ii) For purposes of calculating the total amount of points and fees that are payable in connection with a covered transaction under (e)(3)(i), the following may be excluded:

(A) Any bona fide third party charge not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included in "points and fees" under § 226.32(b)(1)(i)(B).

(B) Up to two bona fide discount points paid by the consumer in connection with the transaction, provided that the following conditions are met—

(*1*) The interest rate before the discount does not exceed the average prime offer rate, as defined in § 226.45(a)(2)(ii), by more than one percent; and

(*2*) The average prime offer rate used for purposes of paragraph (e)(3)(ii)(B)(*1*) of this section is the same average prime offer rate that applies to a comparable transaction as of the date the discounted interest rate for the transaction is set.

(C) Up to one bona fide discount point paid by the consumer in connection with the transaction, provided that the following conditions are met—

(*1*) The interest rate before the discount does not exceed the average prime offer rate, as defined in § 226.45(a)(2)(ii), by more than two percent;

(*2*) The average prime offer rate used for purposes of paragraph (e)(3)(ii)(C)(*1*) of this section is the same average prime offer rate that applies to a comparable transaction as of the date the discounted interest rate for the transaction is set; and

(*3*) Two bona fide discount points have not been excluded under paragraph (e)(3)(ii)(B) of this section.

(iii) The term *loan originator* has the same meaning as in § 226.36(a)(1).

(iv) The term *bona fide discount point* means any percent of the loan amount of a covered transaction paid by the consumer that reduces the interest rate or time-price differential applicable to the covered transaction based on a calculation that—

(A) Is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer; and

(B) Accounts for the amount of compensation that the creditor can reasonably expect to receive from secondary market investors in return for the mortgage loan.

(f) *Balloon-payment qualified mortgages made by certain creditors*—(1) *Exception.* Notwithstanding paragraph (e)(2)(i)(C) of this section, a qualified mortgage may provide for a balloon payment, provided—

(i) The loan satisfies all of the requirements for a qualified mortgage in paragraph (e)(2) of this section, other than paragraphs (e)(2)(i)(B), (e)(2)(i)(C), and (e)(2)(iv) of this section;

(ii) The creditor determines that the consumer can make all of the scheduled payments under the terms of the legal obligation, except the balloon payment, from the consumer's current or reasonably expected income or assets other than the dwelling that secures the loan;

(iii) The scheduled payments on which the determination required by paragraph (f)(1)(ii) of this section is based:

(A) Are calculated using an amortization period that does not exceed 30 years; and

(B) Include all mortgage-related obligations;

(iv) The loan term is five years or longer; and

(v) The creditor:

(A) During the preceding calendar year, extended more than 50% of its total covered transactions that provide for balloon payments in one or more counties designated by the Board as "rural" or "underserved," as defined in paragraph (f)(2) of this section;

Alternative 1—Paragraph (f)(1)(v)(B)

(B) During the preceding calendar year, together with all affiliates, extended covered transactions with loan amounts that in the aggregate total $___ or less;

Alternative 2—Paragraph (f)(1)(v)(B)

(B) During the preceding calendar year, together with all affiliates,

extended ___ or fewer covered transactions;

Alternative 1—Paragraph (f)(1)(v)(C)

(C) On or after [effective date of final rule], has not sold, assigned, or otherwise transferred legal title to the debt obligation for any covered transaction that provides for a balloon payment; and

Alternative 2—Paragraph (f)(1)(v)(C)

(C) During the preceding and current calendar year, has not sold, assigned, or otherwise transferred legal title to the debt obligation for any covered transaction that provides for a balloon payment; and

(D) As of the end of the preceding calendar year, had total assets that do not exceed the asset threshold established and published annually by the Board, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. (See staff comment 43(f)(1)(v)–1.iv for the current threshold.)

(2) "*Rural*" *and* "*underserved*" *defined.* For purposes of paragraph (f)(1)(v)(A) of this section—

(i) A county is "rural" during a calendar year if it is not in a metropolitan statistical area or a micropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget, and:

(A) It is not adjacent to any metropolitan area or micropolitan area; or

(B) It is adjacent to a metropolitan area with fewer than one million residents or adjacent to a micropolitan area, and it contains no town with 2,500 or more residents.

(ii) A county is "underserved" during a calendar year if no more than two creditors extend covered transactions five or more times in the county.

(g) *Prepayment penalties*—(1) *When permitted.* A covered transaction must not include a prepayment penalty unless:

(i) The prepayment penalty is otherwise permitted by law; and

(ii) The transaction—

(A) Has an annual percentage rate that cannot increase after consummation;

(B) Is a qualified mortgage under paragraph (e)(2) or (f) of this section; and

(C) Is not a higher-priced mortgage loan, as defined in § 226.45(a).

(2) *Limits on prepayment penalties.* A prepayment penalty—

(i) Must not apply after the three-year period following consummation; and

(ii) Must not exceed the following percentages of the amount of the outstanding loan balance prepaid:

(A) Three percent, if incurred during the first year following consummation;

(B) Two percent, if incurred during the second year following consummation; and

(C) One percent, if incurred during the third year following consummation.

(3) *Alternative offer required.* Except as provided otherwise in paragraph (g)(4) or (g)(5) of this section, a creditor must not offer a consumer a covered transaction with a prepayment penalty unless the creditor also offers the consumer an alternative covered transaction without a prepayment penalty and the alternative covered transaction—

(i) Has an annual percentage rate that cannot increase after consummation and has the same type of interest rate as the covered transaction with a prepayment penalty. For purposes of this paragraph (g), the term "type of interest rate" refers to whether a transaction:

(A) Is a fixed-rate mortgage, as defined in § 226.18(s)(7)(iii); or

(B) Is a step-rate mortgage, as defined in § 226.18(s)(7)(ii).

(ii) Has the same loan term as the loan term for the covered transaction with a prepayment penalty;

(iii) Satisfies the periodic payment conditions under paragraph (e)(2)(i) of this section;

(iv) Satisfies the points and fees conditions under paragraph (e)(2)(iii) of this section, based on the information known to the creditor at the time the transaction is offered; and

(v) Is a transaction for which the creditor has a good faith belief that the consumer likely qualifies, based on the information known to the creditor at the time the creditor offers the covered transaction without a prepayment penalty.

(4) *Offer through a mortgage broker.* If the creditor offers a covered transaction with a prepayment penalty to the consumer through a mortgage broker, as defined in § 226.36(a)(2), the creditor must—

(i) Present the mortgage broker an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section; and

(ii) Establish by agreement that the mortgage broker must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section, offered by—

(A) The creditor; or

(B) Another creditor, if the transaction offered by the other creditor has a lower interest rate or a lower total dollar amount of origination points or fees and discount points.

(5) *Creditor that is a loan originator.* If the creditor is a loan originator, as defined in § 226.36(a)(1), and the creditor presents the consumer a covered transaction offered by a person to which the creditor would assign the covered transaction after consummation, the creditor must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section, offered by—

(i) The assignee; or

(ii) Another person, if the transaction offered by the other person has a lower interest rate or a lower total dollar amount of origination points or fees and discount points.

(6) *Applicability.* This paragraph (g) applies only if a covered transaction is consummated with a prepayment penalty and is not violated if:

(i) A covered transaction is consummated without a prepayment penalty; or

(ii) The creditor and consumer do not consummate a covered transaction.

(h) *Evasion; open-end credit.* In connection with credit secured by a consumer's dwelling that does not meet the definition of open-end credit in § 226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.◄

7. In Supplement I to Part 226:

A. Under *Section 226.25—Record Retention, 25(a) General rule,* paragraph 2 is revised and paragraphs 6 and 7 are added.

B. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages,*

(1) In subheading *32(a) Coverage, Paragraph 32(a)(1)(ii),* paragraph 1 is revised;

(2) In subheading *32(b) Definitions, Paragraph 32(b)(1)(i),* paragraph 1 is revised and paragraphs 2, 3, and 4 are added;

(i) *Paragraph 32(b)(1)(ii),* paragraph 1 is revised, paragraph 2. is redesignated as *Paragraph 32(b)(1)(iii),* paragraph 1, and revised, and new paragraphs 2 and 3 are added to *Paragraph 32(b)(1)(ii);*

(ii) *Paragraph 32(b)(1)(iv),* paragraph 1 is revised and paragraph 2 is added.

C. Under *Section 226.34—Prohibited Acts or Practices in Connection with Credit Subject to § 226.32,* subheading *34(a) Prohibited acts or practices for loans subject to § 226.32,* paragraph *34(a)(4) Repayment ability* is removed and reserved.

D. *Section 226.35—Prohibited Acts or Practices in Connection with Higher-*

Priced Mortgage Loans is removed and reserved.

E. New entry *Section 226.43—Minimum Standards for Transactions Secured by a Dwelling* is added.

The revisions, removals, and additions read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart D—Miscellaneous

* * * * *

Section 226.25—Record Retention

25(a) General rule.

* * * * *

2. *Methods of retaining evidence.* Adequate evidence of compliance does not necessarily mean actual paper copies of disclosure statements or other business records. The evidence may be retained [on microfilm, microfiche, or] by any [other] method that reproduces records accurately (including computer programs). ►Unless otherwise required,◄ the creditor need retain only enough information to reconstruct the required disclosures or other records. Thus, for example, the creditor need not retain each open-end periodic statement, so long as the specific information on each statement can be retrieved.

* * * * *

►6. *Evidence of compliance with § 226.43.* Creditors must retain evidence of compliance with § 226.43 for three years after the date of consummation of a consumer credit transaction covered by that section. (See comment 25(a)–7 for guidance on the retention of evidence of compliance with the requirement to offer a consumer a loan without a prepayment penalty under § 226.43(g)(3).) If a creditor must verify and document information used in underwriting a transaction subject to § 226.43, the creditor should retain evidence sufficient to demonstrate compliance with the documentation requirements of the rule. Although creditors need not retain actual paper copies of the documentation used in underwriting a transaction subject to § 226.43, creditors should be able to reproduce such records accurately. For example, if the creditor uses a consumer's Internal Revenue Service (IRS) Form W–2 to verify the consumer's income, the creditor should be able to reproduce the IRS Form W–2 itself, and not merely the income information that was contained in the form.

7. *Dwelling-secured transactions and prepayment penalties.* If a transaction covered by § 226.43 has a prepayment penalty, the creditor must maintain records that document that the creditor complied with requirements for offering the consumer an alternative transaction that does not include a prepayment penalty under § 226.43(g)(3), (4), or (5). However, the creditor need not maintain records that document compliance with those provisions if a transaction is consummated without a prepayment penalty or if the creditor and consumer do not consummate a covered transaction. *See* § 226.43(g)(6). If a creditor offers a transaction with a prepayment penalty to a consumer through a mortgage broker, to evidence compliance with § 226.43(g)(4) the creditor should retain records of the alternative covered transaction presented to the mortgage broker, such as a rate sheet, and the agreement with the mortgage broker required by § 226.43(g)(4)(ii).◄

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Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

* * * * *

Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to § 226.18(b), and deducting any cost listed in § 226.32(b)(1)(iii)►,◄ [and 226.32] (b)(1)(iv)►and (b)(1)(vi)◄ that is both included as points and fees under § 226.32(b)(1) and financed by the creditor. Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points. A $500 ►single◄ premium for optional credit ►unemployment◄ [life] insurance is used in one example.

i. If the consumer finances a $300 fee for a creditor-conducted appraisal and pays $400 in points at closing, the amount financed under § 226.18(b) is $9,900 ($10,000 plus the $300 appraisal fee that is paid to and financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under § 226.32(b)(1)(iii). It is deducted from the amount financed ($9,900) to derive a total loan amount of $9,600.

ii. If the consumer pays the $300 fee for the creditor-conducted appraisal in cash at closing, the $300 is included in the points and fees calculation because it is paid to the creditor. However, because the $300 is not financed by the creditor, the fee is not part of the amount financed under § 226.18(b). In this case, the amount financed is the same as the total loan amount: $9,600 ($10,000, less $400 in prepaid finance charges).

iii. If the consumer finances a $300 fee for an appraisal conducted by someone other than the creditor or an affiliate, the $300 fee is not included with other points and fees under § 226.32(b)(1)(iii). ►In this case, the amount financed is the same as the total loan amount:◄ $9,900 ($10,000 plus the $300 fee for an independently conducted appraisal that is financed by the creditor, less the $400 paid in cash and deducted as prepaid finance charges).

iv. If the consumer finances a $300 fee for a creditor-conducted appraisal and a $500 single premium for optional credit ►unemployment◄ [life] insurance, and pays $400 in points at closing, the amount financed under § 226.18(b) is $10,400 ($10,000, plus the $300 appraisal fee that is paid to and financed by the creditor, plus the $500 insurance premium that is financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under § 226.32(b)(1)(iii), and the $500 insurance premium is added under section 226.32(b)(1)(iv). The $300 and $500 costs are deducted from the amount financed ($10,400) to derive a total loan amount of $9,600.

* * * * *

32(b) Definitions.

Paragraph 32(b)(1)(i)

1. *General.* Section 226.32(b)(1)(i) includes in the total "points and fees" items defined as finance charges under § 226.4(a) and 226.4(b). Items excluded from the finance charge under other provisions of § 226.4 are not excluded in the total "points and fees" under § 226.32(b)(1)(i), but may be included in "points and fees" under § 226.32(b)(1)(ii) ►through § 226.32(b)(1)(vi).◄[and § 226.32(b)(1)(iv)]. Interest, including per diem interest, is excluded from "points and fees under § 226.32(b)(1). ►To illustrate: A fee imposed by the creditor for an appraisal performed by an employee of the creditor meets the definition of "finance charge" under § 226.4(a) as "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." However, § 226.4(c)(7) expressly provides that appraisal fees are not finance charges. Therefore, under the general rule regarding the finance

charges that must be counted as points and fees, a fee imposed by the creditor for an appraisal performed by an employee of the creditor would not be counted in points and fees. Section 226.32(b)(1)(iii), however, expressly re-includes in points and fees items listed in § 226.4(c)(7) (including appraisal fees) if the creditor receives compensation in connection with the charge. A creditor would receive compensation for an appraisal performed by its own employee. Thus, the appraisal fee in this example must be included in the calculation of points and fees.

2. *Upfront Federal and state mortgage insurance premiums and guaranty fees.* Under § 226.32(b)(1)(i)(B)(*1*) and (*3*), upfront mortgage insurance premiums or guaranty fees in connection with a Federal or state agency program are not "points and fees," even though they are finance charges under § 226.4(a) and (b). For example, if a consumer is required to pay a $2,000 mortgage insurance premium before or at closing for a loan insured by the U.S. Federal Housing Administration, the $2,000 must be treated as a finance charge but need not be counted in "points and fees."

3. *Upfront private mortgage insurance premiums.* i. Under § 226.32(b)(1)(i)(B)(*2*) and (*3*), upfront private mortgage insurance premiums are not "points and fees," even though they are finance charges under § 226.4(a) and (b)—but only to the extent that the premium amount does not exceed the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)).

ii. In addition, to qualify for the exclusion from points and fees, upfront private mortgage insurance premiums must be required to be refunded on a pro rata basis and the refund must be automatically issued upon notification of the satisfaction of the underlying mortgage loan.

iii. To illustrate: Assume that a $3,000 upfront private mortgage insurance premium charged on a covered transaction is required to be refunded on a pro rata basis and automatically issued upon notification of the satisfaction of the underlying mortgage loan. Assume also that the maximum upfront premium allowable under the National Housing Act is $2,000. In this case, the creditor could exclude $2,000 from "points and fees" but would have to include the $1,000 that exceeds the allowable premium under the National Housing Act. However, if the $3,000 upfront private mortgage insurance premium were not required to be refunded on a pro rata basis and automatically issued upon notification of the satisfaction of the underlying mortgage loan, the entire $3,000 premium must be included in "points and fees."

4. *Method of paying private mortgage insurance premiums.* Upfront private mortgage insurance premiums that do not qualify for an exclusion from "points and fees" under § 226.32(b)(1)(i)(B)(*2*) must be included in "points and fees" for purposes of this section whether paid before or at closing, in cash or financed, and whether the insurance is optional or required. Such charges are also included whether the amount represents the entire premium or an initial payment.◄

Paragraph 32(b)(1)(ii).

1. [*Mortgage broker fees*]►*Loan originator—general*◄. In determining "points and fees" for purposes of this section, compensation paid by a consumer ►or creditor◄ to a ►loan originator◄ [mortgage broker (directly or through the creditor for delivery to the broker)] is included in the calculation whether or not the amount is disclosed as a finance charge. [Mortgage broker fees that are not paid by the consumer are not included.] ►Loan originator◄[Mortgage broker] fees already included in ►points and fees◄ calculation as finance charges under § 226.32(b)(1)(i) need not be counted again under § 226.32(b)(1)(ii).

►2. *Loan originator compensation—examples.* i. In determining "points and fees" under this section, loan originator compensation includes the dollar value of compensation paid to a loan originator for a covered transaction, such as a bonus, commission, yield spread premium, award of merchandise, services, trips, or similar prizes, or hourly pay for the actual number of hours worked on a particular transaction. Compensation paid to a loan originator for a covered transaction must be included in the "points and fees" calculation for that loan whenever paid, whether before, at, or after closing, as long as that compensation amount can be determined at the time of closing. Thus, loan originator compensation for a covered transaction includes compensation that will be paid as part of a periodic bonus, commission, or gift if a portion of the dollar value of the bonus, commission, or gift can be attributed to that loan. The following examples illustrate the rule:

A. Assume that, according to a creditor's compensation policies, the creditor awards its loan officers a bonus every year based on the number of loan applications taken by the loan officer that result in consummated transactions during that year, and that each consummated transaction increases the bonus by $100. In this case, the $100 bonus must be counted in the amount of loan originator compensation that the creditor includes in "points and fees."

B. Assume that, according to a creditor's compensation policies, the creditor awards its loan officers a year-end bonus equal to a flat dollar amount for each of the consummated transactions originated by the loan officer during that year. Assume also that the per-transaction dollar amount is determined at the end of the year, based on the total dollar value of consummated transactions originated by the loan officer. If at the time a mortgage transaction is consummated the loan officer has originated total volume that qualifies the loan officer to receive a $300 bonus per transaction, the $300 bonus is loan originator compensation that must be included in "points and fees" for the transaction.

C. Assume that, according to a creditor's compensation policies, the creditor awards its loan officers a bonus every year based on the number of consummated transactions originated by the loan officer during that year. Assume also that for the first 10 transactions originated by the loan officer in a given year, no bonus is awarded; for the next 10 transactions originated by the loan officer up to 20, a bonus of $100 per transaction is awarded; and for each transaction originated after the first 20, a bonus of $200 per transaction is awarded. In this case, for the first 10 transactions originated by a loan officer during a given year, no amount of loan originator compensation need be included in "points and fees." For any mortgage transaction made after the first 10, up to the 20th transaction, $100 must be included in "points and fees." For any mortgage transaction made after the first 20, $200 must be included in "points and fees."

ii. In determining "points and fees" under this section, loan originator compensation excludes compensation that cannot be attributed to a particular transaction at the time or origination, including, for example:

A. Compensation based on the long-term performance of the loan originator's loans.

B. Compensation based on the overall quality of a loan originator's loan files.

C. The base salary of a loan originator who is also the employee of the creditor, not accounting for any bonuses, commissions, pay raises, or other financial awards based solely on a particular transaction or the number or

amount of covered transactions originated by the loan originator.

3. *Name of fee.* Loan originator compensation includes amounts the loan originator retains and is not dependent on the label or name of any fee imposed in connection with the transaction. For example, if a loan originator imposes a "processing fee" and retains the fee, the fee is loan originator compensation under § 226.32(b)(1)(ii) whether the originator expends the fee to process the consumer's application or uses it for other expenses, such as overhead.

Paragraph 32(b)(1)(iii).

1. *Other charges.*◀[2. *Example.*] Section 32(b)(1)(iii) defines "points and fees" to include all items listed in § 226.4(c)(7), other than amounts held for the future payment of taxes. An item listed in § 226.4(c)(7) may be excluded from the "points and fees" calculation, however, if the charge is reasonable►; ◀[,] the creditor receives no direct or indirect compensation from the charge►;◀[,] and the charge is not paid to an affiliate of the creditor. For example, a reasonable fee paid by the consumer to an independent, third-party appraiser may be excluded from the "points and fees" calculation (assuming no compensation is paid to the creditor► or its affiliate◀). ►By contrast, a◀[A] fee paid by the consumer for an appraisal performed by the creditor must be included in the calculation, even though the fee may be excluded from the finance charge if it is bona fide and reasonable in amount.

Paragraph 32(b)(1)(iv).

1. ►*Credit insurance and debt cancellation or suspension coverage* ◀[*Premium amount*]. In determining "points and fees" for purposes of this section, premiums paid at or before closing for credit insurance or ►any debt cancellation or suspension agreement or contract◀ are included ►in "points and fees" if they are paid at or before closing,◀ whether they are paid in cash or financed, ►and whether the insurance or coverage is optional or required. Such charges are also included◀[and] whether the amount represents the entire premium or payment for the coverage or an initial payment.

►2. *Credit property insurance.* Credit property insurance includes insurance against loss of or damage to personal property, such as a houseboat or manufactured home. Credit property insurance covers the creditor's security interest in the property. Credit property insurance does not include homeowners insurance, which, unlike credit property insurance, typically covers not only the dwelling but its contents, and designates the consumer, not the creditor, as the beneficiary.◀

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Section 226.34—Prohibited Acts or Practices in Connection with Credit Subject to § 226.32

34(a) Prohibited acts or practices for loans subject to § 226.32.

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34(a)(4) Repayment ability.

►[Reserved.]◀

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Section 226.35 ►[*Reserved.*]◀

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►*Section 226.43—Minimum Standards for Transactions Secured by a Dwelling*

1. *Record retention.* See § 226.25(a) and comments 25(a)–6 and –7 for guidance on the required retention of records as evidence of compliance with § 226.43.

43(a) Scope.

1. *Consumer credit.* In general, § 226.43 applies to consumer credit transactions secured by a dwelling, but certain dwelling-secured consumer credit transactions are exempt from coverage under § 226.43(a)(1)–(3). (*See* § 226.2(a)(12) for the definition of "consumer credit.") Section 226.43 does not apply to an extension of credit primarily for a business, commercial, or agricultural purpose, even if it is secured by a dwelling. *See* § 226.3 and associated commentary for guidance in determining the primary purpose of an extension of credit.

2. *Real property.* "Dwelling" means a residential structure that contains one to four units, whether or not the structure is attached to real property. *See* § 226.2(a)(19). For purposes of § 226.43, the term "dwelling" includes any real property to which the residential structure is attached that also secures the covered transaction. For example, for purposes of § 226.43(c)(2)(i), the value of the dwelling that secures the covered transaction includes the value of any real property to which the residential structure is attached that also secures the covered transaction.

3. *Renewable temporary or "bridge" loan.* Under § 226.43(a)(3)(ii), a temporary or "bridge" loan with a term of 12 months or less is excluded from coverage by § 226.43(c) through (f). Examples of such a loan are a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months and a loan to finance the initial construction of a dwelling. Where a temporary or "bridge loan" is renewable, the loan term does not include any additional period of time that could result from a renewal provision. For example, if a construction loan has an initial loan term of 12 months but is renewable for another 12-month loan term, the loan is excluded from coverage by § 226.43(c) through (f), because the initial loan term is 12 months.

43(b) Definitions.

43(b)(3) Fully indexed rate.

1. *Discounted and premium adjustable-rate transactions.* In some adjustable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula at consummation (*i.e.,* a "discounted rate"). In some cases, this initial rate may be higher (*i.e.,* a "premium rate"). For purposes of determining the fully indexed rate where the initial interest rate is not determined using the index or formula for subsequent interest rate adjustments, the creditor must use the interest rate that would have applied had the creditor used such index or formula plus margin at the time of consummation. That is, in determining the fully indexed rate, the creditor must not take into account any discounted or premium rate. To illustrate, assume an adjustable-rate transaction where the initial interest rate is not based on an index or formula, and is set at 5% for the first five years. The loan agreement provides that future interest rate adjustments will be calculated based on the London Interbank Offered Rate (LIBOR) plus a 3% margin. If the value of the LIBOR at consummation is 5%, the interest rate that would have been applied at consummation had the creditor based the initial rate on this index is 8% (5% plus 3% margin). For purposes of this section, the fully indexed rate is 8%. For discussion of payment calculations based on the greater of the fully indexed rate or "premium rate" for purposes of the repayment ability determination under § 226.43(c), *see* § 226.43(c)(5)(i) and comment 43(c)(5)(i)–2.

2. *Index or formula at consummation.* The value of the index or formula in effect at consummation need not be used if the contract provides for a delay in the implementation of changes in an index value or formula. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, the creditor may use any index value in effect during the 45 days before

consummation in calculating the fully indexed rate.

3. *Interest rate adjustment caps.* If the terms of the legal obligation contain a periodic interest rate adjustment cap that would prevent the initial rate, at the time of the first adjustment, from changing to the rate determined using the index or formula at consummation (*i.e.,* the fully indexed rate), the creditor must not give any effect to that rate cap when determining the fully indexed rate. That is, a creditor must determine the fully indexed rate without taking into account any periodic interest rate adjustment cap that may limit how quickly the fully indexed rate may be reached at any time during the loan term under the terms of the legal obligation. To illustrate, assume an adjustable-rate mortgage has an initial fixed rate of 5% for the first three years of the loan, after which the rate will adjust annually to a specified index plus a margin of 3%. The loan agreement provides for a 2% annual interest rate adjustment cap, and a lifetime maximum interest rate of 10%. The index value in effect at consummation is 4.5%; the fully indexed rate is 7.5% (4.5% plus 3%), regardless of the 2% annual interest rate adjustment cap that would limit when the fully indexed rate would take effect under the terms of the legal obligation.

4. *Lifetime maximum interest rate.* A creditor may choose, in its sole discretion, to take into account the lifetime maximum interest rate provided under the terms of the legal obligation when determining the fully indexed rate. If the creditor chooses to use the lifetime maximum interest rate and the loan agreement provides a range for the maximum interest rate, then the creditor must use the highest rate in that range as the maximum interest rate for purposes of this section. To illustrate, assume an adjustable-rate mortgage has an initial fixed rate of 5% for the first three years of the loan, after which the rate will adjust annually to a specified index plus a margin of 3%. The loan agreement provides for a 2% annual interest rate adjustment cap, and a lifetime maximum interest rate of 7%. The index value in effect at consummation is 4.5%; the fully indexed rate is 7.5% (4.5% plus 3%). For purposes of this section, the creditor can choose to use the lifetime maximum interest rate of 7%, instead of the fully indexed rate of 7.5%, for purposes of this section.

5. *Step-rate and fixed-rate mortgages.* Where the interest rate offered under the terms of the legal obligation is not based on, and does not vary with, an index or formula (*i.e.,* there is no fully indexed rate), the creditor must use the maximum interest rate that may apply at any time during the loan term. To illustrate:

i. Assume a step-rate mortgage with an interest rate fixed at 6.5% for the first two years of the loan, 7% for the next three years, and 7.5% thereafter for the remainder of loan term. For purposes of this section, the creditor must use 7.5%, which is the maximum rate that may apply during the loan term. "Step-rate mortgage" is defined in § 226.18(s)(7)(ii).

ii. Assume a fixed-rate mortgage with an interest rate at consummation of 7% that is fixed for the 30-year loan term. For purposes of this section, the maximum interest rate that may apply during the loan term is 7%, which is the interest rate that is fixed at consummation. "Fixed-rate mortgage" is defined in § 226.18(s)(7)(iii).

43(b)(4) Higher-priced covered transaction.

1. *Average prime offer rate.* The average prime offer rate generally has the same meaning as in § 226.45(a)(2)(ii). For further explanation of the meaning of "average prime offer rate," and additional guidance on determining the average prime offer rate, *see* comments 45(a)(2)(ii)–1 and –5. For further explanation of the Board table, *see* comment 45(a)(2)(ii)–4.

2. *Comparable transaction.* A higher-priced covered transaction is a consumer credit transaction that is secured by the consumer's dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by the specified amount. The table of average prime offer rates published by the Board indicates how to identify a comparable transaction. *See* comment 45(a)(2)(ii)–2.

3. *Rate set.* A transaction's annual percentage rate is compared to the average prime offer rate as of the date the transaction's interest rate is set (or "locked") before consummation. Sometimes a creditor sets the interest rate initially and then re-sets it at a different level before consummation. The creditor should use the last date the interest rate is set before consummation.

43(b)(5) Loan amount.

1. *Disbursement of the loan amount.* The definition of "loan amount" requires the creditor to use the entire loan amount as reflected in the loan contract or promissory note, even though the loan amount may not be fully disbursed at consummation. For example, assume the consumer enters into a loan agreement where the consumer is obligated to repay the creditor $200,000 over 15 years, but only $100,000 is disbursed at consummation and the remaining $100,000 will be disbursed during the year following consummation in a series of advances ($25,000 each quarter). For purposes of this section, the creditor must use the loan amount of $200,000, even though the loan agreement provides that only $100,000 will be disbursed to the consumer at consummation. Generally, creditors should rely on § 226.17(c)(6) and associated commentary regarding treatment of multiple-advance and construction-to-permanent loans as single or multiple transactions.

43(b)(6) Loan term.

1. *General.* The loan term is the period of time it takes to repay the loan amount in full. For example, a loan with an initial discounted rate that is fixed for the first two years, and that adjusts periodically for the next 28 years has a loan term of 30 years, which is the amortization period on which the periodic amortizing payments are based.

43(b)(7) Maximum loan amount.

1. *Calculation of maximum loan amount.* For purposes of § 226.43(c)(2)(iii) and (c)(5)(ii)(C), a creditor must determine the maximum loan amount for a negative amortization loan by using the loan amount plus any increase in principal balance that will result from negative amortization based on the terms of the legal obligation. In determining the maximum loan amount, a creditor must assume that the consumer makes the minimum periodic payment permitted under the loan agreement for as long as possible, until the consumer must begin making fully amortizing payments; and that the interest rate rises as quickly as possible after consummation under the terms of the legal obligation. Thus, creditors must assume that the consumer makes the minimum periodic payment until any negative amortization cap is reached or until the period permitting minimum periodic payments expires, whichever occurs first. "Loan amount" is defined in § 226.43(b)(5); "negative amortization loan" is defined in § 226.18(s)(7)(v).

2. *Assumed interest rate.* In calculating the maximum loan amount for an adjustable-rate mortgage that is a negative amortization loan, the creditor must assume that the interest rate will increase as rapidly as possible after consummation, taking into account any periodic interest rate adjustment caps provided in the loan agreement. For an adjustable-rate mortgage with a lifetime maximum interest rate but no periodic interest rate adjustment cap, the creditor must assume that the interest rate increases to the maximum lifetime interest rate at the first adjustment.

3. *Examples.* The following are examples of how to determine the maximum loan amount for a negative amortization loan (all amounts are rounded):

i. *Adjustable-rate mortgage with negative amortization.* A. Assume an adjustable-rate mortgage in the amount of $200,000 with a 30-year loan term. The loan agreement provides that the consumer can make minimum monthly payments that cover only part of the interest accrued each month until the principal balance reaches 115% of its original balance (*i.e.,* a negative amortization cap of 115%) or for the first five years of the loan (60 monthly payments), whichever occurs first. The introductory interest rate at consummation is 1.5%. One month after consummation, the interest rate adjusts and will adjust monthly thereafter based on the specified index plus a margin of 3.5%. The maximum lifetime interest rate is 10.5%; there are no other periodic interest rate adjustment caps that limit how quickly the maximum lifetime rate may be reached. The minimum monthly payment for the first year is based on the initial interest rate of 1.5%. After that, the minimum monthly payment adjusts annually, but may increase by no more than 7.5% over the previous year's payment. The minimum monthly payment is $690 in the first year, $742 in the second year, and $798 in the first part of the third year.

B. To determine the maximum loan amount, assume that the initial interest rate increases to the maximum lifetime interest rate of 10.5% at the first adjustment (*i.e.,* the second month) and accrues at that rate until the loan is recast. Assume the consumer makes the minimum monthly payments as scheduled, which are capped at 7.5% from year-to-year. As a result, the consumer's minimum monthly payments are less than the interest accrued each month, resulting in negative amortization (*i.e.,* the accrued but unpaid interest is added to the principal balance). Thus, assuming that the consumer makes the minimum monthly payments for as long as possible and that the maximum interest rate of 10.5% is reached at the first rate adjustment (*i.e.,* the second month), the negative amortization cap of 115% is reached on the due date of the 27th monthly payment and the loan is recast. The maximum loan amount as of the due date of the 27th monthly payment is $229,243.

ii. *Fixed-rate, graduated payment mortgage with negative amortization.* A loan in the amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate of 7.5%, and requires the consumer to make minimum monthly payments during the first year, with payments increasing 12.5% every year for four years. The payment schedule provides for payments of $943 in the first year, $1,061 in the second year, $1,194 in the third year, $1,343 in the fourth year, and $1,511 for the remaining term of the loan. During the first three years of the loan, the payments are less than the interest accrued each month, resulting in negative amortization. Assuming that the consumer makes the minimum periodic payments for as long as possible, the maximum loan amount is $207,659, which is reached at the end of the third year of the loan (on the due date of the 36th monthly payment). *See* comment 43(c)(5)(ii)(C)–3 providing examples of how to determine the consumer's repayment ability for a negative amortization loan.

43(b)(8) Mortgage-related obligations.

1. *General.* Mortgage-related obligations include expected property taxes and premiums for mortgage-related insurance required by the creditor as set forth in § 226.45(b)(1), such as insurance against loss of or damage to property or against liability arising out of the ownership or use of the property, and insurance protecting the creditor against the consumer's default or other credit loss. A creditor need not include premiums for mortgage-related insurance that it does not require, such as an earthquake insurance or credit insurance, or fees for optional debt suspension and debt cancellation agreements. Mortgage-related obligations also include special assessments that are imposed on the consumer at or before consummation, such as a one-time homeowners' association fee that will not be paid by the consumer in full at or before consummation. *See* commentary to § 226.43(c)(2)(v), discussing the requirement to take into account any mortgage-related obligations.

43(b)(10) Prepayment penalty.

Paragraph 43(b)(10)(i)(A).

1. *Interest accrual amortization method.* A prepayment penalty includes charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such balance, even if the charge results from the interest accrual amortization method used on the transaction. "Interest accrual amortization" refers to the method by which the amount of interest due for each period (*e.g.,* month), in a transaction's term is determined. For example, "monthly interest accrual amortization" treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of a grace period). Thus, under monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3000, the creditor will require payment of $3000 in interest whether the payment is made on April 20, on May 1, or on May 10. In this example, if the interest charged for the month of April upon prepayment in full on April 20 is $3000, the charge constitutes a prepayment penalty of $1000 because the amount of interest actually earned through April 20 is only $2000.

43(b)(11) Recast.

1. *Date of the recast.* The term "recast" means, for an adjustable-rate mortgage, the expiration of the period during which payments based on the introductory fixed rate are permitted; for an interest-only loan, the expiration of the period during which the interest-only payments are permitted; and, for a negative amortization loan, the expiration of the period during which negatively amortizing payments are permitted. For adjustable-rate mortgages, interest-only loans, and negative amortization loans, the date on which the "recast" is considered to occur is the due date of the last monthly payment based on the introductory fixed rate, the interest-only payment, or the negatively amortizing payment, respectively. To illustrate: A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate and permits interest-only payments for the first five years of the loan (60 months). The loan is recast on the due date of the 60th monthly payment. Thus, the term of the loan remaining as of the date the loan is recast is 25 years (300 months).

43(b)(12) Simultaneous loan.

1. *General.* Section 226.43(b)(12) defines a simultaneous loan as another covered transaction or home equity line of credit subject to § 226.5b (HELOC) that will be secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction, whether it is made by the same creditor or a third-party creditor. For example, assume a consumer will enter into a legal obligation that is a covered transaction with Creditor A. Immediately prior to consummation of the covered transaction with Creditor A, the consumer opens a HELOC that is secured by the same dwelling with Creditor B. For purposes of this section, the loan extended by Creditor B is a simultaneous loan. *See* commentary to

§ 226.43(c)(2)(iv) and (c)(6), discussing the requirement to consider the consumer's payment obligation on any simultaneous loan for purposes of determining the consumer's ability to repay the covered transaction subject to this section.

2. *Same consumer.* For purposes of the definition of "simultaneous loan," the term "same consumer" includes any consumer, as that term is defined in § 226.2(a)(11), that enters into a loan that is a covered transaction and also enters into another loan (*e.g.,* second-lien covered transaction or HELOC) secured by the same dwelling. Where two or more consumers enter into a legal obligation that is a covered transaction, but only one of them enters into another loan secured by the same dwelling, the "same consumer" includes the person that has entered into both legal obligations. For example, assume Consumer A and Consumer B will both enter into a legal obligation that is a covered transaction with a creditor. Immediately prior to consummation of the covered transaction, Consumer B opens a HELOC that is secured by the same dwelling with the same creditor; Consumer A is not a signatory to the HELOC. For purposes of this definition, Consumer B is the same consumer and the creditor must include the HELOC as a simultaneous loan.

43(b)(13) Third-party record.

1. *Electronic records.* Third-party records include records transmitted electronically. For example, to verify a consumer's credit history using third-party records as required by § 226.43(c)(2)(viii) and 226.43(c)(3), creditors may use a credit report prepared by a consumer reporting agency and transmitted or viewed electronically.

2. *Forms.* A record prepared by a third party includes a form a creditor gives a third party for providing information, even if the creditor completes parts of the form unrelated to the information sought. For example, if a creditor gives a consumer's employer a form for verifying the consumer's employment status and income, the creditor may fill in the creditor's name and other portions of the form unrelated to the consumer's employment status or income.

Paragraph 43(b)(13)(i).

1. *Reviewed record.* Under § 226.43(b)(13)(i), a third-party record includes a document or other record prepared by the consumer, the creditor, the mortgage broker, or the creditor's or mortgage broker's agent, if the record is reviewed by a third party. For example, a profit-and-loss statement prepared by a self-employed consumer and reviewed by a third-party accountant is a third-party record under § 226.43(b)(13)(i).

Paragraph 43(b)(13)(iii).

1. *Creditor's records.* Section 226.43(b)(13)(iii) provides that third-party record includes a record the creditor maintains for an account of the consumer held by the creditor. Examples of such accounts include checking accounts, savings accounts, and retirement accounts. Examples of such accounts also include accounts related to a consumer's outstanding obligations to a creditor. For example, a third-party record includes the creditor's records for a first-lien mortgage to a consumer who applies for a subordinate-lien home equity loan.

43(c) Repayment ability.

1. *Widely accepted standards.* To evaluate a consumer's repayment ability under § 226.43(c), creditors may look to widely accepted governmental or non-governmental underwriting standards, such as the Federal Housing Administration's handbook on Mortgage Credit Analysis for Mortgage Insurance on One- to Four-Unit Mortgage Loans. For example, creditors may use such standards in determining:

i. Whether to classify particular inflows, obligations, or property as "income," "debt," or "assets";

ii. Factors to consider in evaluating the income of a self-employed or seasonally employed consumer; and

iii. Factors to consider in evaluating the credit history of a consumer who has obtained few or no extensions of traditional "credit," as defined in § 226.2(a)(14).

43(c)(1) General requirement.

1. *Repayment ability at consummation.* Section 226.43(c)(1) requires the creditor to determine that a consumer will have a reasonable ability at the time the loan is consummated to repay the loan. A change in the consumer's circumstances after consummation (for example, a significant reduction in income due to a job loss or a significant obligation arising from a major medical expense) that is not reflected in the consumer's application or the records used to determine repayment ability is not relevant to determining a creditor's compliance with the rule. However, if the application or records state there will be a change in a consumer's repayment ability after consummation (for example, if a consumer's application states that the consumer plans to retire within 12 months without obtaining new employment or that the consumer will transition from full-time to part-time employment), the creditor must consider that information.

2. *Interaction with Regulation B.* Section 226.43(c)(1) does not require or permit the creditor to make inquiries or verifications that would be prohibited by Regulation B, 12 CFR part 202.

Paragraph 43(c)(2)(i).

1. *Income or assets generally.* A creditor may base its determination of repayment ability on current or reasonably expected income from employment or other sources, assets other than the dwelling that secures the covered transaction, or both. The creditor may consider any type of current or reasonably expected income, including, for example, the following: Salary; wages; self-employment income; military or reserve duty income; bonus pay; tips; commissions; interest payments; dividends; retirement benefits or entitlements; rental income; royalty payments; trust income; public assistance payments; and alimony, child support, and separate maintenance payments. The creditor may consider any of the consumer's assets, other than the value of the dwelling that secures the covered transaction, including, for example, the following: funds in a savings or checking account, amounts vested in a retirement account, stocks, bonds, certificates of deposit, and amounts available to the consumer from a trust fund. (For purposes of § 226.43(c)(2)(i), the value of the dwelling includes the value of the real property to which the real property is attached, if the real property also secures the covered transaction. *See* comment 43(a)–2.)

2. *Income or assets relied on.* If a creditor bases its determination of repayment ability entirely or in part on a consumer's income, the creditor need consider only the income necessary to support a determination that the consumer can repay the covered transaction. For example, if a consumer's loan application states that the consumer earns an annual salary from both a full-time job and a part-time job and the creditor reasonably determines that the consumer's income from the full-time job is sufficient to repay the loan, the creditor need not consider the consumer's income from the part-time job. Further, a creditor need verify only the income (and assets) relied on to determine the consumer's repayment ability. *See* comment 43(c)(4)–1.

3. *Expected income.* If a creditor relies on expected income, either in addition to or instead of current income, the expectation that the income will be available for repayment must be reasonable and verified with third-party records that provide reasonably reliable evidence of the consumer's expected

income. For example, if the creditor relies on an expectation that a consumer will receive an annual bonus, the creditor may verify the basis for that expectation with records that show the consumer's past annual bonuses, and the expected bonus must bear a reasonable relationship to the past bonuses. Similarly, if the creditor relies on a consumer's expected salary from a job the consumer has accepted and will begin after receiving an educational degree, the creditor may verify that expectation with a written statement from an employer indicating that the consumer will be employed upon graduation at a specified salary.

4. *Seasonal or irregular income.* A creditor reasonably may determine that a consumer can make periodic loan payments even if the consumer's income, such as self-employment income, is seasonal or irregular. For example, assume a consumer receives income during a few months each year from the sale of crops. If the creditor determines that the consumer's annual income divided equally across 12 months is sufficient for the consumer to make monthly loan payments, the creditor reasonably may determine that the consumer can repay the loan, even though the consumer may not receive income during certain months.

Paragraph 43(c)(2)(ii).

1. *Employment status and income.* Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Under § 226.43(c)(2)(ii), a creditor need verify a consumer's current employment status only if the creditor relies on the consumer's employment income in determining the consumer's repayment ability. For example, if a creditor relies wholly on a consumer's investment income to determine repayment ability, the creditor need not verify or document employment status. *See* comment 43(c)(4)–2 for guidance on which income to consider where multiple consumers apply jointly for a loan.

2. *Military personnel.* Creditors may verify the employment status of military personnel using the electronic database maintained by the Department of Defense to facilitate identification of consumers covered by credit protections provided pursuant to 10 U.S.C. 987.

Paragraph 43(c)(2)(iii).

1. *General.* For purposes of the repayment ability determination required under § 226.43(c)(2), a creditor must consider the consumer's monthly payment on a covered transaction that is calculated as required under § 226.43(c)(5), taking into account any mortgage-related obligations. "Mortgage-related obligations" is defined in § 226.43(b)(8).

Paragraph 43(c)(2)(iv).

1. *Home equity lines of credit.* For purposes of § 226.43(c)(2)(iv), a simultaneous loan includes any covered transaction or home equity line of credit subject to § 226.5b (HELOC) that will be made to the same consumer at or before consummation of the covered transaction and secured by the same dwelling that secures the covered transaction. A HELOC that is a simultaneous loan that the creditor knows or has reason to know about must be considered as a mortgage obligation in determining a consumer's ability to repay the covered transaction even though the HELOC is not a covered transaction subject to § 226.43. See § 226.43(a) discussing the scope of this section. "Simultaneous loan" is defined in § 226.43(b)(12). For further explanation of "same consumer," *see* comment 43(b)(12)–2.

2. *Knows or has reason to know.* In determining a consumer's repayment ability for a covered transaction under § 226.43(c)(2), a creditor must consider the consumer's payment obligation on any simultaneous loan that the creditor knows or has reason to know will be made at or before consummation of the covered transaction. For example, where a covered transaction is a home purchase loan, the creditor must consider the consumer's periodic payment obligation for any "piggyback" second-lien loan that the creditor knows or has reason to know will be used to finance part of the consumer's down payment. The creditor complies with this requirement where, for example, the creditor follows policies and procedures that show at or before consummation that the same consumer has applied for another credit transaction secured by the same dwelling. To illustrate, assume a creditor receives an application for a home purchase loan where the requested loan amount is less than the home purchase price. The creditor's policies and procedures require the consumer to state the source of the downpayment. If the creditor determines the source of the downpayment is another extension of credit that will be made to the same consumer at or before consummation and secured by the same dwelling, the creditor knows or has reason to know of the simultaneous loan and must consider the simultaneous loan. Alternatively, if the creditor has information that suggests the downpayment source is the consumer's income or existing assets, the creditor would be under no further obligation to determine whether a simultaneous loan will be extended at or before consummation of the covered transaction.

3. *Scope of timing.* For purposes of § 226.43(c)(2)(iv), a simultaneous loan includes a loan that comes into existence concurrently with the covered transaction subject to § 226.43(c). In all cases, a simultaneous loan does not include a credit transaction that occurs after consummation of the covered transaction that is subject to this section.

4. *Verification of simultaneous loans.* Although a credit report may be used to verify current obligations, it will not reflect a simultaneous loan that has not yet been consummated or has just recently been consummated. If the creditor knows or has reason to know that there will be a simultaneous loan extended at or before consummation, the creditor may verify the simultaneous loan by obtaining third-party verification from the third-party creditor of the simultaneous loan. For example, the creditor may obtain a copy of the promissory note or other written verification from the third-party creditor in accordance with widely accepted governmental or non-governmental standards. For further guidance, see comments 43(c)(3)–1 and –2 discussing verification using third-party records.

43(c)(2)(v) Mortgage-related obligations.

1. *General.* A creditor must include in its repayment ability assessment the consumer's mortgage-related obligations, such as the expected property taxes and premiums for mortgage-related insurance required by the creditor as set forth in § 226.45(b)(1), but need not include mortgage-related insurance premiums that the creditor does not require, such as credit insurance or fees for operational debt suspension and debt cancellation agreements. Mortgage-related obligations must be included in the creditor's determination of repayment ability regardless of whether the amounts are included in the monthly payment or whether there is an escrow account established. See § 226.43(b)(8) defining the term "mortgage-related obligations."

2. *Pro rata amount.* In considering mortgage-related obligations that are not paid monthly, a creditor may look to widely accepted governmental or non-governmental standards in determining the *pro rata* monthly payment amount.

3. *Estimates.* Estimates of mortgage-related obligations should be based upon information that is known to the creditor at the time the creditor underwrites the mortgage obligation.

Information is known if it is reasonably available to the creditor at the time of underwriting the loan. *See* comment 17(c)(2)(i)–1 discussing the "reasonably available" standard. For purposes of this section, the creditor need not project potential changes, such as by estimating possible increases in taxes and insurance.

4. *Verification of mortgage-related obligations.* Creditors must make the repayment ability determination required under § 226.43(c) based on information verified from reasonably reliable records. For guidance regarding verification of mortgage-related obligations see comments 43(c)(3)–1 and –2, which discuss verification using third-party records.

Paragraph 43(c)(2)(vi).

1. *Consideration and verification of current debt obligations.* In determining how to define "current debt obligations" and how to verify such obligations, creditors may look to widely accepted governmental and non-governmental underwriting standards. For example, a creditor must consider student loans, automobile loans, revolving debt, alimony, child support, and existing mortgages. To verify the obligations as required by § 226.43(c)(3), a creditor may, for instance, look to credit reports, student loan statements, automobile loan statements, credit card statements, alimony or child support court orders, and existing mortgage statements.

2. *Discrepancies between a credit report and an application.* If a credit report reflects a current debt obligation that a consumer has not listed on the application, the creditor must consider the obligation. The credit report is deemed a reasonably reliable third-party record under § 226.43(c)(3). If a credit report does not reflect a current debt obligation that a consumer has listed on the application, the creditor must consider the obligation. However, the creditor need not verify the existence or amount of the obligation through another source. If a creditor nevertheless verifies an obligation, the creditor must consider the obligation based on the information from the verified source.

Paragraph 43(c)(2)(vii).

1. *Monthly debt-to-income ratio and residual income. See* § 226.43(c)(7) regarding the definitions and calculations for the monthly debt-to-income ratio and residual income.

Paragraph 43(c)(2)(viii).

1. *Consideration and verification of credit history.* In determining how to define "credit history" and how to verify credit history, creditors may look to widely accepted governmental and non-governmental underwriting standards. For example, a creditor may consider factors such as the number and age of credit lines, payment history, and any judgments, collections, or bankruptcies. To verify credit history as required by § 226.43(c)(3), a creditor may, for instance, look to credit reports from credit bureaus, or nontraditional credit references contained in third-party documents, such as rental payment history or public utility payments.

43(c)(3) Verification using third-party records.

1. *Records specific to the individual consumer.* Records used to verify a consumer's repayment ability must be specific to the individual consumer. Records regarding average incomes in the consumer's geographic location or average incomes paid by the consumer's employer, for example, would not be specific to the individual consumer and are not sufficient.

2. *Obtaining records.* To determine repayment ability, creditors may obtain records from a third-party service provider, such as a party the consumer's employer uses to respond to income verification requests, as long as the records are reasonably reliable and specific to the individual consumer. Creditors also may obtain third-party records directly from the consumer. For example, creditors using payroll statements to verify the consumer's income (as allowed under § 226.43(c)(4)(iii) may obtain the payroll statements from the consumer.

43(c)(4) Verification of income or assets.

1. *Income or assets relied on.* A creditor need consider, and therefore need verify, only the income or assets the creditor relies on to evaluate the consumer's repayment ability. *See* comment 43(c)(2)(i)–2. For example, if a consumer's application states that the consumer earns a salary and is paid an annual bonus and the creditor relies on only the consumer's salary to evaluate the consumer's repayment ability, the creditor need verify only the salary.

2. *Multiple applicants.* If multiple consumers jointly apply for a loan and each lists income or assets on the application, the creditor need verify only the income or assets the creditor relies on in determining repayment ability.

3. *Tax-return transcript.* Under § 226.43(c)(4), creditors may verify a consumer's income using an Internal Revenue Service (IRS) tax-return transcript, which summarizes the information in a consumer's filed tax return, another record that provides reasonably reliable evidence of the consumer's income, or both. Creditors may obtain a copy of a tax-return transcript or a filed tax return directly from the consumer or from a service provider and need not obtain the copy directly from the IRS or other taxing authority. *See* comment 43(c)(3)–2.

Paragraph 43(c)(4)(vi).

1. *Government benefits.* In verifying a consumer's income, creditors may use a written or electronic record from a government agency of the amount of any benefit payments or awards, such as a "proof of income letter" issued by the Social Security Administration (also known as a "budget letter," "benefits letter," or "proof of award letter").

43(c)(5) Payment calculation.

43(c)(5)(i) General rule.

1. *General.* For purposes of § 226.43(c)(2)(iii), a creditor must determine the consumer's ability to repay the covered transaction using the payment calculation methods set forth in § 226.43(c)(5). The payment calculation methods differ depending on whether the covered transaction has a balloon payment, or is an interest-only or negative amortization loan. The payment calculation method set forth in § 226.43(c)(5)(i) applies to any covered transaction that does not have a balloon payment, or that is not an interest-only or negative amortization loan, whether it is a fixed-rate, adjustable-rate or step-rate mortgage. The terms "fixed-rate mortgage," "adjustable-rate mortgage," "step-rate mortgage," "interest-only loan" and "negative amortization loan," are defined in § 226.18(s)(7)(i), (ii), (iii), (iv) and (v), respectively. For the meaning of the term "balloon payment," see § 226.18(s)(5)(i). The payment calculation method set forth in § 226.43(c)(5)(ii) applies to any covered transaction that is a loan with a balloon payment, interest-only loan, or negative amortization loan. See commentary to § 226.43(c)(5)(i) and (ii), which provides examples for calculating the monthly payment for purposes of the repayment ability determination required under § 226.43(c)(2)(iii).

2. *Greater of the fully indexed rate or introductory rate; premium adjustable-rate transactions.* A creditor must determine a consumer's repayment ability for the covered transaction using substantially equal, monthly, fully amortizing payments that are based on the greater of the fully indexed rate or any introductory interest rate. In some adjustable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were determined by using the the index plus margin, or formula (*i.e.,* fully indexed rate). However, an initial rate that is a

premium rate is higher than the rate based on the index or formula. In such cases, creditors must calculate the fully amortizing payment based on the initial "premium" rate. "Fully indexed rate" is defined in § 226.43(b)(3).

3. *Monthly, fully amortizing payments.* Section 226.43(c)(5)(i) does not prescribe the terms or loan features that a creditor may choose to offer or extend to a consumer, but establishes the calculation method a creditor must use to determine the consumer's repayment ability for a covered transaction. For example, the terms of the loan agreement may require that the consumer repay the loan in quarterly or bi-weekly scheduled payments, but for purposes of the repayment ability determination, the creditor must convert these scheduled payments to monthly payments in accordance with § 226.43(c)(5)(i)(B). Similarly, the loan agreement may not require the consumer to make fully amortizing payments, but for purposes of the repayment ability determination the creditor must convert any non-amortizing payments to fully amortizing payments.

4. *Substantially equal.* In determining whether monthly, fully amortizing payments are substantially equal, creditors should disregard minor variations due to payment-schedule irregularities and odd periods, such as a long or short first or last payment period. That is, monthly payments of principal and interest that repay the loan amount over the loan term need not be equal, but the monthly payments should be substantially the same without significant variation in the monthly combined payments of both principal and interest. For example, where no two monthly payments vary from each other by more than 1% (excluding odd periods, such as a long or short first or last payment period), such monthly payments would be considered substantially equal for purposes of this section. In general, creditors should determine whether the monthly, fully amortizing payments are substantially equal based on guidance provided in § 226.17(c)(3) (discussing minor variations), and § 226.17(c)(4)(i)–(iii) (discussing payment-schedule irregularities and measuring odd periods due to a long or short first period) and associated commentary.

5. *Examples.* The following are examples of how to determine the consumer's repayment ability based on substantially equal, monthly, fully amortizing payments as required under § 226.43(c)(5)(i) (all amounts are rounded):

i. *Fixed-rate mortgage.* A loan in an amount of $200,000 has a 30-year loan term and a fixed interest rate of 7%. For purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a payment of $1,331, which is the substantially equal, monthly, fully amortizing payment that will repay $200,000 over 30 years using the fixed interest rate of 7%.

ii. *Adjustable-rate mortgage with discount for five years.* A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 6% that is fixed for an initial period of five years, after which the interest rate will adjust annually based on a specified index plus a margin of 3%, subject to a 2% annual periodic interest rate adjustment cap. The index value in effect at consummation is 4.5%; the fully indexed rate is 7.5% (4.5% plus 3%). Even though the scheduled monthly payment required for the first five years is $1,199, for purposes of § 226.43(c)(2)(iii) the creditor must determine the consumer's ability to repay the loan based on a payment of $1,398, which is the substantially equal, monthly, fully amortizing payment that will repay $200,000 over 30 years using the fully indexed rate of 7.5%.

iii. *Step-rate mortgage.* A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides that the interest rate will be 6.5% for the first two years of the loan, 7% for the next three years of the loan, and 7.5% thereafter. Accordingly, the scheduled payment amounts are $1,264 for the first two years, $1,328 for the next three years, and $1,388 thereafter for the remainder of the term. For purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a payment of $1,398, which is the substantially equal, monthly, fully amortizing payment that would repay $200,000 over 30 years using the fully indexed rate of 7.5%.

43(c)(5)(ii) Special rules for loans with a balloon payment, interest-only loans, and negative amortization loans.

Paragraph 43(c)(5)(ii)(A).

1. *General.* For loans with a balloon payment, the rules differ depending on whether the loan is a higher-priced covered transaction, as defined under § 226.43(b)(4), or is not a higher-priced covered transaction because the annual percentage rate does not exceed the applicable average prime offer rate (APOR) for a comparable transaction. "Average prime offer rate" is defined in § 226.45(a)(2)(ii); "higher-priced covered transaction" is defined in § 226.43(b)(4). For higher-priced covered transactions with a balloon payment, the creditor must consider the consumer's ability to repay the loan based on the payment schedule under the terms of the legal obligation, including any required balloon payment. For loans with a balloon payment that are not higher-priced covered transactions, the creditor should use the maximum payment scheduled during the first five years of the loan following consummation. "Balloon payment" is defined in § 226.18(s)(5)(i).

2. *First five years after consummation.* Under § 226.43(c)(5)(ii)(A)(*1*), the creditor must determine a consumer's ability to repay a loan with a balloon payment that is not a higher-priced covered transaction using the maximum payment scheduled during the first five years (60 months) after consummation. For example, assume a loan with a balloon payment due at the end of a five-year loan term. The loan is consummated on August 15, 2011, and the first monthly payment is due on October 1, 2011. The first five years after consummation occurs on August 15, 2016. The balloon payment must be made on the due date of the 60th monthly payment, which is September 1, 2016. For purposes of determining the consumer's ability to repay the loan under § 226.43(c)(2)(iii), the creditor need not consider the balloon payment that is due on September 1, 2016.

3. *Renewable balloon loan; loan term.* A balloon loan that is not a higher-priced covered transaction could provide that a creditor is unconditionally obligated to renew a balloon loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control). *See* comment 17(c)(1)–11 discussing renewable balloon loans. For purposes of this section, the loan term does not include any the period of time that could result from a renewal provision. To illustrate, assume a 3-year balloon loan that is not a higher-priced covered transaction contains an unconditional obligation to renew for another three years at the consumer's option. In this example, the loan term for the balloon loan is 3 years, and not the potential 6 years that could result if the consumer chooses to renew the loan. Accordingly, the creditor must underwrite the loan using the maximum payment scheduled in the first five years after consummation, which includes the balloon payment due at the end of the 3-year loan term. *See* comment 43(c)(5)(ii)(A).ii, which provides an example of how to determine the consumer's repayment ability for a 3-year renewable balloon loan.

4. *Examples of loans with a balloon payment that are not higher-priced covered transactions.* The following are examples of how to determine the maximum payment scheduled during the first five years after consummation (all amounts are rounded):

i. *Balloon payment loan with a three-year loan term; fixed interest rate.* A loan agreement provides for a fixed interest rate of 6%, which is below the APOR threshold for a comparable transaction, thus the loan is not a higher-priced covered transaction. The loan amount is $200,000, and the loan has a three-year loan term but is amortized over 30 years. The monthly payment scheduled for the first three years following consummation is $1,199, with a balloon payment of $193,367 due at the end of the third year. For purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on the balloon payment of $193,367.

ii. *Renewable balloon payment loan with a three-year loan term.* Assume the same facts above in 43(c)(5)(ii)(A).i, except that the loan agreement also provides that the creditor is unconditionally obligated to renew the balloon payment mortgage at the consumer's option at the end of the three-year term for another three years (the creditor retains the option to increase the interest rate at the time of renewal). In determining the maximum payment scheduled during the first five years after consummation, the creditor must use a loan term of three years. Accordingly, for purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on the balloon payment of $193,367.

iii. *Balloon payment loan with a five-year loan term; fixed interest rate.* A loan provides for a fixed interest rate of 6%, which is below the APOR threshold for a comparable transaction, and thus, the loan is not a higher-priced covered transaction. The loan amount is $200,000, and the loan has a five-year loan term but is amortized over 30 years. The loan is consummated on March 15, 2011, and the monthly payment scheduled for the first five years following consummation is $1,199, with the first monthly payment due on May 1, 2011. The first five years after consummation end on March 15, 2016. The balloon payment of $187,308 is required on the due date of the 60th monthly payment, which is April 1, 2016 (more than five years after consummation). For purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on the monthly payment of $1,199, and need not consider the balloon payment of $187,308 due on April 1, 2016.

5. *Example of a higher-priced covered transaction with a balloon payment.* The following is an example of how to determine the consumer's repayment ability based on the loan's payment schedule, including any balloon payment (all amounts are rounded):

i. *Balloon payment loan with a 10-year loan term; fixed interest rate.* The loan is a higher-priced covered transaction with a fixed interest rate of 7%. The loan amount is $200,000 and the loan has a 10-year loan term, but is amortized over 30 years. The monthly payment scheduled for the first ten years is $1,331, with a balloon payment of $172,956. For purposes of § 226.43(c)(2)(iii), the creditor must consider the consumer's ability to repay the loan based on the payment schedule that fully repays the loan amount, including the balloon payment of $172,956.

Paragraph 43(c)(5)(ii)(B).

1. *General.* For loans that permit interest-only payments, the creditor must use the fully indexed rate or introductory rate, whichever is greater, to calculate the substantially equal, monthly payment of principal and interest that will repay the loan amount over the term of the loan remaining as of the date the loan is recast. For discussion regarding the fully indexed rate and the meaning of "substantially equal," *see* comments 43(b)(3)–1 through –5 and 43(c)(5)(i)–4, respectively. Under § 226.43(c)(5)(ii)(B), the relevant term of the loan is the period of time that remains as of the date the loan is recast to require fully amortizing payments. For a loan on which only interest and no principal has been paid, the loan amount will be the outstanding principal balance at the time of the recast. "Loan amount" and "recast" are defined in § 226.43(b)(5) and (b)(11), respectively. "Interest-only" and "Interest-only loan" are defined in § 226.18(s)(7)(iv).

2. *Examples.* The following are examples of how to determine the consumer's repayment ability based on substantially equal, monthly payments of principal and interest under § 226.43(c)(5)(ii)(B) (all amounts are rounded):

i. *Fixed-rate mortgage with interest-only payments for five years.* A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate of 7%, and permits interest-only payments for the first five years. The monthly payment of $1167 scheduled for the first five years would cover only the interest due. The loan is recast on the due date of the 60th monthly payment, after which the scheduled monthly payments increase to $1414, a monthly payment that repays the loan amount of $200,000 over the 25 years remaining as of the date the loan is recast (300 months). For purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a payment of $1414, which is the substantially equal, monthly, fully amortizing payment that would repay $200,000 over the 25 years remaining as of the date the loan is recast using the fixed interest rate of 7%.

ii. *Adjustable-rate mortgage with discount for three years and interest-only payments for five years.* A loan in an amount of $200,000 has a 30-year loan term, but provides for interest-only payments for the first five years. The loan agreement provides for a discounted interest rate of 5% that is fixed for an initial period of three years, after which the interest rate will adjust each year based on a specified index plus a margin of 3%, subject to an annual interest rate adjustment cap of 2%. The index value in effect at consummation is 4.5%; the fully indexed rate is 7.5% (4.5% plus 3%). The monthly payments of $833 for the first three years and $1250 for the following two years would cover only the interest due. The loan is recast on the due date of the 60th monthly payment, after which the scheduled monthly payments increase to $1478, a monthly payment that will repay the loan amount of $200,000 over the remaining 25 years of the loan (300 months). For purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a monthly payment of $1,478, which is the substantially equal, monthly payment of principal and interest that would repay $200,000 over the 25 years remaining as of the date the loan is recast using the fully indexed rate of 7.5%.

Paragraph 43(c)(5)(ii)(C).

1. *General.* For purposes of determining the consumer's ability to repay a negative amortization loan, the creditor must use substantially equal, monthly payments of principal and interest based on the fully indexed rate or the introductory rate, whichever is greater, that will repay the maximum loan amount over the term of the loan that remains as of the date the loan is recast. Accordingly, before determining the substantially equal, monthly payments the creditor must first determine the maximum loan amount and the period of time that remains in

the loan term after the loan is recast. "Recast" is defined in § 226.43(b)(11). Second, the creditor must use the fully indexed rate or introductory rate, whichever is greater, to calculate the substantially equal, monthly payment amount that will repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast. For discussion regarding the fully indexed rate and the meaning of "substantially equal," see comments 43(b)(3)–1 through –5 and 43(c)(5)(i)–4, respectively. For the meaning of the term "maximum loan amount" and a discussion of how to determine the maximum loan amount for purposes of § 226.43(c)(5)(ii)(C), *see* § 226.43(b)(7) and associated commentary. "Negative amortization loan" is defined in § 226.18(s)(7)(v).

2. *Term of loan.* Under § 226.43(c)(5)(ii)(C), the relevant term of the loan is the period of time that remains as of the date the terms of the legal obligation recast. That is, the creditor must determine substantially equal, monthly payments of principal and interest that will repay the maximum loan amount based on the period of time that remains after any negative amortization cap is triggered or any period permitting minimum periodic payments expires, whichever occurs first.

3. *Examples.* The following are examples of how to determine the consumer's repayment ability based on substantially equal, monthly payments of principal and interest as required under § 226.43(c)(5)(ii)(C) (all amounts are rounded):

i. *Adjustable-rate mortgage with negative amortization.* A. Assume an adjustable-rate mortgage in the amount of $200,000 with a 30-year loan term. The loan agreement provides that the consumer can make minimum monthly payments that cover only part of the interest accrued each month until the date on which the principal balance reaches 115% of its original balance (*i.e.,* a negative amortization cap of 115%) or for the first five years of the loan (60 monthly payments), whichever occurs first. The introductory interest rate at consummation is 1.5%. One month after consummation, the interest rate adjusts and will adjust monthly thereafter based on the specified index plus a margin of 3.5%. The index value in effect at consummation is 4.5%; the fully indexed rate is 8% (4.5% plus 3.5%). The maximum lifetime interest rate is 10.5%; there are no other periodic interest rate adjustment caps that limit how quickly the maximum lifetime rate may be reached. The minimum monthly payment for the first year is based on the initial interest rate of 1.5%. After that, the minimum monthly payment adjusts annually, but may increase by no more than 7.5% over the previous year's payment. The minimum monthly payment is $690 in the first year, $742 in the second year, and $798 in the first part of the third year.

B. To determine the maximum loan amount, assume that the interest rate increases to the maximum lifetime interest rate of 10.5% at the first adjustment (*i.e.,* the second month), and interest accrues at that rate until the loan is recast. Assume that the consumer makes the minimum monthly payments scheduled, which are capped at 7.5% from year-to-year, for the maximum possible time. Because the consumer's minimum monthly payments are less than the interest accrued each month, negative amortization occurs (*i.e.,* the accrued but unpaid interest is added to the principal balance). Thus, assuming that the consumer makes the minimum monthly payments for as long as possible and that the maximum interest rate of 10.5% is reached at the first rate adjustment (*i.e.,* the second month), the negative amortization cap of 115% is reached on the due date of the 27th monthly payment and the loan is recast as of that date. The maximum loan amount as of the due date of the 27th monthly payment is $229,243, and the remaining term of the loan is 27 years and nine months (333 months).

C. For purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a monthly payment of $1,716, which is the substantially equal, monthly payment of principal and interest that will repay the maximum loan amount of $229,243 over the remaining loan term of 333 months using the fully indexed rate of 8%. *See* comments 43(b)(7)–1 and –2 discussing the calculation of the maximum loan amount, and § 226.43(b)(11) for the meaning of the term "recast."

ii. *Fixed-rate, graduated payment mortgage.* A loan in the amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed-interest rate of 7.5%, and requires the consumer to make minimum monthly payments during the first year, with payments increasing 12.5% every year for four years (the annual payment cap). The payment schedule provides for payments of $943 in the first year, $1061 in the second year, $1194 in the third year, $1343 in the fourth year, and then requires $1511 for the remaining term of the loan. During the first three years of the loan, the payments are less than the interest accrued each month, resulting in negative amortization. Assuming the minimum payments increase year-to-year up to the 12.5% payment cap, the consumer will begin making payments that cover at least all of the interest accrued at the end of the third year. Thus, the loan is recast on the due date of the 36th monthly payment. The maximum loan amount on that date is $207,659, and the remaining loan term is 27 years (324 months). For purposes of § 226.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a monthly payment of $1497, which is the substantially equal, monthly payment of principal and interest that will repay the maximum loan amount of $207,659 over the remaining loan term of 27 years using the fixed interest rate of 7.5%.

43(c)(6) Payment calculation for simultaneous loans.

1. *Scope.* In determining the consumer's repayment ability for a covered transaction under § 226.43(c)(2)(iii), creditors must include consideration of any simultaneous loan which it knows, or has reason to know, will be made at or before consummation of the covered transaction. For a discussion of the standard "knows or has reason to know," see comment 43(c)(2)(iv)–2. For the meaning of the term "simultaneous loan," see § 226.43(b)(12).

2. *Payment calculation—covered transaction.* For a simultaneous loan that is a covered transaction, as that term is defined under § 226.43(b)(12), a creditor must determine a consumer's ability to repay the monthly payment obligation for a simultaneous loan as set forth in § 226.43(c)(5), taking into account any mortgage-related obligations. For the meaning of the term "mortgage-related obligations," see § 226.43(b)(8).

3. *Payment calculation—home equity line of credit.* For a simultaneous loan that is a home equity line of credit subject to § 226.5b, the creditor must consider the periodic payment required under the terms of the plan when assessing the consumer's ability to repay the covered transaction secured by the same dwelling as the simultaneous loan. Under § 226.43(c)(6)(ii), a creditor must determine the periodic payment required under the terms of the plan by considering the actual amount of credit to be drawn by the consumer at consummation of the covered transaction. The amount to be drawn is the amount requested by the consumer; when the amount requested will be disbursed, or actual receipt of funds, is not determinative. For example, where

the creditor's policies and procedures require the source of downpayment to be verified, and the creditor verifies that a simultaneous loan that is a HELOC will provide the source of downpayment for the first-lien covered transaction, the creditor must consider the periodic payment on the HELOC by assuming the amount drawn is the downpayment amount. In general, a creditor should determine the periodic payment based on guidance in staff commentary to § 226.5b(d)(5) (discussing payment terms).

43(c)(7) Monthly debt-to-income ratio or residual income.

1. *Monthly debt-to-income ratio and monthly residual income.* Under § 226.43(c)(2)(vii), the creditor must consider the consumer's monthly debt-to-income ratio, or the consumer's monthly residual income, in accordance with the requirements in § 226.43(c)(7). To determine the appropriate threshold for the monthly debt-to-income ratio or the monthly residual income, the creditor may look to widely accepted governmental and non-governmental underwriting standards.

2. *Use of both debt-to-income ratio and monthly residual income.* If a creditor considers both the consumer's monthly debt-to-income ratio and the residual income, the creditor may base the ability-to-repay determination on either the consumer's debt-to-income ratio or residual income, even if the ability-to-repay determination would differ with the basis used.

3. *Compensating factors.* The creditor may consider compensating factors to mitigate a higher debt-to-income ratio or lower residual income. For example, the creditor may consider the consumer's assets other than the dwelling securing the covered transaction or the consumer's residual income as a compensating factor for a higher debt-to-income ratio. In determining whether and in what manner to consider compensating factors, creditors may look to widely accepted governmental and non-governmental underwriting standards.

43(d) Refinancing of non-standard mortgages.

43(d)(1) Scope.

1. *Written application.* For an explanation of the requirements for a "written application" in § 226.43(d)(1)(iii), (d)(1)(iv) and (d)(1)(v), see comment 19(a)(1)(i)–3.

Paragraph 43(d)(1)(ii).

1. *Materially lower.* The exemptions afforded under § 226.43(d)(3) apply to a refinancing only if the monthly payment for the new loan is "materially lower" than the monthly payment for an existing non-standard mortgage. The payments to be compared must be calculated based on the requirements under § 226.43(d)(5). Whether the new loan payment is "materially lower" than the non-standard mortgage payment depends on the facts and circumstances. In all cases, a payment reduction of 10 percent or more meets the "materially lower" standard.

Paragraph 43(d)(1)(iv).

1. *Late payment—24 months prior to application.* Under § 226.43(d)(1)(iv), the exemptions in § 226.43(d)(3) apply to a covered transaction only if, during the 24 months immediately preceding the creditor's receipt of the consumer's written application for a refinancing, the consumer has made no more than one payment on the non-standard mortgage more than 30 days late. (For an explanation of "written application," see comment 43(d)(1)–1.) For example, assume a consumer applies for a refinancing on May 1, 2011. Assume also that the consumer made a non-standard mortgage payment on August 15, 2009, that was 45 days late. The consumer made no other late payments on the non-standard mortgage between May 1, 2009, and May 1, 2011. In this example, the requirement under § 226.43(d)(1)(iv) is met because the consumer made only one payment that was over 30 days late within the 24 months prior to applying for the refinancing (*i.e.,* 20 and one-half months prior to application).

2. *Payment due date.* Whether a payment is more than 30 days late is measured in relation to the contractual due date not accounting for any grace period. For example, if the contractual due date for a non-standard mortgage payment is the first day of every month, but no late fee will be charged as long as the payment is received by the 16th of the month, the payment due date for purposes of § 226.43(d)(1)(iv) and (d)(1)(v) is the first day of the month, not the 16th day of the month. Thus, a payment due under the contract on September 1st that is paid on October 1st is made more than 30 days after the payment due date.

Paragraph 43(d)(1)(v).

1. *Late payment—six months prior to application.* Under § 226.43(d)(1)(v), the exemptions in § 226.43(d)(3) apply to a covered transaction only if, during the six months immediately preceding the creditor's receipt of the consumer's written application for a refinancing, the consumer has made no payments on the non-standard mortgage more than 30 days late. (For an explanation of "written application" and how to determine the payment due date, see comments 43(d)(1)–1 and 43(d)(1)(iv)–2.) For example, assume a consumer with a non-standard mortgage applies for a refinancing on May 1, 2011. If the consumer made a 45-day late payment on March 15, 2011, the requirement under § 226.43(d)(1)(v) is not met because the consumer made a payment more than 30 days late just one and one-half months prior to application. If the number of months between consummation of the non-standard mortgage and the consumer's application for the standard mortgage is six or fewer, the consumer may not have made any payment more than 30 days late on the non-standard mortgage.

43(d)(2) Definitions.

43(d)(2)(i) Non-standard mortgage.

Paragraph 43(d)(2)(i)(A).

1. *Adjustable-rate mortgage with an introductory fixed rate.* Under § 226.43(d)(2)(i)(A), an adjustable-rate mortgage with an introductory fixed interest rate for one year or longer is considered a "non-standard mortgage." For example, a covered transaction that has a fixed introductory rate for the first two, three or five years and then converts to a variable rate for the remaining 28, 27 or 25 years, respectively, is a "non-standard mortgage." A covered transaction with an introductory rate for six months that then converts to a variable rate for the remaining 29 and ½ years is not a "non-standard mortgage."

43(d)(2)(ii) Standard mortgage.

Paragraph 43(d)(2)(ii)(A).

1. *Regular periodic payments.* Under § 226.43(d)(2)(ii)(A), a "standard mortgage" must provide for regular periodic payments that do not result in an increase of the principal balance (negative amortization), allow the consumer to defer repayment of principal (*see* comment 43(e)(2)(i)–2), or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term "substantially equal," see comment 43(c)(5)(i)–4. In addition, a single-payment transaction is not a "standard mortgage" because it does not require "regular periodic payments." *See also* comment 43(e)(2)(i)–1.

Paragraph 43(d)(2)(ii)(D).

1. *First five years after consummation.* A "standard mortgage" must have an interest rate that is fixed for at least the first five years (60 months) after consummation. For example, assume an

adjustable-rate mortgage that applies the same fixed interest rate to determine the first 60 payments of principal and interest due. The loan consummates on August 15, 2011, and the first monthly payment is due on October 1, 2011. The first five years after consummation occurs on August 15, 2016. The first interest rate adjustment occurs on the due date of the 60th monthly payment, which is September 1, 2016. This loan meets the criterion for a "standard mortgage" under § 226.43(d)(2)(ii)(D) because the interest rate is fixed until September 1, 2016, which is more than five years after consummation. For guidance regarding step-rate mortgages, see comment 43(e)(2)(iv)–3.iii.

Paragraph 43(d)(2)(ii)(E).

1. *Permissible use of proceeds.* To qualify as a "standard mortgage," the mortgage proceeds may be used for only two purposes: paying off the non-standard mortgage and paying for closing costs, including paying escrow amounts required at or before closing. If the proceeds of a covered transaction are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not meet the definition of a "standard mortgage."

43(d)(3) Exemption from certain repayment ability requirements.

Paragraph 43(d)(3)(i).

1. *Two-part determination.* To qualify for the exemptions in § 226.43(d)(3), a creditor must have considered, first, whether the consumer is likely to default on the existing mortgage once that loan is recast, and second, whether the new mortgage will prevent the consumer's default.

2. *Likely default.* In considering whether a consumer is likely to default on the standard mortgage once it is recast, a creditor may look to widely-accepted governmental and non-governmental standards for analyzing a consumer's likelihood of default.

Paragraph 43(d)(3)(ii).

1. *Payment calculation for repayment ability requirements.* If the conditions in § 226.43(d)(3)(i) are met, the creditor may meet the payment calculation requirements for determining a consumer's ability to repay the new loan by applying the calculation prescribed under § 226.43(d)(5)(ii), rather than the calculations prescribed under § 226.43(c)(2)(iii) and (c)(5). For example, assume that a "standard mortgage" is an adjustable-rate mortgage that has an initial fixed interest rate for the first five years after consummation. The loan consummates on August 15, 2011, and the first monthly payment is due on October 1, 2011. Five years after consummation occurs on August 15, 2016. The first interest rate adjustment occurs on the due date of the 60th monthly payment, which is September 1, 2016. Under § 226.43(d)(3)(ii), to calculate the payment required for the ability-to-repay rule under § 226.43(c)(2)(iii), the creditor should use the payment based on the interest rate that is fixed for the first five years after consummation (from August 15, 2011, until August 15, 2016), and is not required to account for the payment resulting after the first interest rate adjustment on September 1, 2016.

43(d)(5) Payment calculations.

43(d)(5)(i) Non-standard mortgage.

1. *Payment calculation for a non-standard mortgage.* In determining whether the monthly periodic payment for a standard mortgage is materially lower than the monthly periodic payment for the non-standard mortgage under § 226.43(d)(1)(ii), the creditor must consider the monthly payment for the non-standard mortgage that will result after the loan is "recast," assuming substantially equal payments of principal and interest that amortize the remaining loan amount over the remaining term as of the date the mortgage is recast. For guidance regarding the meaning of "substantially equal," see comment 43(c)(5)(i)–4. For the meaning of "recast," see § 226.43(b)(11) and associated commentary.

2. *Fully indexed rate.* The term "fully indexed rate" in § 226.43(d)(5)(i)(A) for calculating the payment for a non-standard mortgage is generally defined in § 226.43(b)(3) and associated commentary. Under § 226.43(b)(3) the fully indexed rate is calculated at the time of consummation. For purposes of § 226.43(d)(5)(i), however, the fully indexed rate is calculated within a reasonable period of time before or after the date the creditor receives the consumer's written application for the standard mortgage. Thirty days is generally considered "a reasonable period of time."

3. *Written application.* For an explanation of the requirements for a "written application" in § 226.43(d)(5)(i), see comment 19(a)(1)(i)–3.

4. *Payment calculation for an adjustable-rate mortgage with an introductory fixed rate.* Under § 226.43(d)(5)(i), the monthly periodic payment for an adjustable-rate mortgage with an introductory fixed interest rate for a period of one or more years must be calculated based on several assumptions.

i. First, the payment must be based on the outstanding principal balance as of the date on which the mortgage is recast, assuming all scheduled payments have been made up to that date and the last payment due under those terms is made and credited on that date. For example, assume an adjustable-rate mortgage with a 30-year loan term. The loan agreement provides that the payments for the first 24 months are based on a fixed rate, after which the interest rate will adjust annually based on a specified index and margin. The loan is recast on the due date of the 24th payment. If the 24th payment is due on September 1, 2013, the creditor must calculate the outstanding principal balance as of September 1, 2013, assuming that all 24 payments under the fixed rate terms have been made and credited timely.

ii. Second, the payment calculation must be based on substantially equal monthly payments of principal and interest that will fully repay the outstanding principal balance over the term of the loan remaining as of the date the loan is recast. Thus, in the example above, the creditor must assume a loan term of 28 years (336 payments).

iii. Third, the payment must be based on the fully indexed rate, as defined in § 226.43(b)(3), as of the date of the written application for the standard mortgage.

5. *Example of payment calculation for an adjustable-rate mortgage with an introductory fixed rate.* The following example illustrates the rule described in comment 43(d)(5)(i)–4:

i. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted introductory interest rate of 5% that is fixed for an initial period of two years, after which the interest rate will adjust annually based on a specified index plus a margin of 3 percentage points.

ii. The non-standard mortgage consummates on February 15, 2011, and the first monthly payment is due on April 1, 2011. The loan is recast on the due date of the 24th monthly payment, which is March 1, 2013.

iii. On March 15, 2012, the creditor receives the consumer's written application for a refinancing after the consumer has made 12 monthly on-time payments. On this date, the index value is 4.5%.

iv. To calculate the non-standard mortgage payment that must be compared to the standard mortgage payment under § 226.43(d)(1)(ii), the creditor must use—

A. The outstanding principal balance as of March 1, 2013, assuming all scheduled payments have been made up to March 1, 2013, and the last payment due under the fixed rate terms is made

and credited on March 1, 2013. In this example, the outstanding principal balance is $193,948.

B. The fully indexed rate of 7.5%, which is the index value of 4.5% as of March 15, 2012 (the date on which the application for a refinancing is received) plus the margin of 3%.

C. The remaining loan term as of March 1, 2013, the date of the recast, which is 28 years (336 payments).

v. Based on these assumptions, the monthly payment for the non-standard mortgage for purposes of determining whether the standard mortgage monthly payment is lower than the non-standard mortgage monthly payment (*see* § 226.43(d)(1)(ii)) is $1,383. This is the substantially equal, monthly payment of principal and interest required to repay the outstanding principal balance at the fully-indexed rate over the remaining term.

6. *Payment calculation for an interest-only loan.* Under § 226.43(d)(5)(i), the monthly periodic payment for an interest-only loan must be calculated based on several assumptions.

i. First, the payment must be based on the loan amount, as defined in § 226.43(b)(5) (for a loan on which only interest and no principal has been paid, the "loan amount" will be the outstanding principal balance at the time of the recast), assuming all scheduled payments are made under the terms of the legal obligation in effect before the mortgage is recast. For example, assume that a mortgage has a 30-year loan term, and provides that the first 24 months of payments are interest-only. If the 24th payment is due on September 1, 2013, the creditor must calculate the outstanding principal balance as of September 1, 2013, assuming that all 24 payments under the interest-only payment terms have been made and credited timely.

ii. Second, the payment calculation must be based on substantially equal monthly payments of principal and interest that will fully repay the loan amount over the term of the loan remaining as of the date the loan is recast. Thus, in the example above, the creditor must assume a loan term of 28 years (336 payments).

iii. Third, the payment must be based on the fully indexed rate, as defined in § 226.43(b)(3), as of the date of the written application for the standard mortgage.

7. *Example of payment calculation for an interest-only loan.* The following example illustrates the rule described in comment 43(d)(5)(i)–6:

i. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate of 7%, and permits interest-only payments for the first two years (the first 24 payments), after which time amortizing payments of principal and interest are required.

ii. The non-standard mortgage consummates on February 15, 2011, and the first monthly payment is due on April 1, 2011. The loan is recast on the due date of the 24th monthly payment, which is March 1, 2013.

iii. On March 15, 2012, the creditor receives the consumer's written application for a refinancing, after the consumer has made 12 monthly on-time payments.

iv. To calculate the non-standard mortgage payment that must be compared to the standard mortgage payment under § 226.43(d)(1)(ii), the creditor must use—

A. The loan amount, which is the outstanding principal balance as of March 1, 2013, assuming all scheduled interest-only payments have been made and credited up to that date. In this example, the loan amount is $200,000.

B. An interest rate of 7%, which is the interest rate in effect at the time of consummation of this fixed-rate non-standard mortgage.

C. The remaining loan term as of March 1, 2013, the date of the recast, which is 28 years (336 payments).

v. Based on these assumptions, the monthly payment for the non-standard mortgage for purposes of determining whether the standard mortgage monthly payment is lower than the non-standard mortgage monthly payment (*see* § 226.43(d)(1)(ii)) is $1,359. This is the substantially equal, monthly payment of principal and interest required to repay the loan amount at the fully-indexed rate over the remaining term.

8. *Payment calculation for a negative amortization loan.* Under § 226.43(d)(5)(i), the monthly periodic payment for a negative amortization loan must be calculated based on several assumptions.

i. First, the calculation must be based on the maximum loan amount, as defined in § 226.43(b)(7). For examples of how to calculate the maximum loan amount, see comment 43(b)(7)–3.

ii. Second, the calculation must be based on substantially equal monthly payments of principal and interest that will fully repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast. For example, if the loan term is 30 years and the loan is recast on the due date of the 60th monthly payment, the creditor must assume a loan term of 25 years (300 payments).

iii. Third, the payment must be based on the fully-indexed rate as of the date of the written application for the standard mortgage.

9. *Example of payment calculation for a negative amortization loan.* The following example illustrates the rule described in comment 43(d)(5)(i)–8:

i. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides that the consumer can make minimum monthly payments that cover only part of the interest accrued each month until the date on which the principal balance increases to the negative amortization cap of 115% of the loan amount, or for the first five years of monthly payments (60 payments), whichever occurs first. The loan is an adjustable-rate mortgage that adjusts monthly according to a specified index plus a margin of 3.5%.

ii. The non-standard mortgage consummates on February 15, 2011, and the first monthly payment is due on April 1, 2011. Assume that, based on the calculation of the maximum loan amount required under § 226.43(b)(7) and associated commentary, the negative amortization cap of 115% would be reached on July 1, 2013, the due date of the 28th monthly payment.

iii. On March 15, 2012, the creditor receives the consumer's written application for a refinancing, after the consumer has made 12 monthly on-time payments. On this date, the index value is 4.5%.

iv. To calculate the non-standard mortgage payment that must be compared to the standard mortgage payment under § 226.43(d)(1)(ii), the creditor must use—

A. The maximum loan amount of $229,243 as of July 1, 2013.

B. The fully indexed rate of 8%, which is the index value of 4.5% as of March 15, 2012 (the date on which the creditor receives the application for a refinancing) plus the margin of 3.5%.

C. The remaining loan term as of July 1, 2013, the date of the recast, which is 27 years and eight months (332 monthly payments).

v. Based on these assumptions, the monthly payment for the non-standard mortgage for purposes of determining whether the standard mortgage monthly payment is lower than the non-standard mortgage monthly payment (*see* § 226.43(d)(1)(ii)) is $1,717. This is the substantially equal, monthly payment of principal and interest required to repay the maximum loan amount at the fully-indexed rate over the remaining term.

43(d)(5)(ii) Standard mortgage.

1. *Payment calculation for a standard mortgage.* In determining whether the monthly periodic payment for a standard mortgage is materially lower than the monthly periodic payment for

a non-standard mortgage, the creditor must consider the monthly payment for the standard mortgage that will result in substantially equal, monthly, fully amortizing payments (as defined in § 226.43(b)(2)) using the rate as of consummation. For guidance regarding the meaning of "substantially equal" see comment 43(c)(5)(i)–4. For a mortgage with a single, fixed rate for the first five years, the maximum rate that will apply during the first five years after consummation will be the rate at consummation. For a step-rate mortgage, however, which is a type of fixed-rate mortgage, the rate that must be used is the highest rate that will apply during the first five years after consummation. For example, if the rate for the first two years is 4%, the rate for the second two years is 5%, and the rate for the next two years is 6%, the rate that must be used is 6%.

2. *Example of payment calculation for a standard mortgage.* The following example illustrates the rule described in comment 43(d)(5)(ii)–1: A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 6% that is fixed for an initial period of five years, after which time the interest rate will adjust annually based on a specified index plus a margin of 3%, subject to a 2% annual interest rate adjustment cap. The creditor must determine whether the standard mortgage monthly payment is materially lower than the non-standard mortgage monthly payment (*see* § 226.43(d)(1)(ii)) based on a standard mortgage payment of $1,199. This is the substantially equal, monthly payment of principal and interest required to repay $200,000 over 30 years at an interest rate of 6%.

43(e) Presumption of compliance for qualified mortgages.

Alternative 1—Paragraph 43(e)(1)–1

43(e)(1) Safe harbor.

1. *In general.* A creditor or assignee that satisfies the requirements of § 226.43(e)(2) or § 226.43(f), as applicable, is deemed to have complied with § 226.43(c)(1). That is, a creditor or assignee need not demonstrate compliance with § 226.43(c)(2)–(7) if the terms of the loan comply with § 226.43(e)(2)(i)–(ii) (or, if applicable, § 226.43(f)); the loan's points and fees do not exceed the limits set forth in § 226.43(e)(2)(iii); and the creditor has complied with the underwriting criteria described in § 226.43(e)(2)(iv)–(v) (or, if applicable, § 226.43(f)). The consumer may show the loan is not a qualified mortgage with evidence that the terms, points and fees, or underwriting did not comply with § 226.43(e)(2)(i)–(v) (or § 226.43(f), if applicable). If a loan is not a qualified mortgage (for example because the loan provides for negative amortization), then the creditor or assignee must demonstrate that the loan complies with all of the requirements in § 226.43(c) (or, if applicable, § 226.43(d)).

Alternative 2—Paragraph 43(e)(1)–1

43(e)(1) Presumption of compliance.

1. *In general.* Under § 226.43(c)(1), a creditor must make a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability, at the time of consummation, to repay the loan according to its terms, including any mortgage-related obligations. Under § 226.43(e)(1), a creditor or assignee of a covered transaction is presumed to have complied with the repayment ability requirement of § 226.43(c)(1) if the terms of the loan comply with § 226.43(e)(2)(i)–(ii) (or, if applicable, § 226.43(f)); the points and fees do not exceed the limit set forth in § 226.43(e)(2)(iii), and the creditor has complied with the underwriting criteria described in § 226.43(e)(2)(iv)–(v) (or, if applicable, § 226.43(f)). If a loan is not a qualified mortgage (for example because the loan provides for negative amortization), then the creditor or assignee must demonstrate that the loan complies with all of the requirements in § 226.43(c) (or, if applicable, § 226.43(d)). However, even if the loan is a qualified mortgage, the consumer may rebut the presumption of compliance with evidence that the loan did not comply with § 226.43(c)(1). For example, evidence of a high debt-to-income ratio with no compensating factors, such as adequate residual income, could be sufficient to rebut the presumption.

43(e)(2) Qualified mortgage defined.

Paragraph 43(e)(2)(i).

1. *Regular periodic payments.* Under § 226.43(e)(2)(i), a qualified mortgage must provide for regular periodic payments that may not result in an increase of the principal balance (negative amortization), deferral of principal repayment, or a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest, on a monthly or other periodic basis, that will fully repay the loan amount over the loan term. The periodic payments must be substantially equal except for the effect that any interest rate change after consummation has on the payment in the case of an adjustable-rate or step-rate mortgage. In addition, because § 226.43(e)(2)(i) requires that a qualified mortgage provide for regular periodic payments, a single-payment transaction may not be a qualified mortgage.

2. *Deferral of principal repayment.* Under § 226.43(e)(2)(i)(B), a qualified mortgage's regular periodic payments may not allow the consumer to defer repayment of principal, except as provided in § 226.43(f). A loan allows the deferral of principal repayment if one or more of the periodic payments may be applied solely to accrued interest and not to loan principal. Deferred principal repayment also occurs if the payment is applied to both accrued interest and principal but the consumer is permitted to make periodic payments that are less than the amount that would be required under a payment schedule that has substantially equal payments that fully repay the loan amount over the loan term. Graduated payment mortgages, for example, allow deferral of principal repayment in this manner and therefore may not be qualified mortgages.

Paragraph 43(e)(2)(iv).

1. *Maximum interest rate during the first five years after consummation.* For a qualified mortgage, the creditor must underwrite the loan using a periodic payment of principal and interest based on the maximum interest rate that may apply during the first five years after consummation. Creditors must use the maximum rate that could apply at any time during the first five years after consummation, regardless of whether the maximum rate is reached at the first or subsequent adjustment during the five year period.

2. *Fixed-rate mortgage.* For a fixed-rate mortgage, creditors should use the interest rate in effect at consummation. "Fixed-rate mortgage" is defined in § 226.18(s)(7)(iii).

3. *Interest rate adjustment caps.* For an adjustable-rate mortgage, creditors should assume the interest rate increases after consummation as rapidly as possible, taking into account the terms of the legal obligation. That is, creditors should account for any periodic interest rate adjustment cap that may limit how quickly the interest rate can increase under the terms of the legal obligation. Where a range for the maximum interest rate during the first five years is provided, the highest rate in that range is the maximum interest rate for purposes of this section. Where the terms of the legal obligation are not based on an index plus margin or formula, the creditor must use the maximum interest rate that occurs during the first five years after consummation. To illustrate:

i. *Adjustable-rate mortgage with discount for three years.* Assume an

adjustable-rate mortgage has an initial discounted rate of 5% that is fixed for the first three years of the loan, after which the rate will adjust annually based on a specified index plus a margin of 3%. The index value in effect at consummation is 4.5%. The loan agreement provides for an annual interest rate adjustment cap of 2%, and a lifetime maximum interest rate of 10%. The first rate adjustment occurs on the due date of the 36th monthly payment; the rate can adjust to no more than 7% (5% initial discounted rate plus 2% annual interest rate adjustment cap). The second rate adjustment occurs on the due date of the 48th monthly payment; the rate can adjust to no more than 9% (7% rate plus 2% annual interest rate adjustment cap). The third rate adjustment occurs on the due date of the 60th monthly payment, which occurs more than five years after consummation. The maximum interest rate during the first five years after consummation is 9% (the rate on the due date of the 48th monthly payment). For further discussion of how to determine whether a rate adjustment occurs during the first five years after consummation, *see* comment 43(e)(2)(iv)-2.

ii. *Adjustable-rate mortgage with discount for three years.* Assume the same facts above except that the lifetime maximum interest rate is 8%, which is less than the maximum interest rate in the first five years of 9%. The maximum interest rate during the first five years after consummation is 8%.

iii. *Step-rate mortgage.* Assume a step-rate mortgage with an interest rate fixed at 6.5% for the first two years, 7% for the next three years, and then 7.5% for remainder of the loan term. The maximum interest rate during the first five years after consummation is 7%.

4. *First five years after consummation.* Under § 226.43(e)(2)(iv)(A), the creditor must underwrite the loan using the maximum interest rate that may apply during the first five years after consummation. To illustrate, assume an adjustable-rate mortgage with an initial fixed interest rate of 5% for the first five years after consummation, after which the interest rate will adjust annually to the specified index plus a margin of 6%, subject to a 2% annual interest rate adjustment cap. The index value in effect at consummation is 5.5%. The loan consummates on September 15, 2011, and the first monthly payment is due on November 1, 2011. The first five years after consummation occurs on September 15, 2016. The first rate adjustment to no more than 7% (5% plus 2% annual interest rate adjustment cap) occurs on the due date of the 60th monthly payment, which is October 1, 2016, and therefore, the rate adjustment does not occur during the first five years after consummation. To meet the definition of qualified mortgage under § 226.43(e)(2), the creditor must underwrite the loan using a monthly payment of principal and interest based on an interest rate of 5%, which is the maximum interest rate during the first five years after consummation.

5. *Loan amount.* To meet the definition of qualified mortgage under § 226.43(e)(2), a creditor must determine the periodic payment of principal and interest using the maximum interest rate permitted during the first five years after consummation that repays either—

i. The outstanding principal balance as of the earliest date the maximum interest rate during the first five years after consummation can take effect under the terms of the legal obligation, over the remaining term of the loan. To illustrate, assume a loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 5% that is fixed for an initial period of three years, after which the interest rate will adjust annually based on a specified index plus a margin of 3%, subject to a 2% annual interest rate adjustment cap and a lifetime maximum interest rate of 10%. The index value in effect at consummation equals 4.5%. Assuming the interest rate increases after consummation as quickly as possible, the rate adjustment to the maximum interest rate of 9% occurs on the due date of the 48th monthly payment. The outstanding principal balance on the loan at the end of the fourth year (after the 48th monthly payment is credited) is $188,218. The creditor will meet the definition of qualified mortgage if it underwrites the covered transaction using the monthly payment of principal and interest of $1,564 to repay the outstanding principal balance of $188,218 over the remaining 26 years of the loan term (312 months) using the maximum interest rate during the first five years of 9%; or

ii. The loan amount, as that term is defined in § 226.43(b)(5), over the entire loan term, as that term is defined in § 226.43(b)(6). Using the same example above, the creditor will meet the definition of qualified mortgage if it underwrites the covered transaction using the monthly payment of principal and interest of $1,609 to repay the loan amount of $200,000 over the 30-year loan term using the maximum interest rate during the first five years of 9%.

6. *Mortgage-related obligations.* Section 226.43(e)(2)(iv) requires creditors to take mortgage-related obligations into account when underwriting the loan. For the meaning of the term "mortgage-related obligations," see § 226.43(b)(8) and associated commentary.

7. *Examples.* The following are examples of how to determine the periodic payment of principal and interest based on the maximum interest rate during the first five years after consummation for purposes of meeting the definition of qualified mortgage under § 226.43(e) (all payment amounts are rounded):

i. *Fixed-rate mortgage.* A loan in an amount of $200,000 has a 30-year loan term and a fixed interest rate of 7%. The maximum interest rate during the first five years after consummation for a fixed-rate mortgage is the interest rate in effect at consummation, which is 7% under this example. The monthly fully amortizing payment scheduled over the 30 years is $1,331. The creditor will meet the definition of qualified mortgage if it underwrites the loan using the fully amortizing payment of $1,331.

ii. *Adjustable-rate mortgage with discount for three years.*

A. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 5% that is fixed for an initial period of three years, after which the interest rate will adjust annually based on a specified index plus a margin of 3%, subject to a 2% annual interest rate adjustment cap. The index value in effect at consummation is 4.5%. The loan consummates on March 15, 2011, and the first regular periodic payment is due May 1, 2011. The loan agreement provides that the first rate adjustment occurs on April 1, 2014 (the due date of the 36th monthly payment); the second rate adjustment occurs on April 1, 2015 (the due date of the 48th monthly payment); and the third rate adjustment occurs on April 1, 2016 (the due date of the 60th monthly payment), which occurs more than five years after consummation of the loan. Under this example, the maximum interest rate during the first five years after consummation is 9%, which applies beginning on April 1, 2015 (the due date of the 48th monthly payment). The outstanding principal balance at the end of the fourth year (after the 48th payment is credited) is $188,218.

B. The creditor will meet the definition of a qualified mortgage if it underwrites the loan using the monthly payment of principal and interest of $1,564 to repay the outstanding principal balance at the end of the fourth year of $188,218 over the remaining 26 years of the loan term (312 months), using the maximum interest

rate during the first five years after consummation of 9%. Alternatively, the creditor will meet the definition of a qualified mortgage if it underwrites the loan using the monthly payment of principal and interest of $1,609 to repay the loan amount of $200,000 over the 30-year loan term, using the maximum interest rate during the first five years after consummation of 9%.

iii. *Adjustable-rate mortgage with discount for five years.*

A. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 6% that is fixed for an initial period of five years, after which the interest rate will adjust annually based on a specified index plus a margin of 3%, subject to a 2% annual interest rate adjustment cap. The index value in effect at consummation is 4.5%. The loan consummates on March 15, 2011 and the first regular periodic payment is due May 1, 2011. Under the terms of the loan agreement, the first rate adjustment is on April 1, 2016 (the due date of the 60th monthly payment), which occurs more than five years after consummation of the loan. Thus, the maximum interest rate under the terms of the loan during the first five years after consummation is 6%.

B. The creditor will meet the definition of a qualified mortgage if it underwrites the loan using the monthly payment of principal and interest of $1,199 to repay the loan amount of $200,000 over the 30-year loan term using the maximum interest rate during the first five years of 6%.

iv. *Step-rate mortgage.* A. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides that the interest rate is 6.5% for the first two years of the loan, 7% for the next three years, and then 7.5% for remainder of the loan term. The maximum interest rate during the first five years after consummation is 7%, which occurs on the due date of the 24th monthly payment. The outstanding principal balance at the end of the second year (after the 24th payment is credited) is $195,379.

B. The creditor will meet the definition of a qualified mortgage if it underwrites the loan using a monthly payment of principal and interest of $1,328 to repay the outstanding principal balance of $195,379 over the remaining 28 years of the loan term (336 months), using the maximum interest rate during the first five years of 7%. Alternatively, the creditor will meet the definition of a qualified mortgage if it underwrites the loan using a monthly payment of principal and interest of $1,331 to repay $200,000 over the 30-year loan term using the maximum interest rate during the first five years of 7%.

Alternative 1—Paragraph 43(e)(2)(v)

Paragraph 43(e)(2)(v).

1. *Income or assets.* Creditors may rely on commentary to § 226.43(c)(2)(i), (c)(3), and (c)(4) for guidance regarding considering and verifying the consumer's income or assets to satisfy the conditions under § 226.43(e)(2)(v) for a "qualified mortgage."

Alternative 2—Paragraph 43(e)(2)(v)

Paragraph 43(e)(2)(v).

1. *Repayment ability.* Creditors may rely on commentary to § 226.43(c)(2)(i), (ii), (iv), and (vi) through (viii), (c)(3), (c)(4), (c)(6), and (c)(7) for guidance regarding considering and verifying the consumer's repayment ability to satisfy the conditions under § 226.43(e)(2)(v) for a "qualified mortgage."

43(e)(3) Limits on points and fees for qualified mortgages.

Paragraph 43(e)(3)(i).

1. *Total loan amount.* For an explanation of how to calculate the "total loan amount" under § 226.43(e)(3)(i), see comment 32(a)(1)(ii)-1.

2. *Calculation of allowable points and fees.* A creditor must determine which category the loan falls into based on the face amount of the note (the "loan amount"), but must apply the allowable points and fees percentage to the "total loan amount," which may be different than the face amount of the note. A creditor must calculate the allowable amount of points and fees for a qualified mortgage as follows:

i. First, the creditor must determine the "tier" into which the loan falls based on the loan amount. The loan amount is the principal amount the consumer will borrow as reflected in the promissory note or loan contract. *See* § 226.43(b)(5). For example, if the loan amount is $75,000, the loan falls into the tier for loans of $75,000 or more, to which a three percent cap on points and fees applies.

ii. Second, the creditor must determine the "total loan amount" based on the calculation for the "total loan amount" under comment 32(a)(1)(ii)–1. If the loan amount is $75,000, for example, the "total loan amount" may be a different amount, such as $73,000.

iii. Third, the creditor must apply the percentage cap on points and fees to the "total loan amount." For example, for a loan of $75,000 where the "total loan amount" is $73,000, the allowable points and fees is three percent of $73,000 or $2,190.

Alternative 1—Comment 43(e)(3)(i)–3

3. *Sample determination of allowable points and fees for a $50,000 loan.* A covered transaction with a loan amount of $50,000 falls into the third points and fees tier, to which a points and fees cap of 3.5 percent of the total loan amount applies. *See* § 226.43(e)(3)(i)(C). If a $48,000 total loan amount is assumed, the allowable points and fees for this $50,000 loan is 3.5 percent of $48,000 or $1,920.

Alternative 2—Comment 43(e)(3)(i)–3

3. *Sample determination of allowable points and fees for a $50,000 loan.* A covered transaction with a loan amount of $50,000 falls into the second points and fees tier, requiring application of a formula to derive the allowable points and fees. *See* § 226.43(e)(3)(i)(B). If a $48,000 total loan amount is assumed, the required formula must be applied as follows:

i. First, the amount of $20,000 must be subtracted from $48,000 to yield the number of dollars to which the .0036 basis points multiple must be applied—in this case, $28,000.

ii. Second, $28,000 must be multiplied by .0036—in this case resulting in 100.8.

iii. Third, 100.8 must be subtracted from 500. (The maximum allowable points and fees on any loan is five percent of the total loan amount for loans of less than $20,000. Five percent expressed in basis points is 500). Five hundred minus 100.8 equals 399.2, which is the allowable points and fees in basis points.

iv. Finally, the allowable points and fees in basis points must be translated into the appropriate percentage of the "total loan amount," which is achieved by multiplying 399.2 by .01. The result is 3.99 percent. Accordingly, the allowable points and fees for this $50,000 loan as a dollar figure is 3.99 percent of $48,000 or $1,915.20.

Paragraph 43(e)(3)(ii).

1. *Charges not retained by the creditor, loan originator, or an affiliate of either.* In general, a creditor is not required to count in "points and fees" for a qualified mortgage any bona fide third party charge not retained by the creditor, loan originator, or an affiliate of either. For example, if a creditor charges a consumer $400 for an appraisal conducted by a third party not affiliated with the creditor, pays the third party appraiser $300 for the appraisal, and retains $100, the creditor may exclude $300 of this fee but count the $100 it retains in "points and fees" for a qualified mortgage.

2. *Private mortgage insurance.* For qualified mortgages, the exclusion for

bona fide third party charges not retained by the creditor, loan originator, or an affiliate of either is limited by § 226.32(b)(1)(i)(B) in the general definition of "points and fees." Section 226.32(b)(1)(i)(B) requires inclusion in "points and fees" of premiums or other charges payable at or before closing for any private guaranty or insurance protecting the creditor against the consumer's default or other credit loss to the extent that the premium or charge exceeds the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)). These premiums or charges must also be included if the premiums or charges are not required to be refundable on a pro-rated basis, or the refund is not required to be automatically issued upon notification of the satisfaction of the underlying mortgage loan. Under these circumstances, even if the premiums or other charges are not retained by the creditor, loan originator, or an affiliate of either, they must be included in the "points and fees" calculation for qualified mortgages. *See* comments 32(b)(1)(i)–3 and –4 for further discussion of including upfront private mortgage insurance premiums in the points and fees calculation.

3. *Exclusion of up to two bona fide discount points.* Section 226.43(e)(3)(ii)(B) provides that, under certain circumstances, up to two "bona fide discount points," as defined in § 226.43(e)(3)(iii), may be excluded from the "points and fees" calculation for a qualified mortgage. The following example illustrates the rule:

i. Assume a covered transaction that is a first-lien, purchase money home mortgage with a fixed interest rate and a 30-year term. Assume also that the consumer locks in an interest rate of 6.00 percent on May 1, 2011, that was discounted from a rate of 6.50 percent because the consumer paid two discount points. Finally, assume that the average prime offer rate (APOR) as of May 1, 2011 for home mortgages with a fixed interest rate and a 30-year term is 5.50 percent.

ii. The creditor may exclude two discount points from the "points and fees" calculation because the rate from which the discounted rate was derived (6.50 percent) exceeded APOR for a comparable transaction as of the date the rate on the covered transaction was set (5.25 percent) by only one percent. For the meaning of "comparable transaction," refer to comment 43(e)(3)(ii)–5.

4. *Exclusion of up to one bona fide discount point.* Section 226.43(e)(3)(ii)(C) provides that, under certain circumstances, up to one "bona fide discount point," as defined in § 226.43(e)(3)(iii), may be excluded from the "points and fees" calculation for a qualified mortgage. The following example illustrates the rule:

i. Assume a covered transaction that is a first-lien, purchase money home mortgage with a fixed interest rate and a 30-year term. Assume also that the consumer locks in an interest rate of 6.00 percent on May 1, 2011, that was discounted from a rate of 7.00 percent because the consumer paid four discount points. Finally, assume that the average prime offer rate (APOR) as of May 1, 2011, for home mortgages with a fixed interest rate and a 30-year term is 5.00 percent.

ii. The creditor may exclude one discount point from the "points and fees" calculation because the rate from which the discounted rate was derived (7.00 percent) exceeded APOR for a comparable transaction as of the date the rate on the covered transaction was set (5.00 percent) by only two percent.

5. *Comparable transaction.* The table of average prime offer rates published by the Board indicates how to identify the comparable transaction. *See* comment 45(a)(2)(ii)-2.

43(f) Balloon-payment qualified mortgages made by certain creditors.

43(f)(1) Exception.

Paragraph 43(f)(1)(i).

1. *Satisfaction of qualified mortgage requirements.* Under § 226.43(f)(1)(i), a qualified mortgage that provides for a balloon payment must satisfy all of the requirements for a qualified mortgage in § 226.43(e)(2), other than § 226.43(e)(2)(i)(B), (e)(2)(i)(C), and (e)(2)(iv). Therefore, to satisfy this condition, a covered transaction with balloon payment terms must provide for regular periodic payments that do not result in an increase of the principal balance, pursuant to § 226.43(e)(2)(i)(A); must have a loan term that does not exceed 30 years, pursuant to § 226.43(e)(2)(ii); must have total points and fees that do not exceed specified thresholds pursuant to § 226.43(e)(2)(iii); and must satisfy the consideration and verification requirements in § 226.43(e)(2)(v).

Paragraph 43(f)(1)(ii).

1. *Example.* Under § 226.43(f)(1)(ii), if a qualified mortgage provides for a balloon payment, the creditor must determine that the consumer is able to make all scheduled payments under the legal obligation other than the balloon payment. For example, assume a loan in an amount of $200,000 that has a five-year loan term, but is amortized over 30 years. The loan agreement provides for a fixed interest rate of 6%. The loan consummates on March 15, 2011, and the monthly payment of principal and interest scheduled for the first five years is $1,199, with the first monthly payment due on May 1, 2011. The balloon payment of $187,308 is required on the due date of the 60th monthly payment, which is April 1, 2016. The loan remains a qualified mortgage if the creditor underwrites the loan using the scheduled principal and interest payment of $1,199 (plus all mortgage-related obligations, pursuant to § 226.43(f)(1)(iii)(B)).

2. *Creditor's determination.* A creditor must determine that the consumer is able to make all scheduled payments other than the balloon payment to satisfy § 226.43(f)(1)(ii), but the creditor is not required to meet the repayment ability requirements of § 226.43(c)(2)–(7) because those requirements apply only to covered transactions that are not qualified mortgages. Nevertheless, a creditor satisfies § 226.43(f)(1)(ii) if it complies with the requirements of § 226.43(c)(2)–(7). A creditor also may make the determination that the consumer is able to make the scheduled payments (other than the balloon payment) by other means. For example, a creditor need not determine that the consumer is able to make the scheduled payments based on a payment amount that is calculated in accordance with § 226.43(c)(5)(ii)(A) or may choose to consider a debt-to-income ratio that is not determined in accordance with § 226.43(c)(7).

Paragraph 43(f)(1)(iii).

1. *Amortization period.* Under § 226.43(f)(1)(ii), if a qualified mortgage provides for a balloon payment, the creditor must determine that the consumer is able to make all scheduled payments under the legal obligation other than the balloon payment. Under § 226.43(f)(1)(iii), those scheduled payments must be determined using an amortization period that does not exceed 30 years and must include all mortgage-related obligations. Balloon payments often result when the periodic payment would fully repay the loan amount only if made over some period that is longer than the loan term. For example, a loan term of 10 years with periodic payments based on an amortization period of 20 years would result in a balloon payment being due at the end of the loan term. Whatever the loan term, the amortization period used to determine the scheduled periodic payments that the consumer must pay under the terms of the legal obligation may not exceed 30 years.

Paragraph 43(f)(1)(v).

1. *Creditor qualifications.* Under § 226.43(f)(1)(v), to make a qualified mortgage that provides for a balloon payment, the creditor must satisfy the following four criteria:

i. During the preceding calendar year, the creditor extended over 50% of its total covered transactions with balloon payment terms in counties that are "rural" or "underserved," as defined in § 226.43(f)(2). Pursuant to that section, the Board determines annually which counties in the United States are rural or underserved and publishes on its public Web site a list of those counties to enable creditors to determine whether they meet this criterion. Thus, for example, if a creditor originated 90 covered transactions with balloon payment terms during 2010, the creditor meets this element of the exception in 2011 if at least 46 of those loans are secured by properties located in one or more counties that are on the Board's list for 2010.

Alternative 1—Paragraph 43(f)(1)(v)–1.ii

ii. During the preceding calendar year, the creditor together with all affiliates extended covered transactions with principal amounts that in the aggregate total $____ or less.

Alternative 2—Paragraph 43(f)(1)(v)–1.ii

ii. During the preceding calendar year, the creditor together with all affiliates extended ___ or fewer covered transactions.

Alternative 1—Paragraph 43(f)(1)(v)–1.iii

iii. On and after [effective date of final rule], the creditor has not sold, assigned, or otherwise transferred legal title to the debt obligation for any covered transaction with a balloon-payment term.

Alternative 2—Paragraph 43(f)(1)(v)–1.iii

iii. During the preceding or current calendar year, the creditor has not sold, assigned, or otherwise transferred legal title to the debt obligation for any covered transaction with a balloon-payment term. Thus, for example, if a creditor sells a covered transaction with a balloon-payment term on April 1, 2012, the creditor becomes ineligible for the exception for the remainder of 2012 (but not retroactively for January through March of 2012) and all of 2013. If the creditor sells no covered transactions with balloon-payment terms during 2013, it then may become eligible again for the exception beginning on January 1, 2014 and remains eligible until and unless it sells such loans during 2014.

iv. As of the end of the preceding calendar year, the creditor had total assets that do not exceed the current asset threshold established by the Board. For calendar year 2011, the asset threshold is $2,000,000,000. Creditors that had total assets of $2,000,000,000 or less on December 31, 2010 satisfy this criterion for purposes of the exception during 2011.

43(f)(2) "Rural" and "underserved" defined.

1. *Requirements for "rural or underserved" status.* A county is considered "rural or underserved" for purposes of § 226.43(f)(1)(v)(A) if it satisfies either of the two tests in § 226.43(f)(2). The Board applies both tests to each county in the United States and, if a county satisfies either test, includes that county on the annual list of "rural or underserved" counties. The Board publishes on its public Web site the applicable list for each calendar year by the end of that year. A creditor's originations of covered transactions with balloon-payment terms in such counties during that year are considered in determining whether the creditor satisfies the condition in § 226.43(f)(1)(v)(A) and therefore will be eligible for the exception during the following calendar year. The Board determines whether each county is "rural" by reference to the currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS). Specifically, the Board classifies a county as "rural" if the USDA–ERS categorizes the county under UIC 7, 10, 11, or 12. The Board determines whether each county is "underserved" by reference to data submitted by mortgage lenders under the Home Mortgage Disclosure Act (HMDA).

43(g) Prepayment penalties.

43(g)(2) Limits on prepayment penalties.

1. *Maximum period and amount.* Section 226.43(g)(2) establishes the maximum period during which a prepayment penalty may be imposed and the maximum amount of the prepayment penalty. A covered transaction may include a prepayment penalty that may be imposed during a shorter period or in a lower amount than provided under § 226.43(g)(2). For example, a covered transaction may include a prepayment penalty that may be imposed for two years after consummation and equals two percent of the amount prepaid in each of those two years.

43(g)(3) Alternative offer required.

Paragraph 43(g)(3)(i).

1. *Same type of interest rate.* Under § 226.43(g)(3)(i), if a creditor offers a consumer a covered transaction with a prepayment penalty, the creditor must offer the consumer an alternative covered transaction without a prepayment penalty and with an annual percentage rate that cannot increase after consummation. Further, the covered transaction with a prepayment penalty and the alternative covered transaction without a prepayment penalty must both be fixed-rate mortgages or both be step-rate mortgages, as defined in § 226.18(s)(7)(iii) and (ii), respectively.

Paragraph 43(g)(3)(iv).

1. *Points and fees.* Whether or not an alternative covered transaction without a prepayment penalty satisfies the points and fees conditions for a qualified mortgage is determined based on the information known to the creditor at the time the creditor offers the consumer the transaction. At the time a creditor offers a consumer an alternative covered transaction without a prepayment penalty under § 226.43(g)(3), the creditor may know the amount of some, but not all, of the points and fees that will be charged for the transaction. For example, a creditor may not know that a consumer intends to buy single-premium credit unemployment insurance, which would be included in the points and fees for the covered transaction. The points and fees condition under § 226.43(g)(3)(ii)(C) is satisfied if a creditor reasonably believes, based on information known to the creditor at the time the offer is made, that the amount of points and fees to be charged for an alternative covered transaction without a prepayment penalty will be less than or equal to the amount of points and fees allowed for a qualified mortgage under § 226.43(e)(2)(iii).

Paragraph 43(g)(3)(v).

1. *Transactions for which the consumer likely qualifies.* Under § 226.43(g)(3)(v), the alternative covered transaction without a prepayment penalty the creditor must offer under § 226.43(g)(3) must be a transaction for which the creditor has a good faith belief the consumer likely qualifies. For example, assume the creditor has a good faith belief the consumer can afford monthly payments of up to $800. If the creditor offers the consumer a fixed-rate mortgage with a prepayment penalty for which monthly payments are $700 and an alternative covered transaction without a prepayment penalty for which monthly payments are $900, the requirements of § 226.43(g)(3)(v) are not met. The creditor's belief that the consumer likely qualifies for the

covered transaction without a prepayment penalty should be based on the information known to the creditor at the time the creditor offers the transaction. In making this determination, the creditor may rely on information provided by the consumer, even if the information subsequently is determined to be inaccurate.

43(g)(4) Offer through a mortgage broker.

1. *Rate sheet.* Under § 226.43(g)(4), where the creditor offers covered transactions with a prepayment penalty to consumers through a mortgage broker, as defined in § 226.36(a)(2), the creditor must present the mortgage broker an alternative covered transaction that satisfies the requirements of § 226.43(g)(3). Creditors may comply with this requirement by providing a rate sheet to the mortgage broker that states the terms of such an alternative covered transaction without a prepayment penalty.

2. *Alternative to creditor's offer.* Section 226.43(g)(4)(ii) requires that the creditor provide, by agreement, for the mortgage broker to present the consumer an alternative covered transaction without a prepayment penalty offered by either (1) the creditor, or (2) another creditor, if the other creditor offers a covered transaction with a lower interest rate or a lower total dollar amount of origination points or fees and discount points. The agreement may provide for the mortgage broker to present both the creditor's covered transaction and a covered transaction offered by another creditor with a lower interest rate or a lower total dollar amount of origination points or fees and discount points. See comment 36(e)(3)–3 for guidance in determining which step-rate mortgage has a lower interest rate.

3. *Agreement.* The creditor's agreement with a mortgage broker for purposes of § 226.43(g)(4) may be part of another agreement with the mortgage broker, for example, a compensation agreement. Thus, the creditor need not enter into a separate agreement with the mortgage broker with respect to each covered transaction with a prepayment penalty.

43(g)(5) Creditor that is a loan originator.

1. *Loan originator.* The definition of "loan originator" in § 226.36(a)(1) applies for purposes of § 226.43(g)(5). Thus, a loan originator includes any creditor that satisfies the definition of loan originator but makes use of "table-funding" by a third party. *See* comment 36(a)–1.i, –1.ii.

2. *Lower interest rate.* Under § 226.43(g)(5), a creditor that is a loan originator must present an alternative covered transaction without a prepayment penalty that satisfies the requirements of § 226.43(g)(3) offered by either the assignee for the covered transaction or another person, if that other person offers a transaction with a lower interest rate or a lower total dollar amount of origination points or fees or discount points. See comment 36(e)(3)–3 for guidance in determining which step-rate mortgage has a lower interest rate.

43(h) Evasion; open-end credit.

1. *Subject to closed-end credit rules.* Where a loan is documented as open-end credit but the features and terms or other circumstances demonstrate that it does not meet the definition of open-end credit, the loan is subject to the rules for closed-end credit, including § 226.43.◀

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By order of the Board of Governors of the Federal Reserve System, April 18, 2011.

Jennifer J. Johnson,

Secretary of the Board.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324–1265–02]

RIN 0648–BA01

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures

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

ACTION: Final rule.

SUMMARY: This final rule establishes the 2011–2012 harvest specifications for most of the species in the groundfish fishery and management measures for that fishery off the coasts of Washington, Oregon, and California consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). This rule also establishes, under emergency authority in section 305 of the Magnuson-Stevens Act (MSA), harvest specifications for eight overfished species, and for flatfish.

Emergency authority is being invoked to implement measures that were included in Amendment 16–5 to the PCGFMP, which NMFS disapproved in December 2010. These include a new rebuilding plan for petrale sole, revised rebuilding plans for the remaining seven overfished species, and revised status determination criteria and precautionary harvest control rule for flatfish.

DATES: This rule is effective May 11, 2011. Comments must be received no later than June 10, 2011.

ADDRESSES: Copies of this rule, the Record of Decision (ROD) and Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA) are available from William Stelle, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Electronic copies of this final rule are also available at the NMFS Northwest Region Web site: *http://www.nwr.noaa.gov*

You may submit comments, identified by 0648–BA01, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* 206–526–6736, Attn: Sarah Williams.
- *Mail:* 7600 Sand Point Way NE., Seattle, WA, 98115.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Sarah Williams, 7600 Sand Point Way NE., Seattle, WA, 98115. By phone at 206–526–4646 or fax at 206–526–6736.

Electronic Access: This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule to implement the 2011–2012 groundfish harvest specifications and management measures on November 3, 2010 (75 FR 67810). The proposed rule comment period was extended through January 4, 2011 (75 FR 75449, December 23, 2010) to provide additional opportunity for public comment given the delay in implementation. NMFS received 35 letters of comment, which are addressed later in the preamble of this final rule. See the preamble to the proposed rule for additional background information on the fishery and on this final rule.

The amount of each Pacific Coast groundfish species or species complex that is available for harvest in a specific year is referred to as a harvest specification. The PCGFMP requires the harvest specifications and management measures for groundfish to be set at least biennially. This final rule, which implements the NMFS preferred alternative described in the Final Environmental Impact Statement (FEIS), would set 2011–2012 and beyond harvest specifications and management measures for most of the groundfish species or species complexes managed under the PCGFMP. Specifications for the overfished species and flatfish are also included in this final rule but are adopted under the emergency authority described in section 305 of the MSA. The groundfish fishery regulations include a collection of management measures intended to keep the total catch of each groundfish species or species complex within the harvest specifications. The management measures would be revised by this action for 2011 and 2012.

The Notice of Availability for the FEIS for this action was published on March 11, 2011 (76 FR 13401). The final NMFS preferred alternative in the FEIS is a modified version of the Council's final preferred alternative (FPA) which was described in the proposed rule for this action. The NMFS preferred alternative differs from the Council's FPA and the specifications discussed in the proposed rule on this action with respect to the specifications for yelloweye rockfish and cowcod, and management measures relative to the Cowcod Conservation Area (CCA). These differences are discussed in detail in the Provisions Implemented Through Emergency Rule and Changes from the Proposed Rule sections of this rule.

Provisions Implemented Through Emergency Rule

Section 305(c) of the MSA provides the Secretary of Commerce the authority to promulgate emergency regulations that are treated as an amendment to an FMP for the period the regulations are in effect. The one new and seven revised rebuilding plans, revisions to flatfish proxies, ACLs for overfished species, and specifications for flatfish contained in this final rule are being adopted under emergency authority because these measures were part of, or are based on, Amendment 16–5 to the PCGFMP, which NMFS disapproved. This emergency action is necessary because NMFS is under court order to establish new specifications for overfished species by April 29, 2011, before the Council can submit and NMFS can implement a revised Amendment 16–5.

NMFS disapproved Amendment 16–5 because at the time of NMFS' approval decision, there was not an FEIS to support the decision. Review of actions under the Magnuson-Stevens Act (16 U.S.C. 1854(a)) requires that before approving an FMP or amendment, NMFS must review the FMP or amendment for consistency with the measures of the MSA itself as well as other applicable law. One of the primary tools that NMFS uses to accomplish this review is an adequate FEIS drafted

consistent with the guidance contained within NAO 216–6 (Environmental Review Procedures For Implementing the National Environmental Policy Act). NMFS completed the FEIS and made it available for public review on March 11, 2011.

As is described in the proposed rule preamble, on April 29, 2010, the district court for the Northern District of California issued an order in *NRDC* v. *Locke,* Case 3:01–cv–00421–JLI, vacating the 2009–10 harvest levels for yelloweye rockfish, cowcod, and darkblotched rockfish on the basis that the harvest levels did not meet the MSA mandate to rebuild those stocks in as short a time as possible taking into account factors including the needs of fishing communities. The court upheld the integrated or holistic approach used to develop the harvest levels for all of the overfished species and to analyze their impacts on communities, which was first applied in Amendment 16–4.

The Council, continuing the integrated or holistic approach developed in Amendment 16–4 and upheld by the district court, developed suites of overfished species ACLs, with ACLs for most of the non-overfished species held constant between the alternatives. The impacts of these suites of ACLs are analyzed in the FEIS, rather than the impacts of individual species ACLs. The DEIS included three alternative suites with lower, intermediate and higher ACLs for the overfished species, as well as the Council FPA that included the higher ACLs for all of the overfished species except for darkblotched rockfish, for which the Council adopted the intermediate ACL.

In response to public comment regarding rebuilding plans for overfished species and to ensure consistency with the court's order in *NRDC* v. *Locke,* Case 3:01–cv–00421–JLI, NMFS included in the FEIS an additional alternative (identified as Alternative 4, the NMFS preferred alternative) that was not expressly considered in the DEIS. The NMFS preferred alternative includes the same ACLs as the Council's FPA, except those for yelloweye and cowcod. It does not include changes to the CCAs that were included in the Council's FPA. For cowcod and yelloweye, the NMFS preferred alternative implements ACLs based on Spawning Potential Ratio (SPR) harvest rates that are associated with shorter rebuilding periods than those in the Council FPA. Specifically, in the NMFS preferred alternative, the target rebuilding year and the SPR harvest rate for cowcod are 2068 and 82.7 percent, and the target rebuilding year and the SPR harvest rate for yelloweye rockfish are 2074 and 76.0 percent. NMFS determined that the ACL in the Council's and NMFS' preferred alternative for darkblotched rockfish meets the MSA standard and is consistent with the court's order. Although the harvest level for darkblotched is similar to the level vacated by the court in 2010, the new rebuilding plan is based on a new stock assessment, uses a more conservative SPR harvest rate (64.9 percent rather than 62.1 percent), and rebuilds three years faster than the prior rebuilding plan (2025 rather than 2028).

The NMFS preferred alternative would rebuild as quickly as possible while avoiding serious adverse impacts to communities, and thus meets the MSA standard. Maintaining the 2010 level of economic activity in the most vulnerable communities could be expected to provide the consistency necessary for stability in the fishing community infrastructure and be adequate to support the implementation of the trawl rationalization program. At the same time the strategy would shorten the rebuilding duration for five of the overfished species (bocaccio, cowcod, darkblotched rockfish, widow rockfish and yelloweye rockfish); and maintain the upward rebuilding trajectories for the two overfished species (canary rockfish and Pacific Ocean perch (POP)) where new stock assessments redefined the starting point from which rebuilding began. Unlike the Council's FPA, the NMFS preferred alternative does not implement proposed changes to the CCAs that would allow commercial fixed gear and recreational fishing in areas shoreward of 30 fathoms and would also allow retention of shelf rockfish in depths shallower than 30 fathoms. The impacts of the proposed changes on cowcod, particularly juveniles, are uncertain, and increased impacts on juveniles could potentially delay rebuilding. In addition, because the ACL for cowcod is so extremely low, any measures that potentially increase cowcod mortality require better information on potential biological and economic effects to support such a change. In sum, NMFS concluded that the NMFS preferred alternative is more consistent with direction provided by the court in *NRDC* v. *Locke,* Case 3:01–cv–00421–JLI, and is more consistent with the MSA obligations to rebuild overfished species in the shortest timeframe possible, taking into account the obligation to rebuild, the needs of fishing communities, and the marine environment.

Comments and Responses

NMFS published a proposed rule on November 2, 2010 (75 FR 67810) with a comment period that closed on December 3, 2010. This comment period was extended to January 4, 2011 to allow more time for public comments. NMFS received 35 comments on the proposed rule. The Department of the Interior submitted a letter stating that they reviewed the proposed rule and had no comments. The Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW) and the California Department of Fish and Game (CDFG) all submitted letters in support of the Council's final action and suggested corrections to the proposed rule. 13 letters were submitted from fishing industry members in support of the Council's recommended changes to the depth restrictions in the CCA and the slope rockfish retention changes. One comment was submitted regarding a request for a processing at sea exemption. NMFS also received a number of comments from the public regarding the impacts from the overfished species specifications. The Council submitted a letter stating that the Exempted Fishing Permit that was issued in August of 2010 would actually be conducted in 2011. Oceana and the Natural Resource Defense Council (NRDC) submitted a joint letter regarding the proposed rule and FMP Amendments 16–5 and 23. In their letter they criticized NMFS for setting harvest specifications that allegedly did not comply with the MSA mandate to rebuild overfished species in a period as short as possible. Additionally, they criticized the implementation of Amendment 23 stating that the best available science was not used and that NMFS was not precautionary enough in setting harvest specifications for a number of species and species complexes. Ocean Conservancy submitted a letter raising similar issues as the joint Oceana-NRDC letter. Substantive comments received on the proposed rule are addressed in the following section:

Amendment 23 Implementation (P, ABCs, ACLs, etc) and Stock Complexes*

Comment 1: The ABC control rule makes Scientific and Statistical Committee's (SSC) involvement functionally expendable because it contemplates presenting the Council with a range of potential scientific uncertainty reduction values, based on the SSC recommended "sigma" values and a range of probabilities of overfishing, from which the Council

may choose. NMFS should adopt an ABC control rule that allows the SSC to recommend P* and sigma values along with a decision framework that allows changes to the recommended ABCs to be fully informed by analyses of resulting overfishing risks and environmental consequences.

Response: The ABC control rule selected by the Council is based on the recommendation of the SSC, and is consistent with the MSA and the NS1 (74 FR 3178, January 16, 2009). The SSC recommends the OFL and determines a sigma value representing scientific uncertainty with respect to stock assessments. Once it has determined those values, it can provide the Council with the reductions from OFL that would occur based on the sigma value in conjunction with a range of probabilities of overfishing. This approach conforms with NMFS's NS 1 guidelines. In response to comments on the guidelines, NMFS explains that determining the acceptable level of risk of overfishing that results from scientific uncertainty is a policy issue for the Council to decide. The SSC must recommend an ABC to the Council after the Council advises the SSC on the acceptable probability that a catch equal to the ABC would result in overfishing (January 16, 2009, 74 FR 3178, Response to Comment 42 at 3192). The SSC's role is to determine both the level of scientific uncertainty that exists and to incorporate the Council's policy decision as to acceptable levels of overfishing risk resulting from that uncertainty in developing an ABC. The SSC's recommendations regarding the OFL and sigma limit the range of ABC reductions possible under the available range of P* values consistent with the best scientific information regarding scientific uncertainty.

Comment 2: The proposed sigma values for category 1 stocks represent underestimated and/or inaccurate quantification of scientific uncertainty; they do not account for uncertainty arising from sources other than estimates of biomass in stock assessments, and they do not accurately account for uncertainty in estimates of biomass in stock assessments.

Response: While the proposed sigma value for data-rich stocks (category 1) does not include quantification of all known sources of scientific uncertainty, it is the best scientific information available at this time and the SSC will continue to refine this value in future biennial cycles. The SSC acknowledged that its recommended sigma value for data-rich species does not account for all sources of scientific uncertainty, but recommended this value as "the current best estimate of scientific uncertainty." (Supplemental SSC Report, April 2010, Agenda I.2.b). The Supplemental SSC Report 1 included in the March 2010 briefing book, which is the Councils record for each meeting and contains reports from advisory bodies, state and Federal agencies and public comments, states that the SSC viewed quantifying the uncertainty surrounding stock size estimations as the highest priority, given the large variability in stock assessments. The SSC did not recommend quantifying other sources of uncertainty for the 2011–2012 specifications cycle, but noted that it intends to consider other types of errors for future biennial cycles, specifically forecast uncertainty and uncertainty in the optimal harvest rate. In short, the SSC's recommended sigma values are the best available scientific information at this time. In addition, with respect to longspine thornyhead and shortspine thornyhead, the ACLs for the area south of 40°10′ N.lat are reduced below the ABC to account for uncertainty associated with limited trawl surveys.

Comment 3: The proposed sigma values for category 2 and 3 stocks lack a technical basis and thus are arbitrary. The Council should have used the PSA analysis to generate an appropriate P*.

Response: The SSC noted that scientific uncertainty with respect to the biomass estimates for category 2 and 3 stocks cannot be precisely quantified due to the lack of available information about these stocks. The NS 1 guidelines recognize that precise quantification assessments are not available for all stocks, such as the category 2 and 3 stocks at issue here (See Response to Comment 36, 74 FR at 3190, January 16, 2009). With a P* approach for deciding the ABC for category 2 and 3 stocks, the SSC recommended setting the value of sigma (σ) for category 2 and 3 stocks to 0.72 and 1.44 respectively (*i.e.,* two and four times the σ for category 1 stocks). The difference between buffers determined using sigma values of 0.72 and 1.44 corresponds fairly closely to the difference between the buffers previously used for category 2 and 3 stocks (25 percent versus 50 percent) when P* is in the range 0.3 ~ 0.35. Also, the SSC noted that results from decision tables for some category 2 stocks indicate values for sigma of approximately .72 (PFMC I.2.b, Supplemental SSC Report, April 2010). The specific sigma values of 0.72 and 1.44 were recommended by the SSC and are considered to be the best available scientific information; however, the values are not based on a formal analysis of assessment outcomes and could change substantially when the SSC reviews additional analyses in future management cycles. These sigma values represent the SSC's best estimate given the absence of a formal analysis of assessment outcomes on which to quantify scientific uncertainty as was done for category 1 stocks. The commenters specifically mention that the Council and NMFS should have used other methods for setting the sigma values for category 2 and 3 species, such as looking at the distributions of OFLs for each stock, or the results of the PSA analysis. However, neither of these methods was suggested by commenters until very late in the development of the 2011–2012 specifications nor recommended by the SSC for this specifications cycle.

Comment 4: The P* values used in the proposed rule are too high, and allow for too great a risk of overfishing due to an inaccurate estimate of the OFL, especially for overfished species. P* and resulting ABCs for category 2 and 3 stocks are not consistent with SSC recommendations.

Response: The NS1 guidelines provide the following standards for setting the ABC: (1) The ABC may not exceed the OFL, and (2) the probability that overfishing will occur cannot exceed 50 percent and should be a lower value. The Council chose a P* value of .45, or a 45 percent probability of overfishing, for data-rich species with data-rich assessments. For category 2 and 3 species, with data-poor or no assessments, the Council generally applied a P* value of .4, or a 40 percent probability of overfishing. The comment suggests that the 50 percent cap set by the NS1 guidelines is inadequate, and that the MSA requires a lower probability of overfishing. NMFS considered this issue in developing the NS 1 guidelines and ultimately determined that while neither the MSA nor the relevant case law requires the use of a specific probability, a 50 percent probability of success is a lower bound. NMFS acknowledges that some overfishing may occur even with ABCs that account for scientific uncertainty, however, it does not believe that the MSA requires a complete elimination of any probability of overfishing, as reflected in the guidelines (Response to Comment 63, 74 FR at 3195–96, January 16, 2009). The Council's choice of P* is consistent with the guidelines.

The commenters specifically point to the ABCs for overfished species, and contend that these are not consistent with rebuilding plans. However, ACLs for the overfished species are based on and consistent with the rebuilding plans, which are in turn based on the

rebuilding analyses for these species. The process for developing the ACLs is described in the preamble to the proposed rule for this action (75 FR at 67827–29, January 16, 2009) and in the FEIS. Thus, the ACLs for the overfished species are in most cases set far below the ABCs derived following the ABC control rule set forth in Amendment 23.

For category 1 stocks, the scientific uncertainty reduction from OFL that results from a P* of .45 and a sigma of .36 is 4.4 percent. For healthy stocks, this reduction is more risk-averse than the approach of setting the OY equal to ABC that was used in previous biennial cycles. For species in the precautionary zone, application of the 40–10 or 25–5 harvest control rules results in an additional reduction between ABC and ACL.

The commenters also contend that the P* values the Council adopted for category 2 and 3 stocks are inconsistent with the SSC's recommendation, which the commenters characterize as requiring P* values that would result in reductions from OFL of approximately 25 percent and 50 percent. The Council adopted a general policy of using a P* of 0.4 for category 2 and 3 stocks. The Council discussed P* values for category 2 and 3 stocks of 0.35 and 0.32, respectively. In its report the SSC noted that these P* values, in combination with the sigma values described above, would have resulted in an approximately 24 percent reduction from OFL for category 2 stocks, and an approximately 51 percent reduction from OFL for category 3 stocks, approximating the 25 percent and 50 percent reductions from former ABC that the Council used prior to this specification cycle. However, the SSC did not make a recommendation regarding appropriate P* values but did endorse the Council's final ABC values. In discussing the issue of the buffer between OFL and ABC for category 2 and 3 stocks the Council noted that previously the buffer between former ABC and OY took into account many sources of uncertainty, including scientific uncertainty, but that under NS 1 the buffer between OFL and ABC is now specific to scientific uncertainty. There was therefore concern regarding "double counting" of uncertainty that might result from using status quo buffers to determine the ABC for category 2 and 3 species. For this reason, the Council concluded that it would be inappropriate to use these reductions to quantify scientific uncertainty in the reduction from the OFL to ABC. A review of the ACLs for category 2 and 3 stocks shows that for a number of stocks, the reductions from ABC to ACL address stock status, management uncertainty, and other factors. For example, the ACLs for longnose skate, starry flounder, the other fish complex and the other flatfish complex are all reduced below the ABC to account for management uncertainty. The ACL for sablefish is reduced below the ABC according to the 40–10 harvest control rule, as this species is in the precautionary zone. The southern ACLs for longspine thornyhead and shortspine thornyhead are reduced in order to account for uncertainty associated with trawl surveys in those areas. These reductions are all described in the FEIS and the proposed rule.

The commenters specifically discuss what they see as potential negative impacts from the ABCs for lingcod, sablefish and black rockfish. The FEIS considered the risk of overfishing to all species and no OFLs were projected to be exceeded under any of the alternatives. For lingcod, the ACL (2330 mt in 2011) was set equal to the ABC, however the projected catches are only 685 mt leaving a substantial buffer. Additionally, it is likely that the catches will come in under the ACL because of the limited shelf opportunities given the Rockfish Conservation Area (RCA) configurations implemented through this rule. For sablefish the estimated catch of 5407 mt is well below the ACL value of 6813 mt and the ABC of 8418 mt. Finally, for black rockfish the estimated catch of 905 mt is well below the ACL of 1426 mt and the coastwide ABC of 1589 mt to minimize the risk of overfishing.

For the minor rockfish complexes, a P* value of 0.45 was used in combination with the SSC-recommended sigma values to determine the ABCs for the component stocks. Historically, the OY for minor rockfish north has been shared between Oregon and California with no formal catch sharing agreements because the OY was generally high enough to prevent concerns over the allocation of catch between the states. A struggle for fish could result from 2011–2012 ACLs that are significantly lower than the 2010 OY for the minor nearshore rockfish north subcomplex. (PFMC Supplemental Groundfish Management Team (GMT) Report, I.2.b April 2010). Applying a P* of 0.45 to determine the ABC for this subcomplex results in an ABC lower than the 2010 OY, but higher than the other alternatives considered for determining the ABC. This option constitutes an interim approach to accounting for scientific uncertainty given the current organization of the complexes and the time needed to work out a sharing agreement between the states if necessary. Applying a P* of .45 for the minor rockfish complex components reflects the fact that in contrast to the Other Fish and Other Flatfish complexes, the component stocks in the minor rockfish complexes are not all category 3 stocks. In addition, it reflects the fact that the complexes are not ideally organized to account for scientific uncertainty, and represents a balance between the risk of overfishing due to scientific uncertainty and the risk of unnecessarily limiting fisheries in this biennium until a thorough analysis of the rockfish complexes can be completed.

Comment 5: ACLs should be reduced from ABCs to account for management uncertainty where there is not accurate data regarding true catch amounts and no modeling of management uncertainty. The ACL and ACT control rules should identify all sources of management uncertainty. It is not clear how management uncertainty is accounted for by the use of the ACTs for yelloweye rockfish and POP.

Response: The NS1 guidelines do not expressly contemplate a buffer between ABC and ACL as the primary means to address management uncertainty. An ACT may be established to account for management uncertainty in controlling the catch at or below the ACL, but ACTs are just one type of accountability measure that can address management uncertainty. NMFS specifically considered a system such as that described by the commenter that would require that ACL be set below the ABC to account for management uncertainty, but ultimately rejected it on the basis that it was Congressional intent that ACL should be considered a true limit, not a target catch level (Response to Comment 8, 74 FR at 3183, January 16, 2009). Instead, the guidelines require that, to prevent ACLs from being exceeded, Councils must address the management uncertainty in their fisheries using appropriate accountability measures, which could possibly include setting an ACT. While the Council in fact set the ACL below the ABC for a number of stocks (longnose skate, starry flounder, the other fish complex, the other flatfish complex), consistent with the guidelines, the Council's primary means for addressing management uncertainty is through accountability measures. Section 4.1 and tables 4–1 and 4–3 in the FEIS describe the actual impacts that are expected to the stocks in the fishery as a result of the management measures included in the integrated alternatives. For most of the non-overfished stocks, expected catch levels are far below the ACLs set for these

stocks. Thus, the proposed management measures are expected to ensure that for the non-overfished stocks, actual catch levels will not approach the ACLs. For the overfished stocks, the ACLs are based on the rebuilding plans. Management measures have been specifically designed to keep the catch of these stocks below their ACLs.

The NS 1 guidelines make clear that the use of ACTs is optional, not required. The proposed guidelines did require ACTs as reference points, but the final action "retains the concept of an ACT and an ACT control rule, but does not require them to be included in FMPs." The guidelines note that where fisheries lack inseason management controls to prevent ACLs from being exceeded, "AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL." (74 FR at 3178, January 16, 2009).

The Groundfish FMP provides for inseason management to prevent catch limit overages. The current system of inseason management in the groundfish fishery has resulted in very few catch limit overages in the last four years. Catch limit overages have occurred for canary rockfish (2001–2007), Dover sole (2006), POP (2007) and darkblotched rockfish(2000, 2001, and 2007) (PFMC, Agenda item G.5.a, attachment 1, November 2009).

Projecting canary rockfish impacts has been problematic, especially in the limited entry trawl sector. Under a rationalized fishery, there is individual accountability and real time reporting that is expected to substantially improve performance relative to the 2010 fishery (*i.e.,* ability to stay within the ACL). For recreational fisheries, the Council recommended the use of HGs as an accountability measure to increase the probability that total catch will stay within the ACL. POP and Dover sole are trawl dominant and management performance is also expected to improve under a rationalized fishery structure. However, the nature of POP catch in the whiting fishery could result in high incidental catch events such as occurred in the Pacific whiting shoreside fishery in 2007. For development of the Council's FPA in the EIS, the Council recommended ACTs for POP and yelloweye rockfish for the FPA in order to increase the likelihood that catches will remain below the ACL. This final rule implements an ACT for POP, but not for yelloweye rockfish. This final rule implements an ACL for yelloweye that is 2.2 mt above the projected catch. The ACL value is based on the high end estimates of projected set aside amounts. Therefore, NMFS believes that the 2.2 mt difference between the ACL and the projected catch means that an ACT is not necessary for yelloweye. Further, with the implementation of the Trawl Rationalization program NMFS will have better inseason monitoring and will be able to track catches relative to set aside allocations and close fisheries or take other appropriate action if fisheries are projected to attain their allocations.

Comment 6: The use of stock complex ACLs must be consistent with new guidance outlined in the NS1 guidelines to ensure that stocks are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar. NMFS should either reorganize species complexes to include stocks with similar vulnerabilities to the fishery, or designate indicator species from among the most vulnerable species in each complex. In addition, species-specific ACLs should be set where possible.

Response: The Council recognized the need for reorganization of the four complexes described in the EIS to reflect the results of the vulnerability analysis conducted by the GMT. However, it was determined that this work could not be completed in time for the 2011–2012 specifications and management measures. The Council and NMFS anticipate the development of recommendations for reorganized stock complexes in time for the 2013–14 specifications.

As the commenters point out, the GMT analyzed the vulnerability of the stocks currently managed in complexes and determined that the existing complexes are comprised of stocks with a range of vulnerabilities. It was recognized that the existing complexes were created prior to the revised NS 1 and are not organized in the best possible manner for taking into account scientific uncertainty and the relevant management issues. For this reason, it has been noted by the GMT that the reorganization of stock complexes is an issue they will work on for the 2013–2014 biennial specifications and management measures cycle. The results of any analysis conducted could be presented to the Council for action. The analysis needed to support such reconsideration could not be completed in time for the current cycle.

The commenters state that until the complexes can be reorganized, indicator stocks should be designated to represent the more vulnerable stocks in the complexes. Typically indicator stocks would be used for an assemblage of similar species when most of the species do not have an assessment. This is not the case for 2011–2012 because the Council developed assessments for all species even if they were data-limited assessment for data poor stocks. The issue is not the absence of an estimate for safe levels of harvest, even if it is data poor, it is that by grouping the ACLs there is uncertainty that each individual species remains under its contributions to the group. Indicator stocks do not address this issue. Additionally, the premise behind using an indicator species is that it is representative of the group. Because the current stock complexes are not organized such that the species within each group are exposed to similar fishing pressure, it is unclear how an indicator species would be selected to represent the group. As previously stated, the analysis needed to support a reorganization of the current stock complexes or to define indicator stocks could not be completed for this biennial cycle, but will be addressed at a later date. NMFS agrees that stock complexes should be organized so they include similarly vulnerable species and that indictor stocks may be a useful tool to manage fisheries in a sustainable manner while preventing overfishing of the most vulnerable species.

To aid in the management of stock complexes, NMFS will be notifying the states of Washington, Oregon and California of the intent to propose revisions to the regulatory provisions at § 660.12 (8), § 660.130(d), § 660.230(c), and § 660.330(c) pertaining to the sorting and reporting of groundfish catch. NMFS believes that refining the sorting requirements for the rockfish complexes is necessary for catch accounting and management of the most vulnerable stocks within complexes. Because this provision would require state and Federal reporting systems to be modified including the data systems that house these data, such a change cannot happen for the 2011 fishing season.

During the process of developing the 2011–2012 ACLs, the Council considered removing several species from the minor rockfish complexes, but did not do so for this biennial cycle because changes necessary to manage these species individually under the trawl rationalization program could not be completed in time for this cycle.

Comment 7: The FPA lacks adequate buffers for the data-poor stock complexes. Specifically, the minor nearshore subcomplexes contain OFL/ABC buffers of roughly 14 percent and no buffer between ABC and ACL, even though these complexes contain highly vulnerable component species such as copper, China and quillback. The minor

slope subcomplexes contain OFL/ABC buffers of roughly 9 percent, and ABC/ACL buffers of between 12–25 percent, even though these subcomplexes are composed of data-poor category 3 species and highly vulnerable rougheye and shortraker.

Response: It is unclear which kind of "buffers" the commenters see as inadequate and therefore it is difficult to respond to this comment. The ABCs for the species included in the complexes were recommended by the SSC and adopted by the Council as described above in response to Comment 4. The Council specifically accounted for management uncertainty in the ACLs for the Other Fish and Other Flatfish by adopting ACLs lower than the sum of the ABCs for the individual components of these complexes. The ACLs for the minor shelf and slope rockfish subcomplexes are also significantly lower than the ABCs for these subcomplexes (shelf north—50 percent lower, slope north—12 percent lower, shelf south—49 percent lower, slope south—25 percent lower). In addition, the projected catches of the complexes and subcomplexes, with the exception of the minor nearshore rockfish north subcomplex, are all significantly below the ACLs. For the minor nearshore rockfish north subcomplex, as is discussed in the FEIS, monitoring may indicate a need for inseason management measures to prevent exceeding the ACL (FEIS at pg 352). In summary, given the reductions between OFL and ABC, and ABC and ACL, and the fact that catches are expected to be lower than the ACL for most of the complexes and subcomplexes, overfishing on these complexes and subcomplexes is unlikely.

Comment 8: The Amendment must specify AMs that will be triggered when ACLs are reached.

Response: The NS1 guidelines (74 FR 3178, January 16, 2009) state that FMPs should include AMs, which "are management controls to prevent ACLs, including sector-ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur." NMFS believes that the Groundfish FMP currently provides for robust inseason management measures. Under current practices the Council is presented with inseason updates at each of its meetings. Following an evaluation of the catch to date and catch projections presented by its advisory bodies, the Council makes recommendations to NMFS on regulation changes in order to keep catch within the catch limits. However, NMFS notes that there is a lack of clarity in the amendment with respect to the connection between ACLs and AMs. In its December 27, 2010, letter to the Council, NMFS identified this issue and suggested that it should be addressed through the development and submission of an additional amendment to the FMP.

Comment 9: NMFS should identify and incorporate a specific list of relevant ecological factors into the management of West Coast Groundfish and specify how such factors will be used in the determination of OY, ACLs, or ACTs.

Response: NMFS acknowledges that ecological factors can be an important consideration in setting MSY and OY levels. In the Response to Comment 24 of the NS 1 guidelines NMFS states that "* * * ecological conditions not directly accounted for in the specification of MSY can be among the ecological factors considered when setting OY below MSY" (74 FR at 3187, January 16, 2009). The NS1 Guidelines describe ACT as an accountability measure that accounts for management uncertainty, and does not specifically incorporate ecological concerns.

Under the FMP, as amended by Amendment 23, ecological factors can be a consideration in setting the ACL below the ABC and in setting the OY (FMP Section 2.2). The extent of our knowledge on ecological factors with respect to choosing between the integrated alternatives is considered in the FEIS but our ability to compare these factors with respect to the alternatives is extremely limited. The Council and NMFS have incorporated ecosystem considerations into management of the groundfish fishery in a number of ways (*e.g.* closed areas that protect particularly productive and/or sensitive areas, and consideration of relevant ecological factors in stock assessments). See Agenda Item J.1.c, Attachment 1, PFMC March 2011 (Assessing Ecosystem Policy Principles and Bringing Ecosystem Science into the Pacific Fishery Management Council Process). NMFS is actively engaged in developing ecosystem information about the California Current ecosystem, and the Council is considering development of an Ecosystem Fishery Management Plan and incorporating ecosystem factors into the fishery management process. See Agenda Item J.1, Ecosystem Fishery Management Plan (PFMC March 2011).

While the ecological factors listed in the comments are relevant, at this time the specific elements listed have not been incorporated into the FMP and the Council decisionmaking process. Therefore requiring that information to be reported in a stock assessment or in the determination of OYs, ACLs and ACTs is premature. NMFS agrees that ecological factors are an important consideration in setting harvest levels for groundfish species. The commenters reference two food web models for possible use in considering ecological factors. At this time these models have not been evaluated by the SSC or GMT for use. NMFS suggests that the commenters bring these models forward to the Council's advisory bodies so that they can be evaluated. The groundfish stock assessment and review process, which includes procedures for assessing new models, is laid out in the Terms of Reference for both the groundfish stock assessment and review process and the SSC, which can be found at *http://www.pcouncil.org/groundfish/stock-assessments/safe-documents/2011-safe-document/.*

Even though the FMP does not contain a specific list of ecological factors that must be considered, the FEIS did consider ecological factors. Chapter 4 of the FEIS evaluated the impacts of the alternatives according to the impacts on fishing mortality, rebuilding duration for the overfished species, stock productivity relative to rebuilding success, genetic diversity and prey availability.

Overfished Species and Flatfish

Comment 10: The rebuilding plan for Darkblotched Rockfish is inconsistent with the MSA. A T_{TARGET} of 2025 would maintain the status quo catch limits that were set in 2007–08 that were based on faulty information about darkblotched's resiliency and would extend the 2009–10 harvest specifications that were invalidated by *NRDC* v. *Locke,* Case 3:01-cv-00421–JLI. Review of recent catch levels as well as trends in the economic health of the fishery reveal that it is possible to meet the MSA's conservation priorities by establishing faster rebuilding targets and lower harvest levels while accommodating the needs of the fishing community. NMFS should adopt a target rebuilding date for darkblotched that results in catch levels no higher than 200 metric tons (mt) per year. The catch level for darkblotched was set at 200 mt in 2006 even though economic data from both the commercial trawl sector and the larger groundfish fishery indicate that revenues in 2006 continued to rebound from 2002 lows. Therefore, it is reasonable to assume that the commercial trawl fishery and associated fishing communities can accommodate current catch levels considerably closer of 200 mt for darkblotched.

Response: NMFS disagrees with the commenter. The harvest rate being implemented by this rule is the most

conservative harvest rate for darkblotched rockfish since 2005. The T_{TARGET} adopted in this final rule does not maintain the status quo catch limits set based on faulty information in 2007–08, and it does not extend the 2009–10 harvest specifications invalidated by *NRDC* v. *Locke.* The T_{TARGET} being adopted for darkblotched is 2025, which corresponds to an SPR of 64.9 percent and an ACL of 298 mt. The SPR harvest rate associated with the invalidated darkblotched rockfish specifications was 62.1 percent with a T_{TARGET} equal to 2028. The final rule implements a T_{TARGET} of 2025, which is only 9 years longer than $T_{F=0}$, and is three years earlier than under the 2009–10 harvest specifications. Similarly, the SPR harvest rate is more conservative than the harvest rate under the 2009–10 harvest specifications. Although the ACL this rule implements is comparable to the OY during the beginning of the 2009–10 cycle, the rebuilding period is shorter and the harvest rate is reduced based on the 2009 stock assessment update and the revised rebuilding analyses, which are the best scientific information available at this time. In 2005, steepness (productivity) was estimated at 1.0, and was set at 0.95. In 2007, a good deal more age data was included in the assessment, largely as conditional age-at length compositions, and steepness was estimated (using the prior from Dorn's meta-analysis) at 0.6. That value of steepness was then fixed in the 2007 assessment and hence also used in the 2009 update. The SPR chosen following the 2005 rebuilding analysis, and applied in the 2007–08 harvest specifications (the 2007 SPR was 64.1 percent and the 2008 SPR was 60.7 percent), corresponded to a T_{TARGET} (median rebuilding year) of 2011, which was much earlier than for previous rebuilding analyses, due largely to the high value of steepness (and thus high productivity at low stock sizes) assumed in the 2005 assessment. Based on the 2007 rebuilding analysis, the darkblotched rockfish stock was projected to recover 19 years later (2030) than anticipated from the 2005 rebuilding analysis. This then lead to the adoption by the Pacific Council of a new T_{TARGET} equal to 2028 with an SPR of 62.1 percent. Accordingly, as mentioned above, the SPR of 64.9 percent being implemented by this rule is the most conservative harvest rate for darkblotched rockfish since 2005. Moreover, the percent of unfished darkblotched rockfish biomass continues to increase toward rebuilding.

Due to the complexity and interconnectivity of the Pacific groundfish fishery, the Council and NMFS follow an integrated or holistic approach to rebuilding because it would not be appropriate to develop rebuilding plans for each of the overfished species independent from the rebuilding plans for the others. The rebuilding groundfish species are correlated both biologically and economically. Changes to the OYs for any of the overfished species affect the time to rebuild for that species and the ability of fishermen to harvest other species of groundfish. In addition, changes in OYs for groundfish species have differing economic impacts on West Coast fishing communities. Setting a rebuilding strategy for one species requires the rebuilding strategy for the other rebuilding species be considered simultaneously. Utilizing this approach, it is reasonable to assume that integrated Alternative 1, which considered a T_{TARGET} of 2022 and ACLs of 222 mt in 2011 and 2012, would have similar biological and socio-economic impacts to the ACL of 200 mt suggested by the commenter. NMFS does not agree that fishing communities can accommodate an ACL closer to 200 mt than the ACL in the final rule without suffering severe adverse economic impacts. Darkblotched rockfish is currently taken in research fisheries, Tribal fisheries, limited entry trawl non-whiting fisheries, limited entry trawl whiting fisheries, and limited entry fixed-gear fisheries. Darkblotched rockfish are predominantly caught in bottom trawls operating on the outer continental shelf and slope north of 38° north latitude between 100 and 200 fm. Reductions in the darkblotched rockfish ACLs are highly limiting to the trawl fisheries because darkblotched rockfish co-occur with the most economically important species in the fishery such as slope rockfish, sablefish, Pacific whiting, shortspine and longspine thornyheads, and Dover sole. Under Alternative 1, trawl opportunities on the slope would be limited as the seaward RCA boundaries were moved deeper. The bottom trawl fisheries on the continental slope would be restricted year round to a seaward RCA boundary of 250 fm.

If the ACLs for overfished species are too low, it could undermine the success of the trawl rationalization program. Economic benefits to the IFQ fishery are expected to result from cost reductions and increased access to target species that arise from modifications in fishing behavior (overfished species avoidance). Individual accountability will put pressure on operators to fish in areas with lower encounter rates of constraining overfished species, and the ability to transfer catch privileges allows the fleet to consolidate to fewer, but more profitable vessels as the market directs quota in a manner that is more economically efficient. If the darkblotched rockfish ACL is too low (Alternative 1)—such that trawl fishers perceive slope target fisheries to be risky (high risk of exceeding the individual quota pounds) and the fishers limit their fishing participation for healthy target species—or if fishers hold quota pounds of constraining overfished for sale to other fishers who incur overages, they would not be able to develop new methods or strategies to avoid catching overfished species.

The recruitment pattern for darkblotched rockfish is similar to that of many rockfish species, with highly variable recruitment from year to year adding to the variability in catch accounting between years. In addition, the available ACL to the groundfish fishery is reduced by the projected catch of darkblotched in incidental open access fisheries and non-groundfish fisheries. As another commenter pointed out, the incidental catch in non-groundfish fisheries such as pink shrimp would be expected to increase as the darkblotched rockfish biomass increases, further constraining the groundfish fishery unless the ACL allowed for such a rebuilding paradox. NMFS believes that setting a T_{TARGET} that would result in a catch level no higher than 200 mt has the potential to result in short-term disastrous effects on already vulnerable communities.

As the darkblotched rockfish biomass increases, it will become increasingly more difficult to avoid as the stock rebuilds. Unlike the constant catch strategy suggested by the commenter, which increasingly restricts the fishery as rebuilding occurs and requires ever increasing management restrictions to avoid exceeding the ACL, the constant SPR strategy allows rebuilding to occur at an increasing rate without changing the T_{TARGET} and without drastic swings in management measures, which provides management stability to fisheries and communities and contributes to economic stability. The 2009 stock assessment indicates that darkblotched rockfish was at 18.1 percent of its unfished biomass in 2006 as compared to 27.5 percent in 2009, showing an increasing trend. The recruitment pattern for darkblotched rockfish is similar to that of many rockfish species, with highly variable recruitment from year to year. The most recent year of 2008 shows recruitment closer to those seen in 2003–2005 after very low recruitment in 2006 and 2007. Large year to year swings in recruitment

affect the accuracy of catch projections. As discussed in the FEIS, catch models used for the trawl fishery, a catch model based on data from the fishery managed under a trip limit structure was used to project catch. Although it is the best available information, because the trawl fishery is now being managed as a rationalized fishery with IFQs for the non-whiting fisheries, catch projections based on fishing distribution under a trip limit structure affect the utility of the catch model for making projections. In sum, the shorter rebuilding period and more conservative harvest rate adopted in this final rule rebuild darkblotched rockfish in a time period as short as possible, taking into account the statutory factors of the MSA.

Comment 11: The rebuilding plan for Cowcod is inconsistent with the MSA. The estimated cowcod depletion rate in 2009 is 4.5 percent, slightly lower than the 4.6 percent rate estimated in the 2007 assessment, indicating that the cowcod population is failing to rebuild as projected, and may actually be in decline. It is possible to rebuild cowcod more quickly than the 2071 target proposed by Amendment 16–5, and NMFS does not address why a target rebuilding year 11 years later than the shortest possible is "as short as possible" pursuant to the requirements of the MSA. Overall groundfish fishery revenues have rebounded substantially since 2002. The updated community vulnerability analysis did not rate any fishing communities off the Southern U.S. west coast as vulnerable. Historic mortality data for cowcod (which are admittedly subject to high levels of uncertainty) indicate that actual total catch has varied between as low as .32 mt in 2003, 2.18 mt in 2004, 1.27 mt in 2005, and 1.18 mt in 2006. Therefore, it is reasonable to assume that a catch level of 3 mt for cowcod, which is projected to rebuild the species by 2068, would promote the conservation goals of the MSA and could be reasonably accommodated by affected fisheries and fishing communities. NMFS should adopt a target rebuilding date for cowcod that results in catch levels no higher than 3 mt per year.

Response: NMFS fully considered all public comment and other relevant information, and has determined that modifying the proposed rule to implement a shorter rebuilding period will not cause severe short-term economic consequences to communities. Therefore, a shorter rebuilding period for cowcod is more consistent with the requirements of the MSA. This final rule implements a rebuilding plan for cowcod with a T_{TARGET} of 2068, which corresponds to an SPR of 82.7 percent and an ACL of 3 mt. The T_{TARGET} of 2068 implemented by this rule is only 8 years longer than $T_{F=0}$. In contrast, the proposed rule included a cowcod rebuilding plan with a T_{TARGET} of 2071, which corresponds to an SPR of 79 percent and an ACL of 4 mt. The T_{TARGET} of 2071 in the proposed rule was eleven years longer than $T_{F=0}$.

The commentor is incorrect in stating that the cowcod population may be in decline. The cowcod stock shows a slow but increasing trend in stock biomass. Table ES–6 of the 2009 stock assessment presents a summary of recent trends in cowcod exploitation and stock levels from the base case model. The commenter is correct that the depletion level projected by the 2009 stock assessment is 4.5 percent, however, the 2009 stock assessment, which is the best available scientific information, revises the 2007 stock assessment results and indicates that the 2007 biomass was at 4 percent not 4.6 percent as the commenter indicated. Therefore, the best available scientific information available at this time indicates that Cowcod depletion rate is improving and the cowcod population is rebuilding.

Comment 12: The rebuilding plan for yelloweye is inconsistent with the MSA. NMFS' conclusion that rebuilding progress on yelloweye has been "moderate" is too optimistic. The 2009 rebuilding analysis indicates that yelloweye rebuilding is three years behind schedule under the status quo harvest rate. This is three years beyond the target year of 2084, which was invalidated in *NRDC* v. *Locke.* There is a wide range of possible harvest limits in the 37 year time span between $T_{F=0}$ and the proposed target year of 2084 that would rebuild yelloweye more quickly and still allow for bycatch. NMFS should adopt a target rebuilding date for yelloweye that results in catch levels between 14–17 mt per year.

Response: NMFS fully considered all public comment and other relevant information, and has determined that modifying the proposed rule to implement a shorter rebuilding period will not cause severe short-term economic consequences to communities. Therefore, a shorter rebuilding period for yelloweye rockfish is more consistent with the requirements of the MSA. The range of alternatives considered in the EIS for yelloweye was reasonable as further explained in the response to comments in the FEIS. This final rule implements a rebuilding plan for yelloweye rockfish with a T_{TARGET} of 2074, which corresponds to an SPR of 76 percent and an ACL of 17 mt. The T_{TARGET} of 2074 implemented by this rule is 10 years before the current T_{TARGET} and 27 years longer than TF=0. In contrast, the proposed rule included a yelloweye rockfish rebuilding plan with a T_{TARGET} of 2084, which corresponds to an SPR of 72.8 percent and an ACL of 20 mt. The T_{TARGET} of 2084 in the proposed rule was 37 years longer than TF=0. As discussed below, NMFS determined that an ACL lower than 17 mt would have a disastrous short-term effect on fishing communities.

NMFS disagrees with the commenter regarding the rebuilding progress of yelloweye rockfish. The 2009 stock assessment shows that yelloweye rockfish stock has shown an increasing trend in stock biomass during the rebuilding period, increasing from the estimated depletion level of 16.3 percent of the unfished biomass in 2002 to 20.3 percent in 2009. The median year of recovery in the absence of fishing (TF=0) was calculated by setting fishing mortality to zero in 2011, and is equal to 2047. The value for T_{MIN}, the median year for rebuilding to the target level in the absence of fishing since the year of declaration (2000) is 2044 (revised downward slightly from 2046 in the 2007 analysis). Because T_{MIN} is only three years shorter than $T_{F=0}$ in 2011, it indicates that harvest rates during this eight-year period have been low enough to have had little effect on the stocks rebuilding trajectory.

Although $T_{TARGETS}$ corresponding to ACLs lower than 17 mt were considered, the impacts on the fisheries and communities were significantly greater. Small changes to yelloweye rockfish ACLs can have disproportionately large effects on the ability of fishers to harvest healthy stocks of groundfish, both when considered as part of the integrated approach, and when considered in isolation. For the recreational fisheries, a yelloweye ACL lower than 17 mt would result in northern California recreational seasons that are even shorter than the already extremely limited lengths (*e.g.,* three months in the Mendocino Management Area). This would include a one and a half month season in the Mendocino Management Area if the ACL were at 14 mt. Imposing further restrictions due to a lower ACL would cause the greatest negative economic impacts to communities north of Point Arena, particularly Fort Bragg and Shelter Cove. Under a 14 mt ACL the loss to California communities is equivalent to 170,000 fishing trips with an estimated revenue of 20 million dollars in expenditures associated with these trips (March 2011, Agenda Item H.2.c, CDFG Letter). Those dependent

on the recreational fishery for their incomes would be the most affected, though the coastal community as a whole would suffer from the loss of expenditures by anglers. In the Oregon recreational fishery, an ACL (ACT) less than 17 mt would require shallower depth restrictions, decreased bag limits or full fishery closure, on the part of the state to prevent adjusted harvest guidelines from being exceeded. This would likely cause severe economic impacts to coastal Oregon communities, particularly Garibaldi and Gold Beach, which rely heavily on the recreational bottomfish and halibut fisheries. With an ACL under 17 mt, the Washington recreational management measures may need to be more restrictive. More restrictive management measures would negatively impact local communities that are dependent on sport fishing. Washington's recreational yelloweye impacts are also tied very closely to the halibut fishery. The affected communities are mostly remote areas that rely on the economic benefits created by recreational harvest opportunities.

In the commercial fisheries, yelloweye rockfish bycatch is also a concern for fixed gear longline vessels targeting sablefish north of 40°10′. The nearshore fishery in many communities serves primarily specialty "live-fish" markets. For example, the Brookings port group (southern Oregon) provides more live-fish landings than any other port group along the U.S. west coast. Because the fish buyers are different for this fishery than those for other commercial fisheries, severely restricting the fishery could influence the primary live-fish buyers in some of these specialized ports to leave, which could put an end to live-fish deliveries for these specialized fishing communities. Many of the affected ports lack the infrastructure to compensate for fish buyers leaving the area. The T_{TARGET} of 2074 and ACL of 17 mt implemented by this rule are projected to rebuild yelloweye rockfish a full decade sooner than the previous rebuilding time period, while avoiding severe short-term adverse economic impacts to fishing communities.

Comment 13: NMFS received 5 comments in support of the Council's final preferred yelloweye rockfish ACL of 20 mt and ACT of 17 mt. The comments in support were from the Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG) and two comments from the public. These commenters also stated that setting a yelloweye ACL lower than 17 mt would add risk to communities that were unjustified by the conservation benefits associated with a lower ACL.

Response: For a detailed description of the basis for the final ACL value of 17 mt implemented in this rule refer to the previous comment above. The Council recommended a 20 mt ACL with an ACT of 17 mt for yelloweye. The Council recommended using an ACT to address the uncertainty in accurately monitoring recreational fishery catch inseason, and increase the likelihood that the total catch would be lower than the ACL. An ACL of 17 mt is specified in this rule. NMFS chose not to specify an ACT for yelloweye. This final rule implements an ACL for yelloweye that is 2.2 mt above the projected catch. The ACL value is based on the high end estimates of projected set aside amounts. Therefore NMFS believes that the 2.2 mt difference between the ACL and the projected catch means that an ACT is not necessary for yelloweye. Further, with the implementation of the Trawl Rationalization program NMFS will have better inseason monitoring and will be able to track catches relative to set aside allocations and close fisheries or take other appropriate action if fisheries are projected to attain their allocations. By specifying an ACL of 17 mt rather than an ACT, it is predicted that rebuilding will occur in 2074, ten years earlier than under the Council's FPA.

Comment 14: The rebuilding plan for canary rockfish is inconsistent with the MSA. The rebuilding plan for canary rockfish is six years behind schedule, according to the 2009 stock assessment. The new assessment shows a biomass depletion percentage of 23.7 percent instead of 32.4 percent seen just two years before. In addition, the cumulative OY from 2000–2007 (years with reliable catch data since rebuilding began) was exceeded by 14 percent. Rather than responding to new information that a species is doing worse than expected by lowering catch rates, NMFS again has indicated that it is willing to extend target rebuilding dates in order to maintain status quo catch levels. Therefore, maintenance of the status quo catch levels at the expense of a longer rebuilding period for canary is inconsistent with the MSA's mandate to rebuild in a period as short as possible. NMFS should adopt a target rebuilding date for canary rockfish that results in catch levels no higher than 44 mt per year.

Response: NFMS disagrees with the commenter. The T_{ARGET} being implemented by this rule is within 3 years of the shortest time possible ($T_{F=0}$ = 2024). NMFS believes that the rebuilding plan being adopted by this action is consistent with the MSA.

The latest assessment for canary rockfish demonstrates that the stock has been rebuilding since 2000. The commenter mischaracterizes the projected biomass depletion level from the 2009 stock assessment, which is the best available scientific information, relative to biomass depletion levels from the 2007 stock assessment. The reduction from 2007 is largely due to a revised historical catch time series for California. The new data resulted in the entire rebuilding trajectory (2000 forward) being slightly lower than previously projected. The commenter indicated that canary rockfish rebuilding is six years behind schedule. The change in our understanding of the rebuilding trajectory should not be interpreted as rebuilding having slowed, as this is not the case. Throughout the rebuilding period, the stock has continued to progress towards rebuilding. The overall lowering of the rebuilding trajectory throughout the entire rebuilding period means that it would take more time to reach the B40% (biomass level of 40 percent, which is used as a proxy for B_{MSY}) than was understood in 2007. The new assessment estimated the 2007 depletion level for canary rockfish to have been 21.7 percent (below the estimate of 32.4 percent for 2007 from the 2007 assessment with 95 percent confidence bounds of 24–41 percent) and the 2009 depletion level to have been 23.7 percent (95 percent confidence bounds of 17–30 percent). This action maintains the same SPR harvest rate that is in place under the No Action Alternative. Maintaining the same SPR harvest rate results in an ACL for 2011 that is lower than the than the 2010 OY because applying the same SPR harvest rate responds to changes in our understanding of the status of the stock. Because the rebuilding trajectory was modified, maintaining the current target year had to be modified despite the fact that the stock has continued to progress towards rebuilding.

As explained in the proposed rule and disclosed to the public in stock assessment documents, following the 1999 declaration that the canary rockfish stock was overfished the canary OY was reduced by over 70 percent in 2000 (to 200 mt) and by the same margin again from 2001 to 2003 (to 44 mt). In retrospect, revised catch data indicate that from 2003 to 2008, when the rebuilding OY was between 47 and 44 mt, the OY was exceeded 5 out of 6 years, although catches were well below the ABC. These catch estimates were

done in retrospect using data that were not available during the season. Due to the methods used to derive the total mortality estimates, the catches made in retrospect were higher than estimates made during the season.

Canary rockfish are caught in all the major fishery sectors, including: Research fisheries, Washington, Oregon and California recreational fisheries, Tribal fisheries, limited entry non-whiting trawl fisheries, limited entry whiting trawl fisheries, limited entry fixed gear fisheries, open access directed groundfish fisheries, open access directed fisheries with incidental groundfish catch (California halibut, pink shrimp and salmon troll).

Due to the complexity and interconnectivity of the Pacific groundfish fishery, the Council and NMFS follow an integrated or holistic approach to rebuilding because it would not be appropriate to develop rebuilding plans for each of the overfished species independent from the rebuilding plans for the others. The rebuilding groundfish species are correlated both biologically and economically. Changes to the OYs for any of the overfished species affect the time to rebuild for that species and the ability of fishermen to harvest other species of groundfish. In addition, changes in OYs for groundfish species have differing economic impacts on West Coast fishing communities. Setting a rebuilding strategy for one species requires the rebuilding strategy for the other rebuilding species be considered simultaneously. Utilizing this approach, it is reasonable to assume that a 44 mt catch level would have similar biological and socio-economic impacts as considered under Alternative 1 in the FEIS. Alternative 1 considered a T_{TARGET} of 2025, which is one year longer than T_{MIN} and has an ACL of 49 mt in 2011 and 51 mt in 2012. Under Alternative 1, the canary rockfish ACL and associated apportionment to the non-nearshore fisheries is so low that the sablefish allocations would have to be reduced by as much as 42 percent. The California nearshore fishery would also be severely constrained, requiring statewide 20 fm (37 m) Shoreward RCA lines and large trip limit reductions or total closures for some species would be necessary. This is in contrast to status quo where the non-trawl RCAs are 20 fm (37 m) in most northern areas and 60 fm (110 m) south of 34°27′ north latitude. All recreational fisheries would experience reduced season lengths and restrictive depth restrictions. An ACL of 49 mt (Alternative 1) equates to a trawl allocation of 13.3 mt—62 percent less then what is available in 2010. This will affect both the non-whiting and whiting sectors negatively. The whiting sectors would likely have lower bycatch caps which could preclude them from attaining their whiting allocations. In addition, the trawl IFQ fishery is intended to provide long-term benefits to the fishery in the form of bycatch reduction and economic stability. Given the full catch accounting proposed under trawl IFQ program and that all catch, discarded and retained, will count towards the individuals IFQ shares, the risk of the fishery exceeding the ACL is reduced compared to 2010 and prior years. In the short term, fishers will need to learn how to avoid canary rather than simply discarding them at-sea. Economic benefits to the IFQ fishery are expected to result from cost reductions and increased access to target species that arise from modifications in fishing behavior (overfished species avoidance). Individual accountability will put pressure on operators to fish in areas with lower encounter rates of constraining overfished species, and the ability to transfer catch privileges allows the fleet to consolidate to fewer, but more profitable, vessels as the market directs quota in a manner that is more economically efficient. Lower ACLs for canary rockfish could result in trawl fishers perceiving target fisheries for healthy stocks to be risky (high risk of exceeding the individual quota pounds) and result in fishers limiting their fishing participation for healthy target species; or if fishers hold quota pounds of constraining overfished for sale to other fishers who incur overages, they would not be able to develop new methods or strategies to avoid catching overfished species. Reduced fishing time may result in fishers being unable to develop new methods or strategies to avoid overfished species. The long-term success of the trawl rationalization program to maintain low incidental catch of overfished species in conjunction with profitable harvest of healthy stocks is consistent with the needs of communities specified in section 4.5.3.2 of the PCGFMP.

Comment 15: Economic indicators show improvements in the economic health of the fishery, thus it should be possible to meet the MSA's conservation priorities by establishing shorter rebuilding periods and lower catch levels while accommodating the needs of fishing communities. Historic revenue data indicate that average ex-vessel revenues in the groundfish hook-and-line fishery have rebounded since hitting a low of just over $13 million in 2002. Annual ex-vessel revenues for the fishery averaged nearly $18 million between 2005–2009, reaching a new high of $22.8 million in 2009, which is almost 50% greater than average revenue in 1998 adjusted for inflation. After overall groundfish fishery revenues hit a low of $63.9 million in 2002 (concurrent with the disaster declaration in the fishery), they rebounded to significantly higher levels: After adjusting for inflation, average revenues for the groundfish fishery between 2005 and 2009 were slightly over $85 million. In 2008, revenues in the fishery exceeded $113 million dollars. Per-vessel revenues have rebounded as well. Due in part to the reduction in the trawl fleet resulting from the buyback program, per-vessel revenues are roughly 40% higher than they were in 1998 after adjusted for inflation.

Response: NMFS does not believe that restricting harvests to maintain revenues at or below historically low levels takes into account the needs of fishing communities. Communities may still be "surviving" but they are not thriving, and many fishing communities remain vulnerable to short-term adverse economic impacts associated with rebuilding periods shorter than those adopted by this rule. Small increases in revenues of some sectors will help prevent some of the more vulnerable communities from even further losses. Except for the open access sectors, all other sectors show a decline under NMFS' preferred alternative compared to the No-Action Alternative: Non-whiting trawl (−1.6%), limited entry fixed gear (−10.4%); and Tribal (−1.9%—including Tribal shoreside whiting). To provide different perspectives, revenues are analyzed at several levels. First, the total level groundfish of revenues, including those from non-whiting groundfish, shoreside whiting, and at-sea whiting, are provided to give the perspective of the total fishery. Second, groundfish revenues excluding estimates of at-sea whiting are analyzed to better focus the analysis on impacts to coastal communities, as most at-sea whiting revenues are associated with large Seattle-based companies. Finally, shoreside non-whiting groundfish revenues are analyzed alone because the shoreside non-whiting fishery is crucial to communities for its ability to provide a year-round supply of fish and "keep the lights on" so community processing facilities can take advantage of the income provided from sporadic pulse fisheries such as whiting, salmon, crab, and shrimp (Note that San Francisco is a "coastal community" that receives non-whiting groundfish).

According to the Regulatory Impact Review Analysis, the total groundfish fishery is projected to reach a level of $91 million compared to the No-Action Alternative of $82 million. All of this increase is due to the increase in whiting harvests. Under the no-action alternative, the whiting fishery (shoreside and at-sea) account for $22 million in ex-vessel revenues. With the increase in the whiting OY from 193,000 mt in 2010 to the 290,000 mt OY in 2011, whiting revenues in 2011 are projected to be $33 million. For the shoreside fisheries, including whiting, and coastal communities, shoreside ex-vessel revenues are expected to increase by 2.6%. If whiting is excluded, 2011 ex-vessel revenues flowing from shoreside fisheries to coastal communities are expected to decrease by 3.3%. Most of this decrease is associated with projected decreases in sablefish and petrale sole harvests.

Relative to the needs of communities, the commenter indicates that average (annual) ex-vessel revenues in the groundfish hook-and-line fishery (includes limited entry fixed gear, open access fixed gear, and Tribal fixed gear fisheries) have rebounded since hitting a low of just over $13 million in 2002. In 2011 and 2012 the sablefish ACL will decline from the 2010 level of approximately 7,700 mt to approximately 6,800 mt. Therefore, the annual ex-vessel revenues in the groundfish hook-and-line fishery are projected to decline. Revenues from hook and line gear fishing are just one source of revenue to a community. The major source of groundfish revenues to communities are those from trawlers. Over the years, hook and line revenues have been a growing source of revenue in light of declines in other groundfish fisheries, including trawl fisheries. During the 1998 to 2009 period, the commercial revenue from trawl gear (includes commercial and Tribal, at sea and shoreside trawlers) has varied from a low of $46 million (2009) to a high of $91 million (2008). In 1998, total groundfish revenues flowing to communities from all gear types was about $80 million, in 2002 $63 million, and in 2009, $74 million. The hook and line share of total revenues has increased from 18% in 1998, to 21% in 2002, and 31% in 2009, the lowest year for trawl revenues.

In light of conservation, management, and economic issues associated with overcapacity, three capacity reduction programs have been instituted since 2000. In 2001, Amendment 14 to the FMP added a fixed gear permit stacking program which has resulted in the consolidation of currently 164 sablefish endorsed permits on about 90 vessels. In 2003, a trawl vessel buyback program was implemented, resulting in the retirement of 91 vessels and associated groundfish limited entry permits in order to stabilize what had been declining per-vessel revenues and to reduce bycatch by the remaining vessels. Industry is currently paying back the $36 million loan associated with this program. In early 2011, implementation of a catch share program under Amendment 20 to the FMP began, changing management of portions of the trawl fishery from 2-month cumulative trip limits to individual fishing quota (IFQ) management. In addition to improving the profitability of the fishery while reducing capacity, the IFQ program is expected to reduce bycatch because of the increase in observer coverage to 100%, and placement of catch monitors at landing locations (typically at processing plants), and the use of electronic reporting will lead to better catch accounting and overall quota management of the fishery. Fishermen and processors are paying for these observers and catch monitors (although for the first three years these costs are being partially subsidized by NMFS based on available appropriations). The Council and NMFS are now developing a cost-recovery program where up to 3 percent of the trawl revenues may be assessed on the industry to partially recover the costs of administering the program.

All of these capacity reduction programs have yielded increased average revenues per vessel. However, even if average revenues per vessel or total revenues have increased, total industry and sector profit levels are likely to be declining especially in light of increases in fuel prices. For the Trawl Rationalization Program analysis, a shorebased non-whiting model was constructed based on the 2004 fishery. In 2004, the shorebased non-whiting trawl fishery generated about $21 million in groundfish ex-vessel revenues. But according to cost estimates, this fishery was at best breaking even or perhaps suffering a loss of up to $2 million. Since 2004, shorebased non-whiting trawl fisheries have increased their revenues to about $30 million in 2009 and estimated $27 million in 2010. The increase in shorebased revenues have come from increased landings of flatfish and sablefish and significant increases in sablefish ex-vessel prices. Sablefish now accounts for almost 40 percent of the trawl fleet's revenues.

Increases in revenues must be considered together with significant increases in fuel costs. Fuel costs now account for approximately 30 to 40 percent of the vessels' revenues. The average 2005–2009 revenues were about $27 million, or 29 percent greater than 2004. The average 2005–2009 fuel price was about $2.81 per gallon, 70% greater than that of 2004. Therefore, it appears that the profitability of the 2009 fishery may not be that much improved over that of 2004. In July of 2009, in Newport Oregon fuel prices were about $2.20 a gallon, in July of 2010, $2.50 a gallon and as of April 2011, about $3.75 per gallon.

While NMFS preferred alternative does result in projected shoreside revenue increases over status quo, these are increases from historically low levels of revenue. Healthy communities require profitable sectors. Profits concern revenues and costs. NMFS and the Council have received public comment that low levels of revenue since 1999 have resulted in numerous negative impacts to community infrastructure. Many communities have lost important infrastructure such as ice houses, fuel docks, and processing facilities during the last decade. Continued low levels of revenue will likely result in further losses of infrastructure. Although it is difficult to predict, at some point the losses of infrastructure and fishing opportunity result in a "tipping point" in which a community shifts from a fishing community to a non-fishing community. In addition, with decreased revenues, fishermen are not making needed repairs or improvements to fishing gear, resulting in potential safety issues and potentially reducing innovation in the fleet to reduce bycatch or impacts to habitat.

Several other non-groundfish factors also affect fishing communities. From a fisheries perspective, for the period from 2006 to 2010, except for 2007, the Secretary of Commerce has determined that a disaster under the MSA exists for a major portion of the coastal salmon fishery. From a macro-economic perspective, in 2009 and 2010, communities have been affected by the overall downturn in the economy and now in 2011 and beyond will be affected by the further consequences of the economy.

Comment 16: NMFS should reject changes to the reference points and 25–5 control rule for petrale sole and other assessed flatfish species, as the proposed changes are not adequately precautionary, fail to account for the ecological services rendered by these species, and are premature without a comprehensive management strategy evaluation.

Response: The specifications for flatfish in the proposed rule and in this final rule are based on a new proxy for Fmsy (F30%) recommended by the SSC and adopted by the Council. NMFS believes that the new flatfish proxy is based on the best available science and is consistent with the NS1 guidelines and the MSA. Following the 2009 scientific peer review of the petrale sole assessment by the Council's stock assessment review panel (STAR panel), the STAR panel prepared a report which recommended that the SSC review the estimates of FMSY produced by the petrale sole assessment and investigate alternatives to the proxies of F40%. The SSCs groundfish sub-committee further considered the proxies produced by the petrale sole assessment and recommended that a proxy for FMSY of F30% be established for all west coast flatfish (PFMC E.2.c Supplemental SSC Report September 2009; Agenda Item E.2.c Supplemental SSC PowerPoint, September 2009). The full SSC endorsed the groundfish subcommittee's recommendation to establish a new proxy of F30% for FMSY for flatfish (PFMC G.2.b Supplemental SSC Report, November 2009). This value was based on a number of considerations, including evaluation of information on flatfish productivity (steepness) for assessed west coast flatfish, published meta-analyses of other flatfish stocks, and recommendations on appropriate proxies for FMSY and BMSY in the scientific literature. The SSC however did not endorse the use of a species-specific estimate of FMSY for petrale sole because of high variability in the estimates between repeat assessments for other stocks and the sensitivity of the estimates to assumptions concerning stock structure.

The SSC also recommended and the Council adopted a new Bmsy proxy for flatfish—B25%. This recommendation was developed through the same process and with the same considerations described above (PFMC E.2.c Supplemental SSC Report September 2009). The commenters point to SSC comments recommending a more comprehensive analysis of the control rule proxies. However, this long-term recommendation did not change the SSC's ultimate recommendation that the new proxies be used for the 2011–2012 specifications cycle. The SSC's recommendations are the best available science at this time.

The SSC noted that the overfished threshold, or MSST, and default precautionary reduction policy, are policy decisions for the Council. However, the SSC suggested the options that the Council ultimately chose for both of these policy choices. The Council chose to set the MSST to 50 percent of B25% (B12.5%), based on advice of the SSC that this was the "lowest value recommended by the NS1 guidelines." (PFMC G.2.b, Supplemental SSC Report, November 2009). The 25–5 harvest control rule is intended to be the flatfish corollary to the 40–10 harvest control rule used for other groundfish species. The SSC's groundfish subcommittee suggested the 25–5 rule provided the same benefits as the 40–10 harvest control rule, but took into account the higher productivity of flatfish as compared to rockfish. (PFMC E.4.b, Supplemental SSC Report 2, March 2010).

The commenters suggest that these changes to the reference points and precautionary reduction policy for flatfish are not supported by sufficient analysis of their environmental consequences. They specifically identify the services rendered by flatfish in the California Current marine ecosystem. Ecosystem impacts of the integrated alternatives are described in the FEIS in section 4.1.5. However, available data and models limit NMFS' ability to assess the impacts of the alternatives in detail. The SSCs groundfish subcommittee recognized the need for a management strategy evaluation on harvest control rule proxies (PFMC E.2.c, Supplemental SSC report, September 2009) however, at this time an evaluation has not yet been conducted.

Comment 17: The rebuilding plans in the proposed rule implicitly adopt a Council-designed paradigm to set catch levels for overfished species that are inconsistent with the mandates of the MSA to rebuild overfished species "as quickly as possible" and with the Ninth Circuit's directive on how to do that while "taking into account the needs of fishing communities." NMFS and the Council appear to have substituted this legal directive with a rebuilding paradigm that continues to favor long-term economic yields at the expense of rebuilding as quickly as possible. The white paper submitted to NMFS at the September 2010 Council meeting articulates a rebuilding policy that prioritizes the economic goal of long-term cumulative yield over conservation, a view that is inconsistent with the MSA.

Response: The rebuilding plans implemented by this final rule are designed to rebuild overfished or depleted species as quickly as possible while taking into account the statutory factors of the MSA. Although NMFS considered all relevant factors, NMFS did not rely upon the white paper or any other rebuilding paradigm that prioritizes the economic goal of long-term cumulative yields over conservation as a basis for its final decision.

Comment 18: The rebuilding plan for petrale sole is inconsistent with the MSA. The 2011–2012 specifications allow for catch levels that exceed the 25–5 control rule and do not result in the quickest rebuilding time for this species.

Response: NMFS disagrees with commenters' assertion that the rebuilding plan for petrale sole is inconsistent with the MSA. All of the alternatives considered in the FEIS rebuild the stock within 10 years, as required by the MSA when the stock is biologically capable of doing so. The rebuilding plan adopted in this final rule is estimated to rebuild the stock by 2016, which is only 2 years longer than the estimated minimum time to rebuild (which in this case is equal to $T_{F=0}$). The Council's rebuilding strategy is to set the ACL equal to the ABC in 2011 and apply the 25–5 harvest control rule starting in 2012. This rebuilding strategy results in a rebuilding time period that is as short as possible while taking into consideration the important role of petrale sole in the groundfish fishery and the relatively high productivity of the stock.

Petrale sole is one of the primary target stocks in the non-whiting trawl fishery and is predominantly caught by that sector. No other sector currently targets petrale sole, although other sectors do incidentally catch petrale sole in relatively small amounts. For this reason, the Council chose to rebuild the petrale sole stock by constraining fishing opportunities for the non-whiting trawl sector. Specifications in this final rule rebuild the stock in as short a time as possible.

Comment 19: The harvest specifications for POP and widow rockfish appear inconsistent with the MSA mandate to rebuild overfished species in as short of a time as possible. NMFS chose to maintain the status quo harvest rate and catch limits for POP despite POP rebuilding being behind schedule according to the 2009 stock assessment. In addition, although widow rockfish appears close to being rebuilt, previous assessments predicted the stock would be rebuilt by 2009, indicating the stock is also behind schedule. Nonetheless, the proposed SPR harvest rate for widow rockfish is substantially increased.

Response: NMFS disagrees with the commenters. The T_{TARGET} for widow is 2010; the commenters incorrectly state that the species was to be rebuilt in

2009. Because of the delay in final catch impacts data, which will enable NMFS to declare the stock not overfished, the change in widow rockfish to a healthy stock can not officially occur until a later date. This ensures that NMFS uses the best available science in making its final determination that a stock is no longer overfished. This final rule implements an ACL of 600 mt, which is a modest increase from the No Action OY of 509 but is unlikely to result in targeting of the stock.

For POP, the ACL alternatives analyzed in the FEIS were based on the new stock assessment. Our current understanding of POP stock status and productivity shows that $T_{F=0}$ is longer than the current T_{TARGET}. Therefore, all the ACL alternatives analyzed in the FEIS contemplate a change in the median time to rebuild that is greater than the current T_{TARGET}. Because the current harvest policy will not rebuild the species by T_{TARGET} even in the absence of fishing, the rebuilding plan is modified through this final rule. The SSC did recommend modifying the rebuilding plan out of the necessity to extend the current T_{TARGET} based on our changed understanding of stock status and productivity. For the FPA, the Council proposed changing T_{TARGET} from 2017 to 2020 while maintaining the F86.4 percent SPR harvest rate. Although the same SPR harvest rate is being maintained for POP, the new T_{TARGET} of 2020 is only two years longer than $T_{F=0.}$ In addition, maintaining the same SPR harvest rate results in an ACL for 2011 that is lower than the former 2010 OY because applying the same SPR harvest rate responds to changes in our understanding of the status of the stock. The Council also recommended specifying an ACT of 157 mt for POP in 2011 and 2012 under the FPA to further reduce fishing-related mortality. This revised rebuilding time is based on the best available science and rebuilds the stock in as short a time as possible. This rule implements an ACL and an ACT for POP. The ACT is discussed in detail in Comment 5 above.

Comment 20: The leeway NMFS has to extend T_{TARGET} beyond T_{MIN} is limited to the amount of fish necessary to prevent severe short-term hardship to fishing communities. Therefore, any T_{TARGET} longer than T_{MIN} must be specifically demonstrated as necessary to prevent this hardship. The rebuilding plans continue to place undue reliance on $T_{MAX.}$ The Ninth Circuit decision in *NRDC* v. *NMFS* makes it clear that rebuilding plans can no longer be based on T_{MAX} but instead must be oriented around T_{MIN} in order to comply with the mandate to rebuild as quickly as possible.

Response: NMFS notes that the MSA requires that overfished stocks be rebuilt as quickly as possible, taking into account the status and biology of the overfished stock, the needs of fishing communities and the interaction of the overfished stock of fish within the marine ecosystem. NMFS believes that T_{MIN} is the starting point, and that it is important to assess the impacts on fishing communities of T_{MIN} (or $T_{F=0}$), and alternative levels above that amount in order to determine the appropriate rebuilding time period. The FMP, as amended by Amendment 16–4, is clear that the time to rebuild may be adjusted upward from T_{MIN} (the minimum time in which an overfished stock can rebuild to its target biomass) under certain circumstances, and as such, T_{MIN} is the starting point for considering appropriate time periods for rebuilding. See FMP section 4.5.2. Procedures for Calculating Rebuilding Parameters. T_{TARGET} is established based on the factors specified in MSA section 304(e)(4) with T_{MIN} and T_{MAX} serving as a starting point and reference point, respectively. The use of T_{MAX} as one rebuilding reference point is consistent with the NS1 Guidelines. However, the rebuilding plans implemented by the final rule are not "based on" T_{MAX}.

Bycatch Accounting, CCAs, Processing at Sea, EFP and Other Comments

Comment 21: The PFMC requested the yellowtail rockfish set aside for exempted fishing permit (EFP) activities be 10 mt for 2011, rather than the proposed 2 mt. This is because the EFP was approved in 2010, but all of the catch of yellowtail rockfish would occur in 2011.

Response: NMFS has made the appropriate changes to the EFP set aside amounts and addresses this issue in the Changes from the proposed rule section of this rule.

Comment 22: Bycatch accounting methods are insufficient to meet the MSA mandate to prevent overfishing, and 2011–2012 specifications and management measures do not include new measures to make bycatch accounting more timely and more accurate.

Response: The commenter does not specify additional management measures that might make bycatch accounting methods more timely and accurate, therefore it is difficult to respond to this comment. In the trawl fishery, new management measures being implemented as part of the trawl catch shares program are expected to improve bycatch accounting and include increased observation and monitoring as follows: One observer on every IFQ vessel and mothership catcher vessel; two observers on every at-sea processing vessel 125 ft and over; one observer on at-sea processing vessels under 125 ft; catch monitors at all IFQ first receivers; full catch accounting of retained and discarded catch; and real-time catch reporting through observer reports and electronic fish tickets. Together these monitoring measures are expected to result in significant improvements to the timeliness and accuracy of catch accounting in the trawl fisheries.

IFQs are expected to constrain the total catch mortality to a level within the trawl allocations. Full catch accounting and real time reporting in the shoreside IFQ program is expected to reduce management uncertainty relative to inseason catch accounting in the trawl fishery. Under an IFQ program there is a greater likelihood that the trawl fishery will stay within the trawl allocations. Given the full catch accounting under trawl IFQ program and that all catch, discarded and retained counts towards the individuals' IFQ shares, the risk of the fishery exceeding an ACL is further reduced compared to 2010 and prior years. Management of the bottom trawl fishery under the IFQ program is expected to reduce bycatch. This is because the pace of the fishery under IFQ is expected to slow such that fishers have time to use innovative techniques to avoid non-target species or reduce bycatch by increasing the utilization of non-target species.

Bycatch accounting in the non-trawl fisheries has significantly improved since implementation of the West Coast Groundfish Observer Program (WCGOP) in 2003. Total catch is modeled using the best available WGCOP data (see model descriptions in Appendix A of the FEIS). Unlike the trawl fisheries where every vessel in the fleet will be monitored in 2011 and 2012, vessels in the non-trawl fisheries are sub-sampled meaning that observers collect data from a portion of the vessels in the various non-trawl fisheries. The data collected by observers, in combination with data from state landing receipts (fish tickets), is used together to estimate bycatch. Although the availability of data to inform the understanding of discards in the non-trawl fisheries has significantly improved since 2003; neither the WCGOP observer data on catch discarded at sea nor the landed catch data reported on fish ticket data submitted to the states are available in realtime. The WCGOP for the non-trawl fisheries is a developing program that is

continually being refined. Even as a developing program, NMFS believes that the bycatch accounting methods meet the MSA requirements.

Comment 23: NMFS received 13 letters from private citizens and fishing associations in support of provisions for allowing fishing within the CCA out to 30 fm and allowing the retention of shelf rockfish within the CCA. Many of the comments indicated that the analysis submitted by CDFG represented the best available science and indicates that when the CCAs were first established more area was closed than is necessary, as evidenced by the California commercial passenger fishing vessels (CPFV or California recreational charter) data showing one cowcod caught in 20–30 fm in the last 10 years. CDFG also supported these changes in its comment letter.

Response: Because cowcod are significantly depleted and the stock's productivity is extremely low, an extremely low incidental harvest rate is necessary to achieve rebuilding progress. Tenets of the cowcod rebuilding plan are to prohibit harvest in all fisheries and to close the primary habitats where cowcod are known to occur. Closure of the CCAs in the southern California Bight in 2001 effectively reduced harvest to very low levels; a strategy anticipated to work well for reducing adult cowcod mortality given their sedentary nature. Using the CCA closures to reduce fishing pressure in significant portions of known cowcod habitat addresses management uncertainty by reducing the likelihood that a management mistake would compromise rebuilding, even under data-poor management conditions. The FMP states that as new information become available on cowcod behavior and fisheries interactions with cowcod, the boundaries or related regulations concerning the current CCAs may change, and additional CCAs may be established by regulation. Recent submersible surveys have provided some information on cowcod distribution and indicate that juvenile cowcod occur over a wide range of habitat types, at depths between 28 and 180 fathoms and typically avoid soft sediment substrate, favoring hard substrate such as cobble and boulder fields or rock ridges (Love and Yoklavich, 2008). However, Love and Yaklovich (2008) also indicated that characterizing nursery habitat is important when evaluating survival and recruitment strength of juvenile cowcod and the subsequent persistence of local cowcod populations and that careful delineation of essential nursery habitats for young cowcod is especially critical when considering effective management strategies. There is little data currently available to understand fishery interactions and the distribution of cowcod as the stock rebuilds.

While the CDFG analysis indicated that modifying the depth restriction in the CCA is not projected to result in increased catch of adult cowcod, changes in the encounters of juvenile cowcod are unknown (recreational data does not currently report maturity status). The main conservation considerations pertain to how the proposed changes to depth restrictions will change fishing effort distribution such that changes in effort would result in increased encounters with cowcod (adult and juvenile) such that there is a risk of exceeding the ACL, or rebuilding being delayed (*i.e.,* reproductive potential affected by disturbing or losing nursery habitat). The CDFG analysis indicated that an increase in the depth restriction from 20 fm to 30 fm or 40 fm may not result in a significant increase in bycatch of adult (greater than 45 cm) cowcod in recreational fishery or appreciably increase the risk of the ACL being exceeded. However, NMFS believes that the uncertainty with the cowcod stock assessment and the general lack of information on fishery interactions warrant precaution. Because limited data are available and given the potential disturbance and loss of nursery areas that could have long-lasting effects on rebuilding, NMFS believes that new information on cowcod behavior and fishery interaction must be analyzed and considered in cooperation with the NMFS scientists and SSC prior to making changes in the existing CCAs. In addition, NMFS believes that the risks to the stock and further management measures to improve catch accounting relative to changes in the CCAs must be considered. This final rule does not include changes to the No Action CCA boundaries or retention allowances.

Comment 24: NMFS received a comment from a member of the public who participates in the limited entry trawl fishery requesting that the current regulations prohibiting processing at sea be changed to allow the commenter an exemption. This exemption was supported by ODFW in one of its comment letters on this action.

Response: NMFS understands the considerable expense of modifying a fishing vessel to process at sea, however, this issue was not considered within the EIS for the 2011–2012 management measures. Because modification of the regulations could result in changes in fishing practices, it is not appropriate to modify the regulations without an analysis that specifically considers the effects of allowing the expansion of processing at sea. Further, regulations prohibiting processing at sea were approved by the Council during its development of the Trawl Rationalization program. NMFS suggests that the commenter consider submitting a request for consideration by the Council for the 2013–2014 biennial management cycle.

Comment 26: There were several inaccuracies in the preamble of the proposed rule noted by CDFG and ODFW in their comment letters. They pertained to sector allocations in the preamble.

Response: NMFS has corrected these errors for the final rule.

Comment 27: NMFS received letters that did not contain statements that require a response but instead contained information that provided NMFS with more background information regarding the impacts of the alternatives considered.

Response: NMFS considered all the relevant information and comments received during the comment period and took that information into account when making its final decision.

Comment 28: NMFS should conduct stock assessments and set stock-specific catch limits for china, quillback and rougheye rockfish, which appear to be subject to overfishing according to recent analyses.

Response: The selection of species for stock assessment purposes is conducted through the Council's planning of the 2013–2014 Harvest Specifications. This process will begin at the September 2011 Council meeting. Comments regarding species that should have stock assessments are most appropriately submitted at that time.

Comment 29: NMFS received one comment from WDFW in support of NMFS decision not to remove dusky and dwarf red rockfish from the FMP at this time.

Response: NMFS agrees with the commenter and has disapproved the portion of Amendment 23 that would have removed dusky and dwarf red rockfish from the FMP.

Changes From the Proposed Rule

The November 3, 2010 (75 FR 67850) proposed rule contained incorrect amendatory instructions for the proposed changes to the harvest specification tables. The biennial harvest specifications, including OFLs, ACLs, HGs, allocations *etc.* are published in 50 CFR part 660, subpart C in tables 1a through 2d. Instruction 14a contained amendatory instructions

that described the proposed changes, incorrectly, as "Tables 1a through 1c, subpart C, are proposed to be revised * * *." The instruction was incorrect and incomplete. This final rule includes all eight of the harvest specification tables, including: Table 1a, Table 1b, Table 1c, Table 1d, Table 2a, Table 2b, Table 2c and Table 2d to subpart C. The tables that are revised in this final rule are unchanged from the tables that published in the proposed rule, unless otherwise noted in the Changes from the Proposed Rule section. This final rule also adds Table 1.e., to subpart C, as depicted in the proposed rule.

In § 660.131 NMFS proposed to revise the term "end" and replace it with the term "closed" as a housekeeping measure. The proposed rule contained a mistake in the amendatory language, and listed the paragraphs to be revised as § 660.131(b)(4)(ii). The paragraph that was intended to be amended is actually § 660.131(b)(3)(ii). This final rule corrects that mistake in the amendatory language and makes the changes that were proposed, but in the correct paragraph.

CDFG informed NMFS that there was a mistake in a Council motion and the new boundary line that approximates the 40 fm depth contour inside the CCAs (around Santa Barbara Island, San Nicolas Island, Tanner Bank, and Cortes Bank) should not have been recommended to NMFS for implementation. CDFG requested that the latitude and longitude coordinates that were part of the proposed changes at § 660.71 paragraphs (s) through (v) be removed from the final rule, as they were not intended to be used for management of groundfish fisheries that occur within the CCA. Therefore, NMFS has removed the proposed additions at § 660.71 paragraphs (s) through (v), so that boundary lines approximating the 40 fm depth contour around Santa Barbara Island, San Nicolas Island, Tanner Bank, and Cortes Bank will not be defined in regulations at this time.

The November 3, 2010 proposed rule included changes for consistency with the new annual catch limit (ACL) framework that was added to the PCGFMP under Amendment 23. In § 660.140, two paragraphs were proposed to be revised to either replace or augment the term "OY" with the new terminology that has been added to the PCGFMP and in other sections of the groundfish regulations. The paragraphs at § 660.140 were revised in a December 15, 2010 final rule (75 FR 78344) that implemented the final program components for the IFQ fishery. This final rule modifies the revised paragraphs (a)(3) and (c)(1), as they appear in the codified regulations, by adding language that is consistent with what was in the proposed rule to reflect the new ACL and ACT terminology.

The proposed rule included a 499 mt set-aside deduction from the proposed 2011 yellowtail rockfish ACL of 4,364 mt. This resulted in a proposed harvest guideline of 3,865 mt for 2011. The Council sent a letter to NMFS on December 1, 2010 recommending that NMFS increase the set-aside for EFP catch from 2 mt to 10 mt to allow the Oregon Recreational Fishing Alliance (RFA) to prosecute their EFP in 2011. The Oregon RFA will be fishing under an EFP to catch underutilized yellowtail rockfish while keeping bycatch of overfished species low. A 2 mt set aside for EFPs in 2011 was initially recommended when the Oregon RFA project was anticipated to be concluded before the start of 2011. However, issuance of the EFP by NMFS later in 2010 than was anticipated resulted in a continuation in EFP activities into 2011. Therefore, NMFS is increasing the set-aside for yellowtail rockfish from 499 mt to 507 mt to allow the Oregon RFA EFP for yellowtail rockfish to be prosecuted in 2011. The slightly lower 2011 fishery harvest guideline of 3,857 mt for yellowtail rockfish is shown in Table 1.a and Table 1.b, to subpart C.

This final rule also refines the fishery harvest guidelines that are shown in Table 1a and Table 1b, subpart C, for POP and petrale sole. The calculation and deductions from the ACL are unchanged, but the fishery harvest guideline is modified to show one decimal place. As a result, the fishery harvest guideline in these tables for petrale sole is 910.6 mt instead of 911 mt, and the fishery harvest guideline for POP is 144.2 mt instead of 144 mt.

Footnote "n/" to Table 1a, subpart C was corrected so that the coastwide OFL of 1,802 mt for starry flounder was correctly referenced to be for the year 2011 and not for 2010. Changes to footnote "o/" to Table 1a, subpart C and footnote "o/" to Table 2a, subpart C were added to clarify that all species within the "other flatfish" complex are all category 3 stocks and that the 2011 ACL and 2012 ACL are both equivalent to the 2010 OY for that species complex. Clarifying text is added to footnote "hh/" of Table 1a, subpart C to state that the 2011 ACL is equivalent to the 2010 OY for longnose skate. Edits are also made to footnote "ii/" of Table 1a, subpart C and to footnote "ii/" of Table 2a, subpart C, to clarify that the ABC for the "other fish" complex is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) because all of the stocks in the complex are category 3 species. Clarifying text is also added to footnote "ii/" of Table 1a, subpart C and to footnote "ii/" of Table 2a, subpart C, to state that 2011 ACL and 2012 ACL are both equivalent to the 2010 OY for the "other fish" complex, and that the fishery HG is equal to the ACL. Clarifying language is added in footnotes "b/" through "e/" to Table 1b, subpart C, such that the descriptions of the allocations to the three sectors of the whiting fisheries are clearly articulated and contain cross-references to pertinent shorebased IFQ fishery regulations at § 660.140, subpart D.

Table 1d and Table 2d, subpart C, are corrected to specify that there is a formal allocation of Pacific whiting to the at-sea whiting fishery. References are added to Table 1d and Table 2d, subpart C, to the pertinent regulations in Table 1b, subpart C and Table 2b, subpart C, respectively.

This rule publishes boundaries for the non-trawl commercial fisheries as well as cumulative limits for the limited entry fixed gear and opens access fisheries. Table 2 (North) and 2 (South), to subpart E and Table 3 (North) and 3 (South), to subpart F in this final rule are identical to those tables that published in the proposed rule, except for the trip limits for sablefish. Since the trip limits for sablefish that were published in the proposed rule were developed, the most recent fishery information indicates that changes to sablefish trip limits are warranted. On March 1, 2011, NMFS reduced sablefish trip limits in the open access fishery coastwide and increased or restructured trip limits for sablefish in the limited entry fixed gear fishery coastwide, through the remainder of the year. This action was consistent with the Council's recommendations from its November 2010 meeting, and was based on the most recently available fishery information. At its March 2011 meeting, the Council considered the most recent fishery information and recommended a reduction in the bi-monthly cumulative limits for sablefish in the limited entry fixed gear fishery in the area north of 36° N. latitude. The recommended reduction was in response to an error in the calculation of sablefish landings discovered over the winter. The error affected the landings estimates that the Council has been using for establishing the cumulative limits in the limited entry sablefish daily trip limit fishery. This resulted in cumulative limits in this fishery that were too high, because catch of sablefish was being underestimated. Therefore, NMFS is reducing the bi-monthly cumulative limits for sablefish in the limited entry

fixed gear fishery in the area north of 36° N. latitude. in this rule.

There are many instances throughout 50 CFR part 660, subparts C through G where the tables in the regulations at 50 CFR part 660, subpart C that contain the biennial harvest specifications are referred to as "tables 1a through 2d". Generally, Tables 1a through 1d, subpart C, would contain harvest specifications for the first year of the biennium. In this case, those tables would contain the 2011 harvest specifications. Generally, Table 2a through 2d, subpart C, would contain the harvest specifications for the second year of the biennium and beyond. In this case those tables would contain the 2012 and beyond harvest specifications. Two of the harvest specification tables that published in the proposed rule collapsed each year's harvest specifications into a single table. By doing this, it left no content for the 2012 tables, at Table 2c and 2d, to subpart C. This created an inconsistency with the cross-references that are systemic throughout the groundfish regulations at 50 CFR part 660, subparts C through G. To maintain the integrity of the cross-references, and to maintain the split of annual harvest specifications into two sets of tables (one set for the first year of the biennium, and one set for the second year of the biennium, and beyond) this final rule removes the 2012 harvest specifications from Table 1c and Table 1d, subpart C, and re-publishes those 2012 harvest specifications, unchanged, in Tables 2c and 2d, subpart C.

As described in the preamble to the proposed rule, this final rule does not implement a single value for harvest specifications for Pacific whiting, but describes a range of harvest levels that were considered for 2011 and 2012. In Tables 1a and 1b, and Tables 2a and 2b, subpart C, the proposed rule announced Pacific whiting harvest specifications as "TBA" or "to be announced". To clarify that the range of harvest specifications is what are implemented in this final rule, "TBA" has been removed from these tables and has been replaced with a reference to the range of harvest specifications.

In the preamble of the proposed rule, NMFS described how two options for the trawl RCA and trawl trip limits were proposed. One option was proposed in the event that rationalization was delayed and the fishery was managed with trip limits (proposed Table 1a (North) and Table 1a (South) to subpart D). The other option was proposed for the rationalized fishery (proposed Table 1b (North) and Table 1b (South) to subpart D). Due to the delay in final implementation of the biennial specifications and management measures, the tables that included the RCA boundaries and trip limits during 2010 would remain in place until superseded. So, on December 30, 2010 Table 1b (North) and Table 1b (South) to subpart D from the proposed rule were redesignated as Table 1 (North) and Table 1 (South) to subpart D and were implemented in an emergency rule. NMFS implemented these tables (Table 1b (North) and Table 1b (South) to subpart D from the proposed rule) so that fishing in the rationalized groundfish fishery could begin in January 2011 under appropriate RCA structures and with appropriate landing allowances for non-IFQ species that are set forth in those tables. This final rule supersedes the tables set forth in that December 30, 2010 emergency rule with very similar tables, which will be in effect for 2011 and beyond (see Table 1 (North) and Table 1 (South) to subpart D).

This rule publishes Table 1 (North) and Table 1 (South) to subpart D, which has identical trawl RCA boundaries and landing allowances for non-IFQ species as Table 1b (North) and Table 1b (South) to subpart D that published in the proposed rule. However, a grammatical correction is made to the introductory text of each table to clarify that these tables describe the RCA boundaries that apply to vessels that are using groundfish trawl gear. A further clarification is also made to both tables by adding language to the introductory text to cite regulations regarding gear switching and which RCA applies to vessels operating under gear switching provisions at § 660.140, subpart D. Technical corrections to the numbering of footnotes to these tables are also made.

Related to the redesignation of Table 1 (North) and Table 1 (South) to subpart D, regulatory text at § 660.60(g) and (h)(1) do not need to be revised as proposed. This is because the current regulatory text correctly references Table 1 (North) and Table 1 (South) to subpart D. This rule keeps those tables with their current designations, and therefore the proposed changes to cross-references at § 660.60(g) and (h)(1) are no longer necessary.

The Tribal sablefish allocations for the area north of 36° N. latitude. that were proposed for 2011 and 2012 were 552 mt and 535 mt per year, respectively (§ 660.50(f)(2)(ii)). These were calculated by taking 10 percent of the ACL, for 2011 and 2012, respectively, for the area North of 36° N. latitude. and then reducing that amount by 1.5 percent for estimated discard mortality. The December 30, 2010 emergency rule (75 FR 82296) implemented an interim sablefish Tribal allocation of 543 mt. That amount was calculated by taking 10 percent of the 2011 ACL for the area North of 36° N. latitude. and then reducing that amount by 1.6 percent for estimated discard mortality. The 1.6 percent was the amount deducted for discard mortality in regulations for 2010, and therefore that is what was used in the emergency rule. This final rule implements the Tribal allocations that were announced in the November 3, 2010 (75 FR 67850) proposed rule, and were calculated using the proposed 1.5 percent deduction for discard mortality. This final rule also makes a grammatical correction by adding the acronym "ACL" in the description that was in the proposed rule. This grammatical correction is needed so that the allocation is correctly described as 10 percent of the Monterey through Vancouver area ACL.

The proposed changes to § 660.140(c)(1) removed the term "OYs" and replaced it with "ACLs or ACTs" and made additional clarifying changes to surrounding text. The proposed clarifications to surrounding text were confusing. Therefore, the final rule simply removes the term "OYs" and replaces it with "ACLs or ACTs" with no further changes to the existing regulatory text at § 660.140(c)(1).

The December 30, 2010 emergency rule (75 FR 82296) implemented interim changes to §§ 660.60 and 660.130 to remove obsolete language about trip limits in the trawl fishery because that emergency rule removed trip limits for IFQ species. This final rule makes the removal of trip limits for IFQ species permanent, consistent with the proposed rule (see above regarding Table 1 (North) and Table 1 (South)). This final rule makes additional regulatory changes to what was in the proposed rule, which are a natural extension of the removal of trip limits in the proposed rule. This final rule keeps the obsolete language out of the regulations at §§ 660.60 and 660.130, consistent with the emergency rule. NMFS acknowledges that some obsolete language regarding trip limits, crossover provisions, and varying trip limits based on the gear type that is used will remain in regulations. NMFS intends to issue a follow-up rulemaking that will remove or revise outdated language.

The December 30, 2010 emergency rule (75 FR 82296) implemented interim shorebased trawl allocations for the start of the 2011 trawl fishery at § 660.140. The interim allocations allowed quota pounds for IFQ species to be available at the start of the 2011 fishery, but

before the final 2011 harvest specifications were implemented. This final rule adds new regulations, from what was in the proposed rule. The new regulations implement the allocation structure that is articulated in § 660.55 and are, therefore, a natural extension of the trawl allocations that published in the proposed rule. This final rule updates the initial shorebased trawl allocations that published in the emergency rule, with the final 2011 shorebased trawl allocations. The final shorebased trawl allocations are increasing for the following species: sablefish south of 36° N. latitude.; splitnose rockfish south of 40°10′ N. latitude.; Dover sole; english sole; arrowtooth flounder; starry flounder; petrale sole; cowcod south of 40°10′ N. latitude.; yelloweye rockfish; POP and widow rockfish. Specifically, the yelloweye rockfish shorebased trawl allocation is increasing from 0.3 mt to 0.6 mt consistent with the Council's recommendations associated with a 17 mt harvest level, and the cowcod shorebased trawl allocation is increasing from 1.3 mt to 1.8 mt consistent with the Council's recommendations regarding the trawl and non-trawl allocations for cowcod south of 40°10′ N. latitude.

This final rule publishes 2011 harvest specifications for overfished groundfish species in Tables 1a, 1b, 1c and 1e that are identical to the proposed harvest specifications for all of the groundfish species except cowcod and yelloweye rockfish. Therefore, the cowcod and yelloweye rockfish ACLs in Table 1a to subpart C are lower in this final rule than those from the proposed rule. Footnotes z/for cowcod and bb/for yelloweye rockfish to Table 1a and have also been modified for consistency with the changes in Table 1a. Also, the cowcod fishery HG in Table 1b has been modified for consistency with the changes in Table 1a.

NMFS is implementing changes to the overfished species rebuilding plans. However, final 2012 ACLs, ACTs, and fishery HGs in for the overfished species will be contingent upon potential changes to the FMP with regard to the rebuilding plans for the overfished species. Therefore, the proposed 2012 harvest specifications for overfished species are not implemented in this final rule. ACLs, ACTs and fishery HGs for overfished species, in Table 2a and Table 2b, subpart C, are equal to the 2011 values.

NMFS is implementing changes to the status determination criteria and harvest control rules for flatfish. However, final 2012 OFLs, ABCs, ACLs, ACTs and fishery HGs, for flatfish species will be contingent upon potential changes to the FMP with regard to status determination criteria and harvest control rules for flatfish. Therefore, the proposed 2012 harvest specifications for flatfish are not implemented in this final rule. Assessed flatfish, OFLs, ABCs, ACLs, ACTs and fishery HGs, in Table 2a and Table 2b, subpart C, are equal to the 2011 values.

NMFS is disapproving the Council-recommended changes to depth restrictions and groundfish retention regulations for vessels fishing within the CCAs. Therefore, this final rule does not implement the proposed changes to recreational fishing restrictions that modified the depth restrictions within the CCAs or that allowed retention of shelf rockfish within the fishing areas that are open in the CCAs. Regulations at § 660.360(c)(3)(i)(A)(*5*) and (c)(3)(i)(B) keep the depth restrictions and species retention regulations within the CCAs for the California recreational fishery the same as those that were in place in 2009 and 2010: Fishing for minor nearshore rockfish, cabezon, kelp greenling, lingcod, California scorpionfish and "other flatfish" is permitted within the CCAs, shoreward of the 20 fm (37 m) depth contour when the season for those species is open south of 34°27′ N. latitude. Also, as part of NMFS' disapproval of changes to the depth restrictions for vessels fishing within the CCAs, the latitude and longitude points that were proposed to define the 30 fm depth contour inside the CCAs (around Santa Barbara Island, San Nicolas Island, Tanner Bank, and Cortes Bank) are not included in this final rule. Therefore, NMFS has removed the proposed additions at § 660.71, paragraphs (k) through (n), so that boundary lines approximating the 30 fm depth contour around Santa Barbara Island, San Nicolas Island, Tanner Bank, and Cortes Bank will not be defined in regulations at this time.

NMFS is disapproving the Council's recommendation to remove dusky rockfish (*Sebastes ciliatus*) and dwarf-red rockfish (*Sebastes rufianus*) from the FMP as discussed above in the response to Comment 29. As a result of this disapproval, this final rule does not implement the proposed changes to the definition of "Groundfish" in paragraphs (7), (7)(ii)(A) and (7)(ii)(B) to § 660.11, subpart C.

Classification

The Administrator, Northwest Region, NMFS, determined that FMP Amendment 23 and the 2011 groundfish harvest specifications and management measures, which this final rule implements, are necessary for the conservation and management of the pacific coast groundfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

As described in the preamble to the December 30, 2010 emergency rule and as discussed above in Background, there was not adequate time, given the complexity of the rulemaking and associated documentation and other work, to have this final rule effective by January 1, 2011. Therefore, most of the 2010 specifications and management measures remained in place for the January-April cumulative limit periods, except that an emergency rule made interim changes to allow the start of the rationalized trawl fishery and routine adjustments to fishery management measures, within the scope of the 2009–2010 regulations, were made. At the time NMFS anticipated that this final rule would implement the 2011–2012 biennial specifications and management measures beginning on April 29, 2011. NMFS is under court order to establish rebuilding plans by April 29, 2011 for the overfished species. The 2011–2012 groundfish harvest specifications and management measures are intended to rebuild overfished stocks as quickly as possible, taking into account the appropriate factors. NMFS utilizes the most recently available fishery information, scientific information, and stock assessments, to implement specifications and management measures biennially. Generally these management measures are implemented on January 1 of odd numbered years. The 2011–2012 specifications and management measures were developed using the most recently available information and therefore reflect the current status of the stock being managed.

NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective on May 11, 2011. Leaving the 2010 harvest specifications and management measures in place could cause harm to some stocks because those management measures are not based on the most current scientific information, or they could cause drastic management changes later in the year to prevent exceeding some lower 2011 harvest specifications once they are implemented. For example, the cowcod rockfish ACL is lower in 2011 than it was in 2010 and is taken in commercial and recreational fisheries north of Cape Mendocino, California. Therefore, if higher than anticipated catch of cowcod occurs, changes to management

measures that could reduce incidental catch of cowcod could be delayed because of the higher harvest level that is in place. This could increase the risk of exceeding the lower 2011 ACL or causing more severe closures later in the year for fisheries that take cowcod incidentally. Also, for some species, leaving 2010 harvest specifications in place could unnecessarily delay fishing opportunities until later in the year, as this final rule will increase the catch limits for several species for 2011. Thus, a delay in effectiveness could ultimately cause economic harm to the fishing industry and associated fishing communities. These reasons constitute good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after date of publication.

NMFS prepared a final environmental impact statement for Amendments 16–5 and 23 and the 2011–2012 harvest specifications and management measures. A notice of availability was published on March 11, 2011 (76 FR 13401). FMP amendment 23 was approved on December 23, 2010. NMFS issued a ROD identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS 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**) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows: Amendment 23 and the biennial harvest specifications and management measures are intended to respond to court orders in *NRDC* v. *Locke* and to implement a groundfish management scheme for the 2011–2012 groundfish fisheries. During the comment period on the proposed rule, NMFS received 35 letters of comment, but none of the comments received addressed the IRFA, although one letter directly or indirectly addressed the economic effects of the rule, as discussed above in the response to Comment 10, Comment 12 Comment 15 and Comment 17. The FRFA compares all the alternatives by discussing the impacts of each alternative on commercial vessels, buyers and processors, recreational charter vessels, seafood consumers, recreational anglers, non-consumptive users, non-users, and enforcement. Based on analyses discussed in Chapter 4 of the FEIS, the following summary is based on the Council's RIR/IRFA with the focus on the NMFS preferred alternative that will be implemented by this action. In terms of expected harvests, ex-vessel values, and recreational trips, there are no differences between the Council's FPA and the NMFS preferred alternative, relative to the IRFA/FRFA.

The overall economic impact of NMFS' preferred alternative is that many sectors are expected to achieve social and economic benefits similar to those under the current regulations, or the No Action alternative. The combined total ex-vessel revenues associated with the NMFS preferred alternative including at sea whiting is $90 million, compared with the No-Action level of $82 million. On a coastwide basis, excluding at-sea whiting, commercial ex-vessel revenues for the non-Tribal and Tribal groundfish sectors are estimated to be approximately $70 million per year under NMFS' preferred alternative compared with approximately $68 million under No Action, and the number of recreational bottom fish trips is estimated to be 646 thousand under NMFS' preferred alternative compared with 609 thousand under No Action. However, there are differences in the distribution of ex-vessel revenue and angler trips on a regional basis and on a sector-by-sector basis. These changes are driven by changes in the forecast abundance for target species and overfished species. The major changes to major commercial species target species are associated with Pacific whiting, Dover Sole, petrale sole and sablefish. Compared to the No-Action Alternative, Pacific whiting harvests are expected to increase by 50 percent and Dover sole by 25 percent while sablefish harvests are expected to decrease by 10 percent and petrale sole harvests by 23 percent. With the exception of the Pacific whiting and nearshore open access sectors, all other non-Tribal commercial fisheries sectors are expected to achieve lower levels of ex-vessel revenues than under No Action. The limited entry fixed gear sector shows the greatest projected decline (−10 percent) in revenue as a result of the sablefish ACL decrease. The Pacific whiting fishery at-sea sector (including Tribal) revenues are expected to increase by 51 percent and the shoreside whiting trawl (excluding Tribal) revenues are expected to increase by 33 percent. Ex-vessel revenues in both the non-whiting trawl (excluding Tribal) and the Tribal shoreside fisheries (trawl and fixed, including whiting) are both expected to decrease by about 2 percent.

A variety of time/area closures applicable to commercial vessels have been implemented in recent years. The most extensive of these are the RCAs, which have been in place since 2002 to prohibit vessels from fishing in depths where overfished groundfish species are more abundant. Different RCA configurations apply to the limited entry trawl sector and the limited entry fixed gear and open access sectors. In addition, the depth ranges covered can vary by latitudinal zone and time period. The alternatives vary somewhat in terms of the extent of RCAs. In addition to the RCAs, two CCAs have been in place since 1999 in the Southern California Bight to reduce bycatch of the overfished cowcod stock and yelloweye conservation areas have been established off the Washington Coast to reduce bycatch of the overfished yelloweye rockfish stock. The NMFS preferred alternative for the limited entry non-whiting trawl fleet generates slightly lower ex-vessel revenue on a coastwide basis when compared to revenues under the current regulations or No Action alternative. This is primarily driven by a decrease in the abundance of sablefish and petrale sole as opposed to changes in status of constraining species. Area-based management for the limited entry non-whiting trawl fleet under the NMFS preferred alternative will be comparable to what was in place in 2009 and 2010—the area north of Cape Alava, Washington and shoreward of the trawl RCA will remain closed in order to protect overfished rockfish species. Given the decreased amount of fishable area in northern Washington since 2009, higher costs for fishery participants from increases in fuel required to travel to and fish at those deeper depths would remain.

The fixed gear sablefish sector will generate lower revenue under NMFS' preferred alternative than No Action because the sablefish ACL has decreased. However, the fixed gear fleet will have somewhat more area available than under No Action, because fishing will be open at depths deeper than 100 fm (183 m) north of 40°10′ north latitude whereas under No Action, depths between 100 fm (183 m) and 125 fm (229 m) were only open on days when the Pacific halibut fishery was open. Fixed gear fisheries south of 36° north latitude will see sablefish harvest close to status quo levels. There are no recommended changes to area management relative to status quo.

Under NMFS' preferred alternative, the nearshore groundfish fishery is

expected to have a moderate increase in ex-vessel revenues compared with No Action due to increased targeting opportunities for black rockfish (between 42° north latitude and 40°10′ north latitude) and cabezon south (south of 42° north latitude). Fishing areas open to the nearshore fleets will be roughly the same as under No Action. Fishing opportunity and economic impacts to the nearshore groundfish sector are largely driven by the need to protect canary and especially yelloweye rockfish.

Excluding whiting, the NMFS preferred alternative is projected to provide the west coast economy with slightly lower ex-vessel revenues than was generated by the fishery under No Action—a 3 percent decrease. However, effects on buyers and processors along the coast will vary depending on location. In addition, NMFS' preferred alternative attempts to take into account the desire expressed by buyers and processors to have a year round groundfish fishery. Individual quota management for trawl fisheries should help accommodate this preference; however in practice in the absence of trip limits it is somewhat uncertain how trawl landings will be distributed in time and space.

In terms of recreational angler effort, the number of angler trips under NMFS preferred alternative is slightly higher compared to No Action, but somewhat less than in 2009. However, an increase in angler effort under NMFS preferred alternative is occurring primarily in south and central California, while northern Washington shows a slight increase and Oregon shows no change compared with No Action. It is expected that under the proposed 2011–2012 management measures, Tribal groundfish fisheries will generate less revenue and personal income than under No Action due to a reduction in sablefish harvest.

The 2011–2012 period will be the first groundfish management cycle in which the shoreside trawl sector fisheries would be conducted under the Amendment 20 trawl rationalization program, including issuance and tracking of individual fishing quotas (IFQ) for most trawl-caught groundfish species. IFQ management is designed to provide opportunities for fisherman and processors to maximize the value of their fishery by creating incentives to make the optimum use of available target and bycatch species. Since all trawl trips will be observed, catch of constraining overfished species will be monitored in real time, and individuals will be held directly responsible for "covering" all catch of groundfish species with IFQ. Since IFQ for constraining, overfished species represents a real cost in terms of money and/or fishing opportunity, it is expected that fishers will take extraordinary steps to avoid unnecessary catch of these species. At the same time there is uncertainty about how individuals will be able to manage the individual risk inherent in a system based on personal responsibility. This issue may present a considerable challenge, especially to small businesses that have access to only a single limited entry trawl permit. Exhausting all readily available supplies of IFQ for a particularly constraining species, such as yelloweye, may result in the business being effectively shut down for the remainder of the season. Partly for this reason it is expected that over time the number of vessels and permits engaging in the limited entry trawl fishery will decline as fishers strive to consolidate available IFQ onto a smaller number of vessels in order to reduce the costs of harvesting the quotas. A smaller number of active vessels will mean reductions in the number of crew hired and in expenditures made in local ports for materials, equipment, supplies and vessel maintenance. As such, while wages and profits for those crew and vessel owners that do remain in the fishery should increase, the amount and distribution of ex-vessel revenues and community income will change in ways that are not yet foreseeable, but probably to the detriment of some businesses and communities currently involved in the groundfish trawl fishery. Due to these types of countervailing uncertainties, impacts on trawl fisheries under the 2011–2012 management measures used in this analysis were estimated using a model designed to project overfished species bycatch levels under a status quo cumulative trip limit management regime. Likewise, the model used to estimate community income impacts was calibrated based on recently estimated spending patterns for regional vessels and processors. While providing a useful starting point for comparing gross-level effects under the alternatives, the true range of economic impacts achievable under the rationalized, IFQ-managed fishery may reflect a considerable departure from these estimates.

The FRFA analysis includes a discussion of small businesses. This final rule will regulate businesses that harvest groundfish. According to the Small Business Administration, a small commercial harvesting business is one that has annual receipts under $4.0 million and a small charter boat business is one that has annual receipts under $7 million. The FRFA estimates that implementation of NMFS preferred alternative will affect about 2,600 small entities. These small entities are those that are directly regulated by this final rule that is being promulgated to support implementation of NMFS preferred alternative. These entities are associated with those vessels that either target groundfish or harvest groundfish as bycatch. Consequently, these are the vessels, other than catcher-processors, that participate in the limited entry portion of the fishery, the open access fishery, the charter boat fleet, and the Tribal fleets. Catcher/processors also operate in the Alaska pollock fishery, and all are associated with larger companies such as Trident and American Seafoods. Therefore, it is assumed that all catcher/processors are "large" entities. Best estimates of the limited entry groundfish fleet are taken from the NMFS Limited Entry Permits Office. As of June 2010, there are 399 limited entry permits including 177 endorsed for trawl (172 trawl only, 4 trawl and longline, and 1 trawl and trap-pot); 199 endorsed for longline (191 longline only, 4 longline and trap-pot, and 4 trawl and longline); 32 endorsed for trap-pot (27 trap-pot only, 4 longline and trap-pot, and 1 trawl and trap-pot). Of the longline and trap-pot permits, 164 are sablefish endorsed. Of these endorsements 130 are "stacked" (*e.g.* more than one permit registered to a single vessel) on 50 vessels. Ten of the limited entry trawl endorsed permits are used or owned by catcher/processor companies associated with the whiting fishery. The remaining 389 entities are assumed to be small businesses based on a review of sector revenues and average revenues per entity. The open access or nearshore fleet, depending on the year and level of participation, is estimated to be about 1,300 to 1,600 vessels. Again, these are assumed to be "small entities." The Tribal fleet includes about 53 vessels, and the charter boat fleet includes 525 vessels that are also assumed to be "small entities."

NMFS preferred alternative represents efforts to address the directions provided by the Ninth Circuit Court of Appeals, which emphasizes the need to rebuild stocks in as short a time as possible, taking into account: (1) The status and biology of the stocks, (2) the needs of fishing communities, and (3) interactions of depleted stocks within the marine ecosystem. By taking into account the "needs of fishing communities" NMFS was also simultaneously taking into account the

"needs of small businesses" as fishing communities rely on small businesses as a source of economic activity and income. Therefore, it may be useful to review whether the Council's three-meeting process for selecting the FPA can be seen as means of trying to mitigate impacts of the proposed rule on small entities. The FEIS and RIR/IRFA include analysis of a range of alternatives that were considered by the Council, including analysis of the effects of setting allowable harvest levels necessary to rebuild the seven groundfish species that were previously declared overfished. An eighth species, petrale sole, was declared overfished in 2010 and the final action includes a new rebuilding plan for this species along with the ACLs and management measures consistent with the adopted rebuilding plan. Associated rebuilding analyses for all eight species estimate the time to rebuild under various levels of harvest.

The Council initially considered a wider range of alternatives, but ultimately rejected from further analysis alternatives allowing harvest levels higher than what is generally consistent with current policies for rebuilding overfished stocks and a "no fishing" scenario (F=0). Section 2.4 of the FEIS describes six integrated alternatives including No Action, the Council's FPA, the NMFS preferred alternative, and three other alternatives (including the Council's Preliminary Preferred Alternative, which is similar to the Council's FPA). NMFS finds that the F=0 and Alternatives 1A, 1B, and 2, while resulting in shorter rebuilding times for most of the overfished species, lead to projected major decreases in commercial revenues and recreational activity. Allowing too many communities to suffer commercial or recreational losses greater than 10 percent fails to take into account the needs of fishing communities. Alternative 3, the Council FPA, and NMFS preferred alternative all reduce the impacts to communities to less than 10 percent, but they differ in their impacts on rebuilding times. Alternative 3 reduces rebuilding times from status quo for many of the overfished species, but does not reduce the rebuilding time for yelloweye rockfish, and results in only minor reductions for cowcod and darkblotched and rockfish. The Council's FPA improves upon Alternative 3 by reducing the rebuilding time for darkblotched rockfish by two years while maintaining Alternative 3's small positive increases in commercial revenues and recreational activity. The NMFS preferred alternative improves over the Council FPA by further reducing the rebuilding times of cowcod and yelloweye by three years and ten years, respectively. Comparison of the action alternatives with the No Action alternative allows an evaluation of the economic implications to groundfish sectors, ports, and fishing communities; and the interaction of depleted species within the marine ecosystem of reducing ACLs for overfished species to rebuild stocks faster than they would under the rebuilding strategies that NMFS adopted and has modified consistent with new, scientific information on the status and biology of these stocks.

Alternative 2011–2012 groundfish management measures are designed to provide opportunities to harvest healthy, target species within the constraints of alternative ACLs for overfished species. The integrated alternatives allow estimation of target species catch under the suite of ACLs for overfished species both to demonstrate if target species ACLs are projected to be exceeded and to estimate related socioeconomic impacts.

The Council reviewed these analyses and read and heard testimony from Council advisors, fishing industry representatives, representatives from non-governmental organizations, and the general public before deciding the Council's FPA in June 2010. The Council's final preferred management measures are intended to stay within all the final recommended harvest levels for groundfish species decided by the Council at their April and June 2010 meetings. NMFS reviewed these analyses, read and heard testimony from Council advisors, fishing industry representatives, representatives from non-governmental organizations, the general public, and considered legal obligations to comply with a court order (*NRDC* v. *Locke*) before deciding NMFS' preferred alternative in February 2011. The NMFS preferred management measures are intended to stay within all the final recommended harvest levels for groundfish species that were part of the NMFS preferred alternative.

There are no additional projected reporting, record-keeping, and other compliance requirements of this rule not already envisioned within the scope of current requirements. References to collections-of-information made in this action are intended to properly cite those collections in Federal regulations, and not to alter their effect in any way.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these

species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

The Southern Distinct Population Segment (DPS) of green sturgeon was listed as threatened under the ESA (71 FR 17757, April 7, 2006). The southern DPS of Pacific eulachon was listed as threatened on March 18, 2010, under the ESA (75 FR 13012). NMFS has reinitiated consultation on the fishery, including impacts on green sturgeon, eulachon, marine mammals, and turtles. After reviewing the available information, NMFS has concluded that, consistent with Sections 7(a)(2) and 7(d) of the ESA, the action would not jeopardize any listed species, would not adversely modify any designated critical habitat, and would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with Tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the Tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the Tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.50(d)(2) further state "the Secretary will develop Tribal allocations and regulations under this paragraph in consultation with the affected Tribe(s) and, insofar as possible, with Tribal consensus." The Tribal management measures in this final rule have been developed following these procedures.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: April 28, 2011.

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 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

Subpart C—West Coast Groundfish Fisheries

■ 2. In § 660.11,

■ a. Add definitions of "Acceptable Biological Catch", "Annual Catch Limit", "Annual Catch Target", and "Overfishing limit" in alphabetical order.

■ b. Revise the definition of "Fishery harvest guideline".

■ c. In the definition for "Groundfish", revise paragraph (9).

■ d. In the definition of "North-South management area" redesignate paragraphs (2)(xvii) through (xxii) as (2)(xviii) through (xxiii).

■ e. In the definition of "North-South management area", add paragraph (2)(xvii).

§ 660.11 General definitions.

* * * * *

Acceptable Biological Catch (ABC) means a harvest specification that is set below the overfishing limit to account for scientific uncertainty in the estimate of OFL, and other scientific uncertainty.

* * * * *

Annual Catch Limit (ACL) is a harvest specification set equal to or below the ABC threshold in consideration of conservation objectives, socioeconomic concerns, management uncertainty and other factors. The ACL is a harvest limit that includes all sources of fishing-related mortality including landings, discard mortality, research catches, and catches in exempted fishing permit activities. Sector-specific annual catch limits can be specified, especially in cases where a sector has a formal, long-term allocation of the harvestable surplus of a stock or stock complex.

Annual Catch Target (ACT) is a management target set below the annual catch limit and may be used as an accountability measure in cases where there is great uncertainty in inseason catch monitoring to ensure against exceeding an annual catch limit. Since the annual catch target is a target and not a limit it can be used in lieu of harvest guidelines or strategically to accomplish other management objectives. Sector-specific annual catch targets can also be specified to accomplish management objectives.

* * * * *

Fishery harvest guideline means the harvest guideline or quota after subtracting from the ACL or ACT when specified, any allocation for the Pacific Coast treaty Indian Tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

* * * * *

Groundfish * * *

(9) "Other fish": Where regulations of subparts C through G of this part refer to landings limits for "other fish," those limits apply to all groundfish listed here in paragraphs (1) through (8) of this definition except for the following: Those groundfish species specifically listed in Tables 1a and 2a of this subpart with an OFL for that area (generally north and/or south of 40°10′ N. lat.); spiny dogfish coastwide. "Other fish" may include all sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling listed in this section, as well as cabezon in waters off Washington.

* * * * *

North-South management area * * *

(2) * * *

(xvii) Cape Vizcaino, CA—39°44.00′ N. lat.

* * * * *

Overfishing limit (OFL) is the MSY harvest level or the annual abundance of exploitable biomass of a stock or stock complex multiplied by the maximum fishing mortality threshold or proxy thereof and is an estimate of the catch level above which overfishing is occurring.

* * * * *

■ 3. In § 660.12 revise paragraph (a)(8) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(8) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACT, ACL or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACT, ACL or OY applied; except as specified at § 660.131, subpart C for vessels participating in the Pacific whiting at-sea sectors.

* * * * *

■ 4. In § 660.30, paragraphs (a)(2)(iv) and (a)(6) are revised to read as follows:

§ 660.30 Compensation with fish for collecting resource information—EFPs.

* * * * *

(a) * * *

(2) * * *

(iv) The year in which the compensation fish would be deducted from the ACL or ACT before determining the fishery harvest guideline or commercial harvest guideline.

* * * * *

(6) *Accounting for the compensation catch.* As part of the harvest specifications process, as described at § 660.60, subpart C, NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next harvest specifications (ACLs or ACTs) set by the Council. Fish authorized in an EFP too late in the year to be deducted from the following year's ACLs or ACTs will be accounted for in the next management cycle where it is practicable to do so.

* * * * *

■ 5. Revise § 660.40 to read as follows:

§ 660.40 Overfished species rebuilding plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial ACLs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock. The harvest control rule is expressed as a "Spawning Potential Ratio" or "SPR" harvest rate.

(a) *Bocaccio.* The target year for rebuilding the bocaccio stock south of 40°10′ N. latitude to B_{MSY} is 2022. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual SPR harvest rate of 77.7 percent.

(b) *Canary rockfish.* The target year for rebuilding the canary rockfish stock to B_{MSY} is 2027. The harvest control rule to be used to rebuild the canary rockfish stock is an annual SPR harvest rate of 88.7 percent.

(c) *Cowcod.* The target year for rebuilding the cowcod stock south of 40°10′ N. latitude to B_{MSY} is 2068. The harvest control rule to be used to rebuild the cowcod stock is an annual SPR harvest rate of 82.7 percent.

(d) *Darkblotched rockfish.* The target year for rebuilding the darkblotched rockfish stock to B_{MSY} is 2025. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual SPR harvest rate of 64.9 percent.

(e) *Pacific Ocean Perch (POP).* The target year for rebuilding the POP stock to B_{MSY} is 2020. The harvest control rule to be used to rebuild the POP stock is an annual SPR harvest rate of 86.4 percent.

(f) *Petrale Sole.* The target year for rebuilding the petrale sole stock to B_{MSY} is 2016. The harvest control rule is to set the ACL equal to the ABC, which corresponds to an annual SPR harvest rate of 31 percent in 2011.

(g) *Widow rockfish.* The target year for rebuilding the widow rockfish stock to B_{MSY} is 2010. The harvest control rule is a constant catch of 600 mt, which corresponds to an annual SPR harvest rate of 91.7 percent in 2011.

(h) *Yelloweye rockfish.* The target year for rebuilding the yelloweye rockfish stock to BMSY is 2074. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual SPR harvest rate of 76.0 percent.

■ 6. In § 660.50, paragraphs (f)(2)(i) and (ii), (f)(4), (g)(2), and (g)(7) are revised to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(2) * * *

(i) The sablefish allocation to Pacific coast treaty Indian Tribes is 10 percent of the sablefish ACL for the area north of 36° N. lat. This allocation represents the total amount available to the treaty Indian fisheries before deductions for discard mortality.

(ii) The Tribal allocation is 552 mt in 2011 and 535 in 2012 per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36° N. lat.) ACL. The Tribal allocation is reduced by 1.5 percent for estimated discard mortality.

* * * * *

(4) *Pacific whiting.* The Tribal allocation for 2010 is 49,939 mt. The Tribal allocations for will be announced each year following the Council's March meeting when the final specifications for Pacific whiting are announced.

* * * * *

(g) * * *

(2) *Thornyheads.* The Tribes will manage their fisheries to the following limits for shortspine and longspine thornyheads. The limits would be accumulated across vessels into a cumulative fleetwide harvest target for the year. The limits available to individual fishermen will then be adjusted inseason to stay within the overall harvest target as well as estimated impacts to overfished species. The annual following limits apply:

(i) Shortspine thornyhead cumulative trip limits are 17,000-lb (7,711-kg) per 2 months.

(ii) Longspine thornyhead cumulative trip limits are 22,000-lb (9,979-kg) per 2 months.

* * * * *

(7) *Flatfish and other fish.* Treaty fishing vessels using bottom trawl gear are subject to the following limits: For Dover sole, English sole, other flatfish 110,000 lbs (49,895 kg) per 2 months; and for arrowtooth flounder 150,000 lbs (68,039 kg) per 2 months. The Dover sole and arrowtooth limits in place at the beginning of the season will be combined across periods and the fleet to create a cumulative harvest target. The limits available to individual vessels will then be adjusted inseason to stay within the overall harvest target as well as estimated impacts to overfished species. For petrale sole, treaty fishing vessels are restricted to a 50,000 lb (22,680 kg) per 2 months limit for the entire year. Trawl vessels are restricted to using small footrope trawl gear.

* * * * *

■ 7. In § 660.55, paragraphs (a), (b) introductory text, (f)(1)(ii), and (k) are revised to read as follows:

§ 660.55 Allocations.

* * * * *

(a) *General.* An allocation is the apportionment of a harvest privilege for a specific purpose, to a particular person, group of persons, or fishery sector. The opportunity to harvest Pacific Coast groundfish is allocated among participants in the fishery when the ACLs for a given year are established in the biennial harvest specifications. For any stock that has been declared overfished, any formal allocation may be temporarily revised for the duration of the rebuilding period. For certain species, primarily trawl-dominant species, beginning with the 2011–2012 biennial specifications process, separate allocations for the trawl and nontrawl

fishery (which for this purpose includes limited entry fixed gear, directed open access, and recreational fisheries) will be established biennially or annually using the standards and procedures described in Chapter 6 of the PCGFMP. Chapter 6 of the PCGFMP provides the allocation structure and percentages for species allocated between the trawl and nontrawl fisheries. Also, separate allocations for the limited entry and open access fisheries may be established using the procedures described in Chapters 6 and 11 of the PCGFMP and this subpart. Allocation of sablefish north of 36° N. lat. is described in paragraph (h) of this section and in the PCGFMP. Allocation of Pacific whiting is described in paragraph (i) of this section and in the PCGFMP. Allocation of black rockfish is described in paragraph (l) of this section. Allocation of Pacific halibut bycatch is described in paragraph (m) of this section. Allocations not specified in the PCGFMP are established in regulation through the biennial harvest specifications and are listed in Tables 1 a through d and Tables 2 a through d of this subpart.

(b) *Fishery harvest guidelines and reductions made prior to fishery allocations.* Beginning with the 2011–2012 biennial specifications process and prior to the setting of fishery allocations, the ACL or ACT when specified is reduced by the Pacific Coast treaty Indian Tribal harvest (allocations, set-asides, and estimated harvest under regulations at § 660.50); projected scientific research catch of all groundfish species, estimates of fishing mortality in non-groundfish fisheries and, as necessary, set-asides for EFPs. The remaining amount after these deductions is the fishery harvest guideline or quota. (note: recreational estimates are not deducted here).

* * * * *

(f) * * *

(1) * * *

(ii) *Catch accounting for the nontrawl allocation.* All groundfish caught by a vessel not registered to a limited entry permit and not fishing in the non-groundfish fishery will be counted against the nontrawl allocation. All groundfish caught by a vessel registered to a limited entry permit when the fishery for a vessel's limited entry permit has closed or they are not declared in to a limited entry fishery, will be counted against the nontrawl allocation, unless they are declared in to a non-groundfish fishery. Catch by vessels fishing in the non-groundfish fishery, as defined at § 660.11, will be accounted for in the estimated mortality in the non-groundfish fishery that is deducted from the ACL or ACT when specified.

* * * * *

(k) *Exempted fishing permit set-asides.* Annual set-asides for EFPs described at § 660.60(f), will be deducted from the ACL or ACT when specified. Set-aside amounts will be adjusted through the biennial harvest specifications and management measures process.

* * * * *

■ 8. In § 660.60 paragraph (c)(1)(i) introductory text is revised to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(c) * * *

(1) * * *

(i) Trip landing and frequency limits, size limits, all gear. Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, black rockfish, blue rockfish, splitnose rockfish, chilipepper rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; DTS complex which is composed of Dover sole, sablefish, shortspine thornyheads, longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the other flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.11, subpart C; Pacific whiting; lingcod; Pacific cod; spiny dogfish; cabezon in Oregon and California and "other fish" as a complex consisting of all groundfish species listed at § 660.11, subpart C and not otherwise listed as a distinct species or species group. Specific to the IFQ fishery, sub-limits or aggregate limits may be specified for the following species: longnose skate, big skate, California skate, California scorpionfish, leopard shark, soupfin shark, finescale codling, Pacific rattail (grenadier), ratfish, kelp greenling, shortbelly, and cabezon in Washington. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraphs (c)(1)(i)(A) and (B) of this section.

* * * * *

■ 9. Section 660.65 is revised to read as follows:

§ 660.65 Groundfish harvest specifications.

Harvest specifications include OFLs, ABCs, and the designation of OYs and ACLs. Management measures necessary to keep catch within the ACL include ACTs, harvest guidelines (HGs), or quotas for species that need individual management, and the allocation of fishery HGs between the trawl and nontrawl segments of the fishery, and the allocation of commercial HGs between the open access and limited entry segments of the fishery. These specifications include fish caught in state ocean waters (0–3 nm offshore) as well as fish caught in the EEZ (3–200 nm offshore). Harvest specifications are provided in Tables 1a through 2d of this subpart.

■ 10. Section 660.71 is amended as follows:

■ a. Remove paragraph (e)(78),

■ b. Redesignate paragraphs (e)(79) through (e)(333) as (e)(78) through (e)(332) respectively.

■ c. Revise paragraphs (k)(149) and (150), redesignate paragraphs (k)(151) through (212) as (k)(153) through (214), add new paragraphs (k)(151) and (152) to read as follows:

§ 660.71 Latitude/longitude coordinates defining the 10 fm (18 m) through 40 fm (73 m) depth contours.

* * * * *

(k) * * *

* * * * *

(149) 36°18.40′ N. lat., 121°57.93′ W. long.;

(150) 36°16.80′ N. lat., 121°59.97′ W. long.;

(151) 36°15.00′ N. lat., 121°55.95′ W. long.;

(152) 36°15.00′ N. lat., 121°54.41′ W. long.;

* * * * *

■ 11. Section 660.72 is amended as follows:

■ a. Remove and reserve paragraphs (f)(143) through (f)(144), and remove paragraph (f)(198),

■ b. Redesignate paragraphs (a)(122) through (a)(195) as (a)(127) through (a)(200), paragraphs (f)(145) through (f)(197) as (f)(146) through (f)(198), paragraphs (j)(16) through (j)(254) as (j)(18) through (j)(256), and paragraphs (j)(4) through (j)(15) as (j)(5) through (j)(16),

■ c. Revise paragraphs (a)(121), newly designated (a)(193), (b), (f)(140) through

(f)(142), and newly designated (j)(183) through (j)(185),

■ d. Add paragraphs (a)(122) to (a)(126), add and reserve paragraph (a)(145), and add paragraphs (j)(4), and (j)(17), to read as follows:

§ 660.72 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.

* * * * *

(a) * * *

(121) 36°18.40′ N. lat., 121°58.97′ W. long.;

(122) 36°18.40′ N. lat., 122°00.35′ W. long.;

(123) 36°16.02′ N. lat., 122°00.35′ W. long.;

(124) 36°15.00′ N. lat., 121°58.53′ W. long.;

(125) 36°15.00′ N. lat., 121°56.53′ W. long.;

(126) 36°14.79′ N. lat., 121°54.41′ W. long.;

* * * * *

(193) 32°55.35′ N. lat., 117°18.65′ W. long.;

* * * * *

(b) The 50-fm (91-m) depth contour around the Swiftsure Bank and along the U.S. border with Canada is defined by straight lines connecting all of the following points in the order stated:

(1) 48°30.15′ N. lat., 124°56.12′ W. long.;

(2) 48°28.29′ N. lat., 124°56.30′ W. long.;

(3) 48°29.23′ N. lat., 124°53.63′ W. long.;

(4) 48°30.31′ N. lat., 124°51.73′ W. long.;

and connecting back to 48°30.15′ N. lat., 124°56.12′ W. long.

* * * * *

(f) * * *

(140) 36°16.80′ N. lat., 122°01.76′ W. long.;

(141) 36°14.33′ N. lat., 121°57.80′ W. long.;

(142) 36°14.67′ N. lat., 121°54.41′ W. long.;

* * * * *

(j) * * *

(4) 48°10.00′ N. lat., 125°27.99′ W. long.;

* * * * *

(17) 48°10.00′ N. lat., 125°20.19′ W. long.;

* * * * *

(183) 36°17.49′ N. lat., 122°03.08′ W. long.;

(184) 36°14.21′ N. lat., 121°57.80′ W. long.;

(185) 36°14.53′ N. lat., 121°54.99′ W. long.;

* * * * *

■ 12. Section 660.73 is amended as follows:

■ a. Remove paragraphs (a)(118) through (a)(120), (a)(156), (d)(134), (d)(180), (h)(157) and (h)(158),

■ b. Redesignate paragraphs (a)(3) through (a)(16) as (a)(4) through (a)(17), paragraphs (a)(17) through (a)(117) as (a)(19) through (a)(119), paragraphs (a)(121) through (a)(155) as (a)(128) through (a)(162), paragraphs (a)(157) through (a)(307) as (a)(165) through (a)(315), paragraphs (d)(135) through (d)(179) as (d)(138) through (d)(182), paragraphs (d)(181) through (d)(350) as (d)(185) through (d)(354), and paragraphs (h)(159) through (h)(302) as (h)(158) through (h)(301),

■ c. Add paragraphs (a)(3), (a)(18), (a)(120) through (a)(127), (a)(163) and (a)(164), (d)(134) through (d)(137), (d)(183), (d)(184), and (h)(157) to read as follows:

§ 660.73 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.

* * * * *

(a) * * *

(3) 48°10.00′ N. lat., 125°40.00′ W. long.;

* * * * *

(18) 48°10.00′ N. lat., 125°17.81′ W. long.;

* * * * *

(120) 44°02.34′ N. lat., 124°55.46′ W. long.;

(121) 43°59.18′ N. lat., 124°56.94′ W. long.;

(122) 43°56.74′ N. lat., 124°56.74′ W. long.;

(123) 43°55.76′ N. lat., 124°55.76′ W. long.;

(124) 43°55.41′ N. lat., 124°52.21′ W. long.;

(125) 43°54.62′ N. lat., 124°48.23′ W. long.;

(126) 43°55.90′ N. lat., 124°41.11′ W. long.;

(127) 43°57.36′ N. lat., 124°38.68′ W. long.;

* * * * *

(163) 40°30.37′ N. lat., 124°37.30′ W. long.;

(164) 40°28.48′ N. lat., 124°36.95′ W. long.;

* * * * *

(d) * * *

(134) 43°59.43′ N. lat., 124°57.22′ W. long.;

(135) 43°57.49′ N. lat., 124°57.31′ W. long.;

(136) 44°55.73′ N. lat., 124°55.41′ W. long.;

(137) 44°54.74′ N. lat., 124°53.15′ W. long.;

* * * * *

(183) 40°30.35′ N. lat., 124°37.52′ W. long.;

(184) 40°28.39′ N. lat., 124°37.16′ W. long.;

* * * * *

(h) * * *

(157) 40°30.30′ N. lat., 124°37.63′ W. long.;

* * * * *

■ 13. Section 660.74 is amended as follows:

■ a. Remove paragraphs (a)(159), (g)(136),

■ b. Redesignate paragraphs (a)(160) through (a)(284) as (a)(161) through (a)(285), (g)(137) through (g)(256) as (g)(138) through (g)(257),

■ c. Revise paragraphs (g)(133), (l)(84) and (l)(85),

■ d. Add paragraphs (a)(159) and (a)(160), (g)(136) and (g)(137), to read as follows:

§ 660.74 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

* * * * *

(a) * * *

(159) 40°30.22′ N. lat., 124°37.80′ W. long.;

(160) 40°27.29′ N. lat., 124°37.10′ W. long.;

* * * * *

(g) * * *

(133) 40°30.16′ N. lat., 124°37.91′ W. long.;

* * * * *

(136) 40°22.34′ N. lat., 124°31.22′ W. long.;

(137) 40°14.40′ N. lat., 124°35.82′ W. long.;

* * * * *

(l) * * *

(84) 43°57.88′ N. lat., 124°58.25′ W. long.;

(85) 43°56.89′ N. lat., 124°57.33′ W. long.;

* * * * *

■ 14. Tables to Part 660, Subpart C are amended as follows:

■ a. Revise Tables 1a through 1d and 2a through 2c, Subpart C,

■ b. Add Table 1.e. and Table 2d, Subpart C, to read as follows:

BILLING CODE 3510–22–P

Table 1a. To Part 660, Subpart C - 2011, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	OFL	ABC	ACL a/	ACT	Fishery HG a/
ROUNDFISH:					
Lingcod	2,438	2,330	2,330		2,059
	2,523	2,102	2,102		2,095
Pacific Cod d/	3,200	2,222	1,600		1,200
Pacific Whiting e/	e/	e/	e/		e/
Sablefish	8,808	8,418	5,515	See Table 1c	
			1,298		1,264
Cabezon	52	50	50		50
	187	179	179		179
FLATFISH:					
Dover sole j/	44,400	42,436	25,000		23,410
English sole k/	20,675	19,761	19,761		19,661
Petrale sole l/	1,021	976	976		910.6
Arrowtooth flounder m/	18,211	15,174	15,174		13,096
Starry Flounder n/	1,802	1,502	1,352		1,345
Other flatfish o/	10,146	7,044	4,884		4,686
ROCKFISH:					
Pacific Ocean Perch p/	1,026	981	180	157	144.2
Shortbelly q/	6,950	5,789	50		49
Widow r/	5,097	4,872	600		539.1
Canary s/	614	586	102		82
Chilipepper t/	2,073	1,981	1,981		1,966
Bocaccio u/	737	704	263		249.6
Splitnose v/	1,529	1,461	1,461		1,454
Yellowtail w/	4,566	4,364	4,364		3857
Shortspine thornyhead x/	2,384	2,279	1,573		1,528
			405		363
Longspine thornyhead y/	3,577	2,981	2,119		2,075
			376		373
Cowcod z/	13	10	3		2.7
Darkblotched aa/	508	485	298		279.3
Yelloweye bb/	48	46	17		11.1
California Scorpionfish cc/	141	135	135		133
Black North of 40 10' N. lat.	445	426	426		412
	1,217	1,163	1,000		1,000
Minor Rockfish North ff/	3,767	3,363	2,227		2,116
Nearshore	116	99	99		99
Shelf	2,188	1,940	968		925
Slope	1,462	1,324	1,160		1,092
Minor Rockfish South gg/	4,302	3,723	2,341		2,301
Nearshore	1,156	1,001	1,001		1,001
Shelf	2,238	1,885	714		701
Slope	907	836	626		599
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:					
Longnose Skate hh/	3,128	2,990	1,349		1,220
Other fish ii/	11,150	7,742	5,575		5,575

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a/ACLs and HGs are specified as total catch values. Fishery harvest guidelines (HGs) means the harvest guideline or quota after subtracting from the ACL or ACT any allocation for the Pacific Coast treaty Indian Tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

b/Lingcod north (Oregon and Washington). A new lingcod stock assessment was prepared in 2009. The lingcod north biomass was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 2,438 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,330 mt was based on a 4 percent reduction from the OFL (σ=0.36/

P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. ACL is further reduced for the Tribal fishery (250 mt), incidental open access fishery (16 mt) and research catch (5 mt), resulting in a fishery HG of 2,059 mt.

c/Lingcod south (California). A new lingcod stock assessment was prepared in 2009. The lingcod south biomass was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 2,523 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,102 mt was based on a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. An incidental open access set-aside of 7 mt is deducted from the ACL, resulting in a fishery HG of 2,095 mt.

d/Pacific Cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,222 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 species. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 400 mt is deducted from the ACL for the Tribal fishery resulting in a fishery HG of 1,200 mt.

e/Pacific whiting. A range of ACLs were considered in the EIS (96,968 mt-290,903 mt). A new stock assessment will be prepared prior to the Council's March 2011 meeting. Final adoption of the Pacific whiting specifications have been deferred until the Council's March 2011 meeting.

f/Sablefish north. A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide OFL of 8,808 mt was based on the 2007 stock assessment with a F_{MSY} proxy of $F_{45\%}$. The ABC of 8,418 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 40–10 harvest policy was applied to the ABC to derive the coastwide ACL and then the ACL was apportioned north and south of 36° N. lat, using the average of annual swept area biomass (2003–2008) from the NMFS NWFSC trawl survey, between the northern and southern areas with 68 percent going to the area north of 36° N. lat. and 32 percent going to the area south of 36° N. lat. The northern portion of the ACL is 5,515 mt and is reduced by 552 mt for the Tribal allocation (10 percent of the ACL north of 36° N. lat.) The 552 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

g/Sablefish South. That portion of the coastwide ACL apportioned to the area south of 36° N. lat. is 2,595 mt (32 percent). An additional 50 percent reduction was made for uncertainty resulting in an ACL of 1,298 mt. A set-aside of 34 mt is deducted from the ACL for EFP catch (26 mt), the incidental open access fishery (6 mt) and research catch (2 mt), resulting in a fishery HG of 1,264 mt.

h/Cabezon (Oregon). A new cabezon stock assessment was prepared in 2009. The cabezon biomass in Oregon was estimated to be at 51 percent of its unfished biomass in 2009. The OFL of 52 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 50 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 50 mt. Cabezon in waters off Oregon were removed from the "other fish" complex, while cabezon of Washington will continue to be managed within the "other fish" complex.

i/Cabezon (California). A new cabezon stock assessment was prepared in 2009. The cabezon south biomass was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 187 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 179 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 179 mt.

j/Dover sole. A 2005 Dover sole assessment estimated the stock to be at 63 percent of its unfished biomass in 2005. The OFL of 44,400 mt is based on the results of the 2005 stock assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 42,436 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{25\%}$ coastwide, the ACL could be set equal to the ABC. However, the ACL of 25,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. A set-aside of 1,590 mt is deducted from the ACL for the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt) and research catch (38 mt), resulting in a fishery HG of 23,410 mt.

k/English sole. A stock assessment update was prepared in 2007 based on the full assessment in 2005. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The OFL of 20,675 mt is based on the results of the 2007 assessment update with an F_{MSY} proxy of $F_{30\%}$. The ABC of 19,761 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. A set-aside of 100 mt is deducted from the ACL for the Tribal fishery (91 mt), the incidental open access fishery (4 mt) and research catch (5 mt), resulting in a fishery HG of 19,661 mt.

l/Petrale sole. A petrale sole stock assessment was prepared for 2009. In 2009 the petrale sole stock was estimated to be at 12 percent of its unfished biomass coastwide, resulting in the stock being declared as overfished. The OFL of 1,021 mt is based on the 2009 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 976 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL is set equal to the ABC and corresponds to an SPR harvest rate of 31 percent. A set-aside of 65.4 mt is deducted from the ACL for the Tribal fishery (45.4 mt), the incidental open access fishery (1 mt), EFP catch (2 mt) and research catch (17 mt), resulting in a fishery HG of 911 mt.

m/Arrowtooth flounder. The stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 18,211 mt is based on the 2007 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 15,174 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL is set equal to the ABC. A set-aside of 2,078 mt is deducted from the ACL for the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (7 mt), resulting in a fishery HG of 13,096 mt.

n/Starry Flounder. The stock was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. For 2011, the coastwide OFL of 1,802 mt is based on the 2005 assessment with a F_{MSY} proxy of $F_{30\%}$. The ABC of 1,502 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL could have been set equal to the ABC. As a precautionary measure, the ACL of 1,352 mt is a 25 percent reduction from the OFL, which is a 10 percent reduction from the ABC. A set-aside of 7 mt is deducted from the ACL for the Tribal fishery (2 mt), the incidental open access fishery (5 mt), resulting in a fishery HG of 1,345 mt.

o/"Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABC/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,146 mt is based on the summed contribution of the OFLs determined for the component stocks. The ABC of 7,044 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all species in this complex are category 3 species. The ACL of 4,884 mt is equivalent to the 2010 OY, because there have been no significant changes in the status or management of stocks within the complex. A set-aside of 198 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (13 mt), resulting in a fishery HG of 4,686 mt.

p/POP. A POP stock assessment update was prepared in 2009, based on the 2003 full assessment, and the stock was estimated to be at 29 percent of its unfished biomass in 2009. The OFL of 1,026 mt for the Vancouver and Columbia areas is based on the 2009 stock assessment update with an $F_{50\%}$ F_{MSY} proxy. The ABC of 981 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 180 mt is based on a rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 86.4 percent. An ACT of 157 mt is being established to address management uncertainty and increase the likelihood that total catch remains within the ACL. A set-aside of 12.8 mt is deducted from the ACT for the Tribal fishery (10.9 mt), EFP catch (0.1 mt) and research catch (1.8 mt), resulting in a fishery HG of 144.2 mt.

q/Shortbelly rockfish. A non quantitative assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2011 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings, but much lower than previous OYs in recognition of the stock's importance as a forage species in the California Current ecosystem. A set-aside of

1 mt for research catch results in a fishery HG of 49 mt.

r/Widow rockfish. The stock was assessed in 2009 and was estimated to be at 39 percent of its unfished biomass in 2009. The OFL of 5,097 mt is based on the 2009 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,872 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. A constant catch strategy of 600 mt, which corresponds to an SPR harvest rate of 91.7 percent, will be used to rebuild the widow rockfish stock consistent with the rebuilding plan and a T_{TARGET} of 2010. A set-aside of 61 mt is deducted from the ACL for the Tribal fishery (45 mt), the incidental open access fishery (3.3 mt), EFP catch (11 mt) and research catch (1.6 mt), resulting in a fishery HG of 539.1 mt.

s/Canary rockfish. A canary rockfish stock assessment update, based on the full assessment in 2007, was completed in 2009 and the stock was estimated to be at 23.7 percent of its unfished biomass coastwide in 2009. The coastwide OFL of 614 mt is based on the new assessment with a F_{MSY} proxy of $F_{50\%}$. The ABC of 586 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 102 mt is based on a rebuilding plan with a target year to rebuild of 2027 and a SPR harvest rate of 88.7 percent. A set-aside of 20 mt is deducted from the ACL for the Tribal fishery (9.5 mt), the incidental open access fishery (2 mt), EFP catch (1.3 mt) and research catch (7.2 mt) resulting in a fishery HG of 82 mt. Recreational HGs are being specified as follows: Washington recreational, 2.0; Oregon recreational 7.0 mt; and California recreational 14.5 mt.

t/Chilipepper rockfish. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 71 percent of its unfished biomass coastwide in 2006. Given that chilipepper rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. South of 40°10 N. lat., the OFL of 2,073 mt is based on the 2007 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,981 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the biomass is estimated to be above 40 percent of the unfished biomass, the ACL was set equal to the ABC. The ACL is reduced by the incidental open access fishery (5 mt), and research catch (9 mt), resulting in a fishery HG of 1,966 mt.

u/Bocaccio. A bocaccio stock assessment was prepared in 2009 from Cape Mendocino to Cape Blanco (43° N. lat.) Given that bocaccio rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. The bocaccio stock was estimated to be at 28 percent of its unfished biomass in 2009. The OFL of 737 mt is based on the 2009 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 704 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 263 mt ACL is based on a rebuilding plan with a target year to rebuild of 2022 and a SPR harvest rate of 77.7 percent. A set-aside of 13.4 mt is deducted from the ACL for the incidental open access fishery (0.7 mt), EFP catch (11 mt) and research catch (1.7 mt), resulting in a fishery HG of 249.6 mt.

v/Splitnose rockfish. A new coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and south of 40°10' N. lat. with species-specific harvest specifications. South of 40°10 N. lat. the OFL of 1,529 mt is based on the 2009 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,461 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. A set-aside of 7 mt is deducted from the ACL for research catch, resulting in a fishery HG of 1,454 mt.

w/Yellowtail rockfish. A yellowtail rockfish stock assessment was last prepared in 2005 for the Vancouver, Columbia, and Eureka areas. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in 2005. The OFL of 4,566 mt is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\%}$. The ABC of 4,364 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, because the stock is above $B_{40\%}$. A set-aside of 507 mt is deducted from the ACL for the Tribal fishery (490 mt), the incidental open access fishery (3 mt), EFP catch (10 mt) and research catch (4 mt), resulting in a fishery HG of 3,857 mt.

x/Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,384 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,279 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,573 mt, 66 percent of the coastwide OFL. A set-aside of 45 mt is deducted from the ACL for the Tribal fishery (38 mt), the incidental open access fishery (2 mt), and research catch (5 mt) resulting in a fishery HG of 1,528 mt for the area north of 34°27′ N. lat. For that portion of the stock south of 34°27′ N. lat. the ACL is 405 mt which is 34 percent of the coastwide OFL, reduced by 50 percent as a precautionary adjustment. A set-aside of 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt) resulting in a fishery HG of 363 mt for the area south of 34°27′ N. lat. The sum of the northern and southern area ACLs (1,978 mt) is a 13 percent reduction from the coastwide ABC.

y/Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,577 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The ABC of 2,981 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,119 mt, and is 79 percent of the coastwide OFL for the biomass found in that area reduced by an additional 25 percent as a precautionary adjustment. A set-aside of 44 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (1 mt), and research catch (13 mt) resulting in a fishery HG of 2,075 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 376 mt and is 21 percent of the coastwide ABC reduced by 50 percent as a precautionary adjustment. A set-aside of 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt) resulting in a fishery HG of 373 mt. The sum of the northern and southern area ACLs (2,495 mt) is a 16 percent reduction from the coastwide ABC.

z/Cowcod. A stock assessment update was prepared in 2009 and the stock was estimated to be 5 percent (bounded between 4 and 21 percent) of its unfished biomass in 2009. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10 N. lat. OFL of 13 mt. The ABC for the area south of 40°10′ N. lat. is 10 mt. The assessed portion of the stock in the Conception Area was considered category 2, with a Conception Area contribution to the ABC of 5 mt, which is a 17 percent reduction from the OFL (σ=0.72/P*=0.35). The unassessed portion of the stock in the Monterrey area was considered a category 3 stock, with a contribution to the ABC of 5 mt, which is a 29 percent reduction from the OFL (σ=1.44/P*=0.40). A single ACL of 3 mt is being set for both areas combined. The ACL of 3 mt is based on a rebuilding plan with a target year to rebuild of 2068 and an SPR rate of 82.7 percent. The amount anticipated to be taken during research activity is 0.1 mt and the amount expected to be taken during EFP activity is 0.2 mt, which results in a fishery HG of 2.7 mt.

aa/Darkblotched rockfish. A stock assessment update was prepared in 2009, based on the 2007 full assessment, and the stock was estimated to be at 27.5 percent of its unfished biomass in 2009. The OFL is projected to be 508 mt and is based on the 2009 stock assessment with an F_{MSY} proxy of F50%. The ABC of 485 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 298 mt is based on a rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. A set-aside of 18.7 mt is deducted from the ACL for the Tribal fishery (0.1 mt), the incidental open access fishery (15 mt), EFP catch (1.5 mt) and research catch (2.1 mt), resulting in a fishery HG of 279.3 mt.

bb/Yelloweye rockfish. The stock was assessed in 2009 and was estimated to be at 20.3 percent of its unfished biomass in 2009. The 48 mt coastwide OFL was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 46 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 17 mt ACL is based on a rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76 percent. A set-aside of 5.9 mt is deducted from the ACT for the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.1 mt) and research catch (3.3 mt) resulting in a

fishery HG of 11.1 mt. Recreational HGs are being established as follows: Washington recreational, 2.6; Oregon recreational 2.4 mt; and California recreational 3.1 mt.

cc/California Scorpionfish was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 141 mt is based on the new assessment with a harvest rate proxy of $F_{50\%}$. The ABC of 135 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. A set-aside of 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 133 mt.

dd/Black rockfish north (Washington). A stock assessment was prepared for black rockfish north of 45°56′ N. lat. (Cape Falcon, Oregon) in 2007. The biomass in the north was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16' N. lat. (the Washington/Oregon Border) is 445 mt and is 97 percent of the OFL from the assessed area. The ABC of 426 mt for the north of 46° 16' N. Lat. is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, since the stock is above $B_{40\%}$. A set-aside of 14 mt for the Tribal fishery results in a fishery HG of 412 mt.

ee/Black rockfish south (Oregon and California). A 2007 stock assessment was prepared for black rockfish south of 45°56' N. lat. (Cape Falcon, Oregon) to the southern limit of the stock's distribution in Central California in 2007. The biomass in this area was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. Three percent of the OFL from the stock assessment prepared for black rockfish north of 45°56′ N. lat. is added to the OFL from the assessed area south of 45° 56′ N. lat. The resulting OFL for the area south of 46°16′ N. lat. is 1,217 mt. The ABC of 1,163 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set at 1,000 mt, which is a constant catch strategy designed to keep the stock biomass above $B_{40\%}$. There are no set-asides thus the fishery HG is equal to the ACL. The black rockfish ACL in the area south of 46°16′ N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

ff/Minor rockfish north is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope rockfish. The OFL of 3,767 mt is the sum of OFLs for nearshore (116 mt), shelf (2,188 mt) and slope (1,462 mt) north sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (splitnose and chilipepper rockfish), 0.72 for category 2 stocks (greenstriped rockfish and blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish north ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex (nearshore, shelf, and slope) is 3,363 mt. The ACL of 2,227 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 99 mt. The set-aside for the shelf sub-complex is 43 mt—Tribal fishery (9 mt), the incidental open access fishery (26 mt), EFP catch (4 mt) and research catch (4 mt) resulting in a shelf fishery HG of 925 mt. The set-aside for the slope sub-complex is 68 mt—Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (2 mt) and research catch (11 mt), resulting in a slope fishery HG of 1,092 mt.

gg/Minor rockfish south is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 4,302 mt is the sum of OFLs for nearshore (1,156 mt), shelf (2,238 mt) and slope (907 mt) south sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (gopher rockfish north of 34°27' N. lat., blackgill), 0.72 for category 2 stocks (blue rockfish in the assessed area, greenstriped rockfish, and bank rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish south ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex, is 3,723 mt (1,001 mt nearshore, 1,885 mt shelf, and 836 mt slope). The ACL of 2,341 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 1,001 mt. The set-aside for the shelf sub-complex is 13 mt for the incidental open access fishery (9 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a shelf fishery HG of 701 mt. The set-aside for the slope sub-complex is 27 mt for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (8 mt), resulting in a slope fishery HG of 599 mt.

hh/Longnose skate. A stock assessment was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 3,128 mt is based on the 2007 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,990 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 1,349 is equivalent to the 2010 OY and represents a 50 percent increase in the average 2004–2006 mortality (landings and discard mortality). The set-aside for longnose skate is 129 mt for the Tribal fishery (56 mt), incidental open access fishery (65 mt), and research catch (8 mt), resulting in a fishery HG of 1,220 mt.

ii/"Other fish" contains all unassessed groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish. These species include big skate, California skate, leopard shark, soupfin shark, spiny dogfish, finescale codling, Pacific rattail, ratfish, cabezon off Washington, and kelp greenling. The OFL of 11,150 mt is equivalent to the 2010 MSY harvest level minus the 50 mt contribution made for cabezon off Oregon, which is a newly assessed stock to be managed with stock-specific specifications. The ABC of 7,742 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all of the stocks in the "other fish" complex are category 3 species. The ACL of 5,575 mt is equivalent to the 2010 OY, minus half of the OFL contribution for Cabezon off of Oregon (25 mt). The fishery HG is equal to the ACL.

Table 1b. To Part 660, Subpart C - 2011, Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Fishery HG	Allocations			
		Trawl		Non-trawl	
		%	Mt	%	Mt
ROUNDFISH:					
Lingcod					
N of 42° N. lat.	2,059	45%	927	55%	1,132
S of 42° N. lat.	2,095	45%	943	55%	1,152
Pacific cod	1,200	95%	1,140	5%	60
Pacific whiting	See Table 1a	100%	See Table 1a	0%	0
Sablefish					
N of 36° N. lat.	See Table 1c of this subpart				
S of 36° N. lat.	1,264	42%	531	58%	733
FLATFISH:					
Dover sole	23,410	95%	22,240	5%	1,170
English sole	19,661	95%	18,678	5%	983
Petrale sole a/	910.6		876		35
Arrowtooth flounder	13,096	95%	12,441	5%	655
Starry Flounder	1,345	50%	673	50%	672
Other flatfish	4,686	90%	4,217	10%	469
ROCKFISH:					
Pacific Ocean Perch b/	144.2	95%	137	5%	7
Widow e/	539.1	91%	491	9%	49
Canary a/ c/	82		34.1		29.8
Chilipepper - S of 40°10 N. Lat.	1,966	75%	1,475	25%	492
Bocaccio - S of 40°10 N. Lat. a/	249.6		60		189.6
Splitnose - S of 40°10 N. Lat.	1,454	95%	1,381	5%	73
Yellowtail - N of 40°10 N. Lat.	3857	88%	3394	12%	463
Shortspine thornyhead					
N of 34°27' N. lat.	1,528	95%	1,452	5%	76
S of 34°27' N. lat.	363	NA	50	NA	313
Longspine thornyhead					
N of 34°27' N. lat.	2,075	95%	1,971	5%	104
Cowcod - S of 40°10 N. Lat. a/	2.7		1.8		0.9
Darkblotched d/	279.3	95%	265	5%	14
Yelloweye a/	11.1		0.6		10.5
Minor Rockfish North					
Shelf a/	925	60.2%	557	39.8%	368
Slope	1,092	81%	885	19%	207
Minor Rockfish South					
Shelf a/	701	12.2%	86	87.8%	615
Slope	599	63%	377	37%	222
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:					
Longnose Skate a/	1,220	95%	1,159	5%	61

[a]/ Allocations decided through the biennial specification process.

[b]/ 30 mt of the total trawl allocation for POP is allocated to the whiting fisheries, as follows: 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140 (d)(1)(ii)(D).

[c]/ 14.1 mt of the total trawl allocation of canary rockfish is allocated to the whiting fisheries, as follows: 5.9 mt for the shorebased IFQ fishery, 3.4 mt for the mothership fishery, and 4.8 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140 (d)(1)(ii)(D).

[d]/ 25 mt of the total trawl allocation for darkblotched rockfish is allocated to the whiting fisheries, as follows: 10.5 mt for the shorebased IFQ fishery, 6.0 mt for the mothership fishery, and 8.5 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140 (d)(1)(ii)(D).

[e]/ 52 percent (255 mt) of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 107.1 mt for the shorebased IFQ fishery, 61.2 mt for the mothership fishery, and 86.7 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140 (d)(1)(ii)(D).

Table 1c. To Part 660, Subpart C - Sablefish North of 36° N. lat. Allocations, 2011

Year	ACL	Set-asides		Recreational Estimate	Commercial HG	Limited Entry HG		Open Access HG	
		Tribal a/	Research			%	Mt	%	MT b/
2011	5,515	552	16	6.1	4,941	90.6%	4,477	9.4%	464

Year	LE All	Limited Entry Trawl c/			Limited Entry Fixed Gear d/		
		ALL Trawl	At-sea Whiting	Shorebased IFQ	ALL FG	Primary	DTL
2011	4,477	2,597	50	2,547	1,880	1,598	282

a/ The tribal allocation is further reduced by 1.5 percent for discard mortality resulting in 544 mt in 2011

b/ Of the Open access HG the annual amount estimated to be taken in the incidental OA fishery is 17.2 mt.

c/ The trawl allocation is 58% of the limited entry HG

d/ The limited entry fixed gear allocation is 42% of the limited entry HG

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TABLE 1d. TO PART 660, SUBPART C—AT-SEA WHITING FISHERY ANNUAL SET-ASIDES 2011

Species of species complex	Set-aside (mt)
Lingcod	6
Pacific Cod	5
Pacific Whiting	Allocation [a]
Sablefish N. of 36°	50
Sablefish S. of 36°	NA
PACIFIC OCEAN PERCH	Allocation [a]
WIDOW ROCKFISH	Allocation [a]
Chilipepper S. of 40°10′	NA
Splitnose S. of 40°10′	NA
Yellowtail N. of 40°10′	300
Shortspine Thornyhead N. of 34°27′.	20
Shortspine Thornyhead S. of 34°27′.	NA
Longspine Thornyhead N. of 34°27′.	5

TABLE 1d. TO PART 660, SUBPART C—AT-SEA WHITING FISHERY ANNUAL SET-ASIDES 2011—Continued

Species of species complex	Set-aside (mt)
Longspine Thornyhead S. of 34°27′.	NA
DARKBLOTCHED	Allocation [a]
Minor Slope RF N.	55
Minor Slope RF S.	NA
Dover Sole	5
English Sole	5
Petrale Sole—coastwide	5
Arrowtooth Flounder	10
Starry Flounder	5
Other Flatfish	20
CANARY ROCKFISH	Allocation [a]
BOCACCIO	NA
COWCOD	NA
YELLOWEYE	0
Black Rockfish	NA
Blue Rockfish (CA)	NA
Minor Nearshore RF N.	NA

TABLE 1d. TO PART 660, SUBPART C—AT-SEA WHITING FISHERY ANNUAL SET-ASIDES 2011—Continued

Species of species complex	Set-aside (mt)
Minor Nearshore RF S.	NA
Minor Shelf RF N.	35
Minor Shelf RF S.	NA
California scorpionfish	NA
Cabezon (off CA only)	NA
Other Fish	520
Longnose Skate	5
Pacific Halibut	10 [b]

a See Table 1.b., to Subpart C, for the at-sea whiting allocations for these species.

b As stated in § 660.55(m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10′ N lat. (estimated to be approximately 5 mt each).

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Table 1e. To Part 660, Subpart C - Whiting and non-whiting initial issuance allocation percentage for IFQ decided through the harvest specifications, 2011

Species/Species Group/Area	Trawl Allocation (mt)	At-sea Whiting set asides	Shorebased IFQ			
			Non-Whiting		Whiting	
			percent	mt	percent	mt
Pacific Ocean Perch	137	17.4 (10.2 catcher/processor + 7.2 mothership)	89.5% [Remaining]	107	10.5% (Greater of 17% or 30 mt to shorebased + at-sea whiting)	12.6
Widow rockfish	491	147.9 (86.7 catcher/processor + 61.2 mothership)	68.7% (Remaining)	235	31.3% (52% to shorebased + at-sea whiting)	107.1
Yellowtail rockfish North of 40°10' N. lat.	3,401	300	90.3% (Remaining)	2,801	9.7% (300 mt)	300
Darkblotched rockfish	265	14.5 (8.5 catcher/ processors + 6 mothership)	95.8% (Remaining)	240	4.20% (Greater of 9% or 25 mt to shorebased + at-sea whiting)	10.5
Minor slope rockfish South of 40°10' N. lat.	377	na	100%	377	0.0%	0
Minor shelf rockfish North of 40°10' N. lat.	557	35	82.6%	431.2	17.4%	90.8
South of 40°10' N. lat.	86	na	100%	86	0.0%	0
Canary Rockfish	34.1	8.2 (4.8 catcher/processor + 3.4 mothership)	77.2%	20	22.8%	5.9
Bocaccio	60	na	100%	60	0.0%	0
Cowcod	1.8	na	100%	1.8	0.0%	0
Yelloweye Rockfish	0.6	0	100%	0.6	0.0%	0

Table 2a. To Part 660, Subpart C - 2012, and beyond, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	OFL	ABC	ACL a/	ACT	Fishery HG
ROUNDFISH:					
Lingcod	2,251	2,151	2,151		1,880
	2,597	2,164	2,164		2,157
Pacific Cod d/	3,200	2,222	1,600		1,200
Pacific Whiting e/	e/	e/	e/		e/
Sablefish	8,623	8,242	5,347	See Table 2c	
			1,258		1,224
Cabezon	50	48	48		48
	176	168	168		168
FLATFISH:					
Dover sole j/	44,400	42,436	25,000		23,410
English sole k/	20,675	19,761	19,761		19,661
Petrale sole l/	1,021	976	976		910.6
Arrowtooth flounder m/	18,211	15,174	15,174		13,096
Starry Flounder n/	1,802	1,502	1,352		1,345
Other flatfish o/	10,146	7,044	4,884		4,686
ROCKFISH:					
Pacific Ocean Perch p/	1,007	962	180	157	144.2
Shortbelly q/	6,950	5,789	50		49
Widow r/	4,923	4,705	600		539.1
Canary s/	622	594	102		82
Chilipepper t/	1,872	1,789	1,789		1,774
Bocaccio u/	732	700	263		249.6
Splitnose v/	1,610	1,538	1,538		1,531
Yellowtail w/	4,573	4,371	4,371		3,872
Shortspine thornyhead x/	2,358	2,254	1,556		1,511
			401		359
Longspine thornyhead y/	3,483	2,902	2,064		2,020
			366		363
Cowcod z/	13	10	3		2.7
Darkblotched aa/	497	475	298		279.3
Yelloweye bb/	48	46	17		11.1
California Scorpionfish cc/	132	126	126		124
Black	435	415	415		401
	1,169	1,117	1,000		1,000
Minor Rockfish North ff/	3,821	3,414	2,227		2,116
Nearshore	116	99	99		99
Shelf	2,197	1,948	968		925
Slope	1,507	1,367	1,160		1,092
Minor Rockfish South gg/	4,291	3,712	2,341		2,290
Nearshore	1,145	990	990		990
Shelf	2,243	1,890	714		701
Slope	903	832	626		599
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:					
Longnose Skate hh/	3,006	2,873	1,349		1,220
Other fish ii/	11,150	7,742	5,575		5,575

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a/ ACLs and HGs are specified as total catch values. Fishery harvest guideline (HG) means the harvest guideline or quota after subtracting from the ACL of ACT any allocation for the Pacific Coast treaty Indian Tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

b/ Lingcod north (Oregon and Washington). A new lingcod stock assessment was prepared in 2009. The lingcod north biomass was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 2,251 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,151 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. ACL is further reduced for the Tribal fishery (250 mt), incidental open access fishery (16 mt) and

research catch (5 mt), resulting in a fishery HG of 1,880 mt.

c/ Lingcod south (California). A new lingcod stock assessment was prepared in 2009. The lingcod south biomass was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 2,597 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,164 mt was based on a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. An incidental open access set-aside of 7 mt is deducted from the ACL, resulting in a fishery HG of 2,157 mt.

d/ Pacific Cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,222 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 species. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 400 mt is deducted from the ACL for the Tribal fishery, resulting in a fishery HG of 1,200 mt.

e/ Pacific whiting. A range of ACLs were considered in the EIS (96,968 mt-290,903 mt). A new stock assessment will be prepared prior to the Council's March 2012 meeting. Final adoption of the Pacific whiting specifications have been deferred until the Council's March 2012 meeting.

f/ Sablefish north. A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide OFL of 8,623 mt was based on the 2007 stock assessment with a F_{MSY} proxy of $F_{45\%}$. The ABC of 8,242 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 40–10 harvest policy was applied to the ABC to derive the coastwide ACL and then the ACL was apportioned north and south of 36° N. lat, using the average of annual swept area biomass (2003–2008) from the NMFS NWFSC trawl survey, between the northern and southern areas with 68 percent going to the area north of 36° N. lat. and 32 percent going to the area south of 36° N. lat. The northern portion of the ACL is 5,347 mt and is reduced by 535 mt for the Tribal allocation (10 percent of the ACL north of 36° N. lat.) The 535 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

g/ Sablefish South. That portion of the coastwide ACL (32 percent) apportioned to the area south of 36° N. lat. is 2,516 mt. An additional 50 percent reduction for uncertainty was made, resulting in an ACL of 1,258 mt. A set-aside of 34 mt is deducted from the ACL for EFP catch (26 mt), the incidental open access fishery (6 mt) and research catch (2 mt), resulting in a fishery HG of 1,224 mt.

h/ Cabezon (Oregon). A new cabezon stock assessment was prepared in 2009. The cabezon biomass in Oregon was estimated to be at 51 percent of its unfished biomass in 2009. The OFL of 50 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 48 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 48 mt. Cabezon in waters off Oregon were removed from the "other fish" complex, while cabezon of Washington will continue to be managed within the "other fish" complex.

i/ Cabezon (California)—A new cabezon stock assessment was prepared in 2009. The cabezon south biomass was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 176 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 168 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 168 mt.

j/ Dover sole. Final 2012 OFLs, ABCs, ACLs, ACTs and fishery HGs for assessed flatfish species are contingent upon potential changes to the flatfish status determination criteria and harvest control rule.

k/ English sole. Final 2012 OFLs, ABCs, ACLs, ACTs and fishery HGs for assessed flatfish species are contingent upon potential changes to the flatfish status determination criteria and harvest control rule.

l/ Petrale sole. Final 2012 petrale sole OFL, ABC, ACL, ACT and fishery HG are contingent upon potential changes to the flatfish status determination criteria and harvest control rule, and potential changes to rebuilding plans.

n/ Starry Flounder. Final 2012 OFLs, ABCs, ACLs, ACTs and fishery HGs, for assessed flatfish species are contingent upon potential changes to the flatfish status determination criteria and harvest control rule.

o/ "Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABC/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,146 mt is based on the summed contribution of the OFLs determined for the component stocks. The ABC of 7,044 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all species in this complex are category 3 species. The ACL of 4,884 mt is equivalent to the 2010 OY, because there have been no significant changes in the status or management of stocks within the complex. A set-aside of 198 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (13 mt), resulting in a fishery HG of 4,686 mt.

p/ POP. Final 2012 ACLs, ACTs and fishery HGs for overfished species are contingent upon potential changes to rebuilding plans.

q/ Shortbelly rockfish. A non quantitative assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2011 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings, but much lower than previous OYs in recognition of the stock's importance as a forage species in the California Current ecosystem. A set-aside of 1 mt for research catch, resulting in a fishery HG of 49 mt.

r/ Widow rockfish. Final 2012 ACLs, ACTs and fishery HGs for overfished species are contingent upon potential changes to rebuilding plans.

s/ Canary rockfish. Final 2012 ACLs, ACTs and fishery HGs for overfished species are contingent upon potential changes to rebuilding plans.

t/ Chilipepper rockfish. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 71 percent of its unfished biomass coastwide in 2006. Given that chilipepper rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. South of 40°10 N. lat., the OFL of 1,872 mt is based on the 2007 assessment with an F_{MSY} proxy of $F_{50\neq}$. The ABC of 1,789 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the biomass is estimated to be above 40 percent the unfished biomass, the ACL was set equal to the ABC. The ACL is reduced by the incidental open access fishery (5 mt), and research catch (9 mt), resulting in a fishery HG of 1,774 mt.

u/ Bocaccio. Final 2012 ACLs, ACTs and fishery HGs for overfished species are contingent upon potential changes to rebuilding plans.

v/ Splitnose rockfish. A new coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and in the south (south of 40°10′ N. lat.), with species-specific harvest specifications. The 1,610 mt OFL south of 40°10 N. lat. is based on the 2009 assessment with an F_{MSY} proxy of $F_{50\neq}$. The ABC of 1,538 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. A set-aside of 7 mt is deducted from the ACL for research catch, resulting in a fishery HG of 1,531 mt.

w/ Yellowtail rockfish. A yellowtail rockfish stock assessment was last prepared in 2005 for the Vancouver, Columbia, Eureka areas. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in 2005. The OFL of 4,573 mt is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\neq}$. The ABC of 4,371 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, because the stock is above $B_{40\neq}$. A set-aside of 499 mt is deducted from the ACL for the Tribal fishery (490 mt), the incidental open access fishery (3 mt), EFP catch (2 mt) and research catch (4 mt), resulting in a fishery HG of 3,872 mt.

x/ Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,358 mt is based on the 2005 stock assessment with a $F_{50\neq}$ F_{MSY} proxy. The coastwide ABC of 2,254 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,556 mt, 66 percent of the coastwide

OFL. A set-aside of 45 mt is deducted from the ACL for the Tribal fishery (38 mt), the incidental open access fishery (2 mt), and research catch (5 mt), resulting in a fishery HG of 1,511 mt for the area north of 34°27′ N. lat. For that portion of the stock south of north of 34°27′ N. lat. the ACL is 401 mt which is 34 percent of the coastwide OFL for the portion of the biomass found south of 34°27′ N. lat reduced by 50 percent as a precautionary adjustment. A set-aside of 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt), resulting in a fishery HG of 359 mt for the area south of 34°27′ N. lat. The sum of the northern and southern area ACLs (1,957 mt) is a 13 percent reduction from the coastwide ABC.

y/ Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,483 mt is based on the 2005 stock assessment with a $F_{50\neq}$ F_{MSY} proxy. The ABC of 2,902 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,064 mt, and is 79 percent of the coastwide OFL for the biomass in that area. A set-aside of 44 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (1 mt), and research catch (13 mt), resulting in a fishery HG of 2,020 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 366 mt and is 21 percent of the coastwide OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt), resulting in a fishery HG of 363 mt. The sum of the northern and southern area ACLs (2,430 mt) is a 16 percent reduction from the coastwide ABC.

z/ Cowcod. Final 2012 ACLs, ACTs and fishery HGs for overfished species are contingent upon potential changes to rebuilding plans.

aa/ Darkblotched rockfish. Final 2012 ACLs, ACTs and fishery HGs for overfished species are contingent upon potential changes to rebuilding plans.

bb/ Yelloweye rockfish. Final 2012 ACLs, ACTs and fishery HGs for overfished species are contingent upon potential changes to rebuilding plans.

cc/ California Scorpionfish south was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 132 mt is based on the new assessment with a harvest rate proxy of $F_{50\neq}$. The ABC of 126 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\neq}$, the ACL is set equal to the ABC. A set-aside of 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 124 mt.

dd/ Black rockfish north (Washington). A stock assessment was prepared in 2007 for black rockfish north of 45°56′N. lat. (Cape Falcon, Oregon). The biomass in this area was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\neq}$. The resulting OFL for the area north of 46°16′ N. lat. (the Washington/Oregon border) is 435 mt, which is 97 percent of the OFL from the assessed area. The ABC of 415 mt for the area north of 46°16′ N. lat. is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, since the stock is above $B_{40\neq}$. A set-aside of 14 mt for the Tribal fishery results in a fishery HG of 401 mt.

ee/ Black rockfish south (Oregon and California). A 2007 stock assessment was prepared for black rockfish south of 45°56′ N. lat. (Cape Falcon, Oregon) to the southern limit of the stock's distribution in Central California. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\neq}$. Three percent of the OFL from the stock assessment prepared for black rockfish north of 45°56′ N. lat. is added to the OFL from the assessed area south of 45°56′. The resulting OFL for the area south of 46°16′ N. lat. is 1,169 mt. The ABC of 1,117 mt for the south is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set at 1,000 mt, which is a constant catch strategy designed to keep the stock biomass above $B_{40\neq}$. The black rockfish ACL in the area south of 46°16′ N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

ff/ Minor rockfish north is comprised of three minor rockfish sub-complexes: Nearshore, shelf, and slope. The OFL of 3,767 mt is the sum of OFLs for nearshore (116 mt), shelf (2,197 mt) and slope (1,507 mt) north sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (splitnose and chilipepper rockfish), 0,72 for category 2 stocks (greenstriped rockfish and blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish north ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex (nearshore, shelf, and slope) is 3,414 mt. The ACL of 2,227 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 99 mt. The set-aside for the shelf sub-complex is 43 mt—Tribal fishery (9 mt), the incidental open access fishery (26 mt), EFP catch (4 mt) and research catch (4 mt), resulting in a shelf fishery HG of 925 mt. The set-aside for the slope sub-complex is 68 mt—Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (2) and research catch (11 mt), resulting in a slope fishery HG of 1,092 mt.

gg/ Minor rockfish south is comprised of three minor rockfish sub-complexes: Nearshore, shelf, and slope. The OFL of 4,291 mt is the sum of OFLs for nearshore (1,145 mt), shelf (2,243 mt) and slope (903 mt) south sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (gopher rockfish north of Point Conception, blackgill), 0.72 for category 2 stocks (blue rockfish in the assessed area, greenstriped rockfish, and bank rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish south ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex, is 3,712 mt. The ACL of 2,341 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 990 mt. The set-asides for the shelf sub-complex is 13 mt for the incidental open access fishery (9 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a shelf fishery HG of 701 mt. The set-asides for the slope sub-complex is 27 mt for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (8 mt), resulting in a slope fishery HG of 599 mt.

hh/ Longnose skate. A stock assessment update was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 3,128 mt is based on the 2007 stock assessment with an F_{MSY} proxy of $F_{45\neq}$. The ABC of 2,990 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 1,349 is the 2010 OY and represents a 50 percent increase in the average 2004–2006 catch mortality (landings and discard mortality). The set-asides for longnose skate is 129 mt for the Tribal fishery (56 mt), incidental open access fishery (65 mt), and research catch (8 mt), resulting in a fishery HG of 1,220 mt.

ii/ "Other fish" contains all unassessed groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish. These species include big skate, California skate, leopard shark, soupfin shark, spiny dogfish, finescale codling, Pacific rattail, ratfish, cabezon off Washington, and kelp greenling. The OFL of 11,150 mt is the 2010 MSY harvest level minus the 50 mt contribution made for cabezon off Oregon, which is a newly assessed stock to be managed with stock-specific specifications. The ABC of 7,742 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all of the stocks in the "other fish" complex are category 3 species. The ACL of 5,575 mt is equal to the 2010 OY, minus half of the OFL contribution for Cabezon off of Oregon (25 mt). The fishery HG is equal to the ACL.

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Table 2b. To Part 660, Subpart C - 2012, and beyond, Allocations by Species or Species Group (final 2012 allocations for assessed flatfish are contingent upon potential changes to flatfish status determination criteria and the harvest control rule, and, for overfished species, potential changes to rebuliding plans). (Weights in Metric Tons)

Species	Fishery HG	Allocations			
		Trawl		Non-trawl	
		%	Mt	%	Mt
Lingcod					
N of 42° N. lat.	1,880	45%	846	55%	1,034
S of 42° N. lat.	2,157	45%	971	55%	1,186
Pacific cod	1,200	95%	1,140	5%	60
Pacific whiting	See Table 2a	100%	See Table 2a	0%	0
Sablefish					
N of 36° N. lat.	See Table 1c of this subpart				
S of 36° N. lat.	1,224	42%	514	58%	710
FLATFISH:					
Dover sole	23,410	95%	22,240	5%	1,170
English sole	19,661	95%	18,678	5%	983
Petrale sole a/	910.6		876		35
Arrowtooth flounder	13,096	95%	12,441	5%	655
Starry Flounder	1,345	50%	673	50%	672
Other flatfish	4,686	90%	4,217	10%	469
ROCKFISH:					
Pacific Ocean Perch	144.2	95%	137	5%	7
Widow e/	539.1	91%	491	9%	49
Canary a/ c/	82		34.1		29.8
Chilipepper - S of 40°10 N. Lat.	1,774	75%	1,331	25%	443
Bocaccio - S of 40°10 N. Lat. a/	249.6		60		189.6
Splitnose - S of 40°10 N. Lat.	1,531	95%	1,454	5%	77
Yellowtail - N of 40°10 N. Lat.	3,872	88%	3,407	12%	465
Shortspine thornyhead					
N of 34°27' N. lat.	1,511	95%	1,435	5%	76
S of 34°27' N. lat.	359		50		309
Longspine thornyhead					
N of 34°27' N. lat.	2,020	95%	1,919	5%	101
Cowcod - S of 40°10 N. Lat. a/	2.7		1.8		0.9
Darkblotched d/	279.3	95%	265	5%	14
Yelloweye a/	11.1		0.6		10.5
Minor Rockfish North					
Shelf a/	925	60.20%	557	39.80%	368
Slope	1,092	81%	885	19%	207
Minor Rockfish South					
Shelf a/	701	12.2%	86	87.8%	615
Slope	599	63%	377	37%	222
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:					
Longnose Skate a/	1,220	95%	1,159	5%	61

a/ Allocations decided through the biennial specification process.

b/ /30 mt of the total trawl allocation for POP is allocated to the whiting fisheries, as follows: 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140 (d)(1)(ii)(D).

c/ 14.1 mt of the total trawl allocation of canary rockfish is allocated to the whiting fisheries, as follows: 5.9 mt for the shorebased IFQ fishery, 3.4 mt for the mothership fishery, and 4.8 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140 (d)(1)(ii)(D).

d/ 25 mt of the total trawl allocation for darkblotched rockfish is allocated to the whiting fisheries, as follows: 10.5 mt for the shorebased IFQ fishery, 6.0 mt for the mothership fishery, and 8.5 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140 (d)(1)(ii)(D).

e/ 52 percent (255 mt) of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 107.1 mt for the shorebased IFQ fishery, 61.2 mt for the mothership fishery, and 86.7 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140 (d)(1)(ii)(D).

Table 2c. To Part 660, Subpart C - Sablefish North of 36° N. lat. Allocations, 2012, and beyond

Year	ACL	Set-asides		Recreational Estimate	Commercial HG	Limited Entry HG		Open Access HG	
		Tribal a/	Research			%	Mt	%	MT b/
2012	5,347	535	16	6.1	4,790	90.6%	4,340	9.4%	450

Year	LE All	Limited Entry Trawl c/			Limited Entry Fixed Gear d/		
		ALL Trawl	At-sea Whiting	Shorebased IFQ	ALL FG	Primary	DTL
2012	4,340	2,517	50	2,467	1,823	1,549	273

a/ The tribal allocation is further reduced by 1.5 percent for discard mortality resulting in 527 mt in 2012

b/ Of the Open access HG the annual amount estimated to be taken in the incidental OA fishery is 17.2 mt.

c/ The trawl allocation is 58% of the limited entry HG

d/ The limited entry fixed gear allocation is 42% of the limited entry HG

TABLE 2D. TO PART 660, SUBPART C—AT-SEA WHITING FISHERY ANNUAL SET-ASIDES, 2012 AND BEYOND

Species or species complex	Set-aside (mt)
Lingcod	6
Pacific Cod	5
Pacific Whiting	Allocation [a]
Sablefish N. of 36°	50
Sablefish S. of 36°	NA
PACIFIC OCEAN PERCH	Allocation [a]
WIDOW ROCKFISH	Allocation [a]
Chilipepper S. of 40°10′	NA
Splitnose S. of 40°10′	NA
Yellowtail N. of 40°10′	300
Shortspine Thornyhead N. of 34°27′.	20
Shortspine Thornyhead S. of 34°27′.	NA
Longspine Thornyhead N. of 34°27′.	5
Longspine Thornyhead S. of 34°27′.	NA
DARKBLOTCHED	Allocation [a]
Minor Slope RF N	55
Minor Slope RF S	NA
Dover Sole	5
English Sole	5
Petrale Sole—coastwide	5
Arrowtooth Flounder	10
Starry Flounder	5
Other Flatfish	20
CANARY ROCKFISH	Allocation [a]
BOCACCIO	NA
COWCOD	NA
YELLOWEYE	0
Black Rockfish	NA
Blue Rockfish (CA)	NA
Minor Nearshore RF N	NA
Minor Nearshore RF S	NA
Minor Shelf RF N	35
Minor Shelf RF S	NA
California scorpionfish	NA
Cabezon (off CA only)	NA
Other Fish	520
Longnose Skate	5
Pacific Halibut	10 [b]

[a] See Table 2.b., to Subpart C, for the at-sea whiting allocations for these species.

[b] As stated in § 660.55(m), the Pacific halibut set-aside is 10 mt, to accommodate by-catch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10′ N lat. (estimated to be approximately 5 mt each).

* * * * *

Subpart D—West Coast Groundfish—Limited Entry Trawl Fisheries.

■ 15. In § 660.130 paragraph (d) introductory text is revised to read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(d) *Sorting.* Under § 660.12 (a)(8), subpart C, it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipt.

* * * * *

■ 16. In § 660.131, paragraph (b)(3)(ii) is revised to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(3) * * *

(ii) If, during a primary whiting season, a whiting vessel harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any cumulative limit period that overlaps the start or close of the primary whiting season.

* * * * *

■ 17. In § 660.140, paragraphs (a)(3), (c)(1), and (d)(1)(ii)(D), are revised as follows:

§ 660.140 Shorebased IFQ program.

(a) * * *

(3) The Shorebased IFQ Program may be restricted or closed as a result of projected overages within the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sector in aggregate or the individual trawl sectors (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an ACL, OY, ACT or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

* * * * *

(c) * * *

(1) *IFQ species.* IFQ species are those groundfish species and Pacific halibut in the exclusive economic zone or adjacent state waters off Washington, Oregon and California, under the jurisdiction of the Pacific Fishery Management Council, for which QS and IBQ will be issued. Groupings and area subdivisions for IFQ species are those groupings and area subdivisions for which ACLs or ACTs are specified in the Tables 1a through 2d, subpart C, and those for which there is an area-specific precautionary harvest policy. The lists of individual groundfish species included in the minor shelf complex north of 40°10′ N. lat., minor shelf complex south of 40°10′ N. lat., minor slope complex north 40°10′ N. lat., minor slope complex south of 40°10′ N. lat., and in the other flatfish complex are specified under the definition of "groundfish" at § 660.11. The following are the IFQ species:

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For the 2011 trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ Species	Management area	Shorebased trawl allocation (mt)
Lingcod		1,863.30
Pacific cod		1,135.00
Pacific Whiting		92,817.90
Sablefish	North of 36° N. lat.	2,546.34
Sablefish	South of 36° N. lat.	530.88
Dover sole		22,234.50
English sole		18,672.95
PETRALE SOLE		871.00
Arrowtooth flounder		12,431.20
Starry flounder		667.50
Other flatfish		4,197.40
PACIFIC OCEAN PERCH	North of 40°10′ N. lat.	119.36
WIDOW ROCKFISH		342.62

IFQ Species	Management area	Shorebased trawl allocation (mt)
CANARY ROCKFISH		25.90
Chilipepper rockfish	South of 40°10′ N. lat.	1,475.25
BOCACCIO ROCKFISH	South of 40°10′ N. lat.	60.00
Splitnose rockfish	South of 40°10′ N. lat.	1,381.30
Yellowtail rockfish	North of 40°10′ N. lat.	3,094.16
Shortspine thornyhead	North of 34°27′ N. lat.	1,431.60
Shortspine thornyhead	South of 34°27′ N. lat.	50.00
Longspine thornyhead	North of 34°27′ N. lat.	1,966.25
COWCOD	South of 40°10′ N. lat.	1.80
DARKBLOTCHED ROCKFISH		250.84
YELLOWEYE ROCKFISH		0.60
Minor shelf rockfish complex	North of 40°10′ N. lat.	522.00
Minor shelf rockfish complex	South of 40°10′ N. lat.	86.00
Minor slope rockfish complex	North of 40°10′ N. lat.	829.52
Minor slope rockfish complex	South of 40°10′ N. lat.	377.37

* * * * *

■ 18. In § 660.150 paragraph (a)(5) is revised to read as follows:

§ 660.150 Mothership (MS) Coop program.

(a) * * *

(5) The MS Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an ACL, ACT, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

* * * * *

■ 19. In § 660.160 paragraph (a)(5) is revised to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

(a) * * *

(5) The C/P Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an ACL, ACT, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

* * * * *

■ 20. Table 1 (North), Table 1 (South) to part 660, subpart D are revised to read as follows:

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Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 04292011

TABLE 1 (North)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 48°10' N. lat.	shore - modified[2/] 200 fm line[1/]	shore - 200 fm line[1/]	shore - 150 fm line[1/]		shore - 200 fm line[1/]	shore - modified[2/] 200 fm line[1/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[1/] - modified[2/] 200 fm line[1/]	75 fm line[1/] - 200 fm line[1/]	75 fm line[1/] - 150 fm line[1/]	100 fm line[1/] - 150 fm line[1/]	75 fm line[1/] - 200 fm line[1/]	75 fm line[1/] - modified[2/] 200 fm line[1/]
3	45°46' N. lat. - 40°10' N. lat.			75 fm line[1/] - 200 fm line[1/]	100 fm line[1/] - 200 fm line[1/]		

Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 1 (North) and 1 (South) to Part 660, Subpart E.**

See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

4	**Minor nearshore rockfish & Black rockfish**	300 lb/ month
5	**Whiting**	
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.
8	**Cabezon**	
9	North of 46°16' N. lat.	Unlimited
10	46°16' N. lat. - 40°10' N. lat.	50 lb/ month
11	**Shortbelly**	Unlimited
12	**Spiny dogfish**	60,000 lb/ month
13	**Longnose skate**	Unlimited
14	**Other Fish [3/]**	Unlimited

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1 (South) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting South of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 04292011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	South of 40°10' N. lat.	100 fm line[1/] - 150 fm line [1/ 2/]					
	Small footrope trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 1 (North) and 1 (South) to Part 660, Subpart E.**						
	See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Longspine thornyhead**						
3	South of 34°27' N. lat.	24,000 lb/ 2 months					
4	**Minor nearshore rockfish & Black rockfish**	300 lb/ month					
5	**Whiting**						
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
8	**Cabezon**	50 lb/ month					
9	**Shortbelly**	Unlimited					
10	**Spiny dogfish**	60,000 lb/ month					
11	**Longnose skate**	Unlimited					
12	**California scorpionfish**	Unlimited					
13	**Other Fish [3/]**	Unlimited					

TABLE 1 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.

3/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (excluding longnose skate), ratfish, morids, grenadiers, and kelp greenling.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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Subpart E—West Coast Groundfish—Limited Entry Fixed Gear Fisheries

■ 21. In § 660.230 paragraphs (c)(1), (c)(2)(ii), and (d)(5) through (9) are revised to read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(c) * * *

(1) Under § 660.12(a)(8), subpart C, it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts.

(2) * * *

(ii) North of 40°10′ N. lat.—POP, yellowtail rockfish, Cabezon (Oregon and California);

* * * * *

(d) * * *

(5) *Point St. George YRCA*. The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point St. George YRCA, on dates when the

closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(6) *South Reef YRCA.* The latitude and longitude coordinates of the South Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(7) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(8) *Point Delgada (North) YRCA.* The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(9) *Point Delgada (South) YRCA.* The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

* * * * *

■ 22. In § 660.231, paragraphs (b)(1) and (b)(3)(i) are revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(1) *Season dates.* North of 36° N. lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and closes at 12 noon local time on October 31, or closes for an individual permit holder when that permit holder's tier limit has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60, subpart C.

* * * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (*i.e.,* stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232, subpart E. In 2011, the following annual limits are in effect: Tier 1 at 41,379 lb (18,769 kg), Tier 2 at 18,809 lb (8,532 kg), and Tier 3 at 10,748 lb–(4,875 kg). For 2012 and beyond, the following annual limits are in effect: Tier 1 at 40,113 lb (18,195 kg), Tier 2 at 18,233 lb (8,270 kg), and Tier 3 at 10,419 lb (4,726 kg).

* * * * *

■ 23. In § 660.232 paragraph (a)(2) is revised to read as follows:

§ 660.232 Limited entry daily trip limit (DTL) fishery for sablefish.

(a) * * *

(2) Following the start of the primary season, all landings made by a vessel authorized by § 660.231(a) of this subpart to fish in the primary season will count against the primary season cumulative limit(s) associated with the permit(s) registered for use with that vessel. A vessel that is eligible to fish in the sablefish primary season may fish in the DTL fishery for sablefish once that vessels' primary season sablefish limit(s) have been taken, or after the close of the primary season, whichever occurs earlier. Any subsequent sablefish landings by that vessel will be subject to the restrictions and limits of the limited entry DTL fishery for sablefish for the remainder of the fishing year.

* * * * *

■ 24. Table 2 (North) and Table 2 (South) to part 660, subpart E are revised to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table

04292011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
5	**Minor slope rockfish [2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
6	**Pacific ocean perch**	1,800 lb/ 2 months					
7	**Sablefish**	1,900 lb per week, not to exceed 6,500 lb/ 2 months[7/]	2,000 lb/ week, not to exceed 7,000 lb/ 2 months		2,000 lb/ week, not to exceed 6,500 lb/ 2 months		
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**	2,000 lb/ 2 months					
10	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[1/]**						
16	**Whiting**	10,000 lb/ trip					
17	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
22	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
23	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Other fish[5/]**	Unlimited					

TABLE 2 (North)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The trip limit that was in place for sablefish north of 36° N. Lat. in Jan-Feb 2011 was "1,750 lb per week, not to exceed 7,000 lb per 2 months".

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 04292011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,900 lb per week, not to exceed 6,500 lb/ 2 months[6/]	2,000 lb/ week, not to exceed 7,000 lb/ 2 months		2,000 lb/ week, not to exceed 6,500 lb/ 2 months		
7	South of 36° N. lat.	2,000 lb per week[6/]	2,100 lb/ week				
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							TABLE 2 (South)
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months		
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	1,200 lb/ 2 months[7/]	CLOSED	1,200 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Other fish**[4/]	Unlimited						

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

6/ The trip limit that was in place for sablefish north of 36° N. Lat. in Jan-Feb 2011 was "1,750 lb per week, not to exceed 7,000 lb per 2 months". The trip limit that was in place for sablefish south of 36° N. Lat. in Jan-Feb 2011 was "400 lb per week, not to exceed 1,500 lb per 2 months".

7/ The trip limit that was in place for California scorpionfish south of 40°10' N. Lat. in Jan-Feb 2011 was "600 lb per 2 months".

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

Subpart F—West Coast Groundfish—Open Access Fisheries

■ 25. In § 660.330 paragraphs (c) introductory text, (c)(2) and (d)(5) through (9) are revised to read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(c) *Sorting.* Under § 660.12(a)(8), subpart C, it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts. For open access vessels, the following species must be sorted:

* * * * *

(2) North of 40°10′ N. lat.—POP, yellowtail rockfish, Cabezon (Oregon and California);

* * * * *

(d) * * *

(5) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(6) *South Reef YRCA.* The latitude and longitude coordinates of the South Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(7) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through

inseason adjustment. Open access gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(8) *Point Delgada (North) YRCA.* The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(9) *Point Delgada (South) YRCA.* The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

* * * * *

■ 26. Table 3 (North) and Table 3 (South) to part 660, subpart F are revised to read as follows:

BILLING CODE 3510–22–P

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 04292011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
5	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
6	**Pacific ocean perch**	100 lb/ month					
7	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	300lb/ day, or 1 landing per week of up to 950 lb, not to exceed 1,900 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 1,200 lb, not to exceed 2,250 lb/ 2 months		
8	**Thornyheads**	CLOSED					
9	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
10	**Arrowtooth flounder**						
11	**Petrale sole**						
12	**English sole**						
13	**Starry flounder**						
14	**Other flatfish[2/]**						
15	**Whiting**	300 lb/ month					
16	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
17	**Canary rockfish**	CLOSED					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor nearshore rockfish & Black rockfish**						
20	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
21	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
22	**Lingcod[4/]**	CLOSED		400 lb/ month			CLOSED
23	**Pacific cod**	1,000 lb/ 2 months					
24	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Other Fish[5/]**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
26	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish except for yellowtail rockfish and lingcod, as described below)*							**TABLE 3 (North) con't**
27	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.						
28	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*							
29	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.						

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 04292011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	300lb/ day, or 1 landing per week of up to 950 lb, not to exceed 1,900 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 1,200 lb, not to exceed 2,250 lb/ 2 months		
9	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 6,000 lb/ 2 months[6/]	300 lb/ day, or 1 landing per week of up to 1,200 lb, not to exceed 2,400 lb/ 2 months				
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED		200 lb/ 2 months	300 lb/ 2 months	
22	South of 34°27' N. lat.	750 lb/ 2 months			750 lb/ 2 months		
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					
27	**Bocaccio**						
28	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED		100 lb/ 2 months	200 lb/ 2 months	
29	South of 34°27' N. lat.	100 lb/ 2 months			100 lb/ 2 months		

TABLE 3 (South)

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
30	**Minor nearshore rockfish & Black rockfish**						
31	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months	
34	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
35	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
36	**Lingcod**[3/]	CLOSED		400 lb/ month			CLOSED
37	**Pacific cod**	1,000 lb/ 2 months					
38	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
39	**Other Fish**[4/]	Unlimited					
40	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
42	*40° 10' - 38° N. lat.*	*100 fm line - 200 fm line* [6/]	*100 fm line* [5/] *- 150 fm line* [5/]				*100 fm line* [5/] *- 200 fm line* [5/ 6/]
43	*38° - 34° 27' N. lat.*	*100 fm line* [5/] *- 150 fm line* [5/]					
44	*South of 34° 27' N. lat.*	*100 fm line* [5/] *- 150 fm line* [5/] *along the mainland coast; shoreline - 150 fm line* [5/] *around islands*					
45		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
46	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
47	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.

2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

6/ The trip limit that was in place for sablefish south of 36° N. Lat. in Jan-Feb 2011 was "400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 8,000 lb/ 2 months".

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

Subpart G—West Coast Groundfish—Recreational Fisheries

■ 27. In § 660.360,

■ a. Remove paragraphs (c)(3)(i)(C), (c)(3)(i)(A)(*5*), (c)(3)(ii)(A)(*5*),

■ b. Redesignate paragraphs (c)(1)(iii) as (c)(1)(iv), (c)(3)(i)(A)(*6*) as (c)(3)(i)(A)(*5*), (c)(3)(i)(D) through (J) as (c)(3)(i)(C) through (I), (c)(3)(ii)(A)(*6*) as (c)(3)(ii)(A)(*5*),

■ c. Revise newly redesignated paragraphs (c)(1)(iv)(A) and (B), (c)(3)(i)(A)(*5*), (c)(3)(i)(D) through (H), (c)(3)(ii)(A)(*5*),

■ d. Revise paragraphs (c)(1), (c)(1)(i)(D), (c)(1)(i)(D)(*1*) and (*2*), (c)(2)(iii), (c)(3)(i)(A)(*1*) through (*4*), (c)(3)(i)(B), (c)(3)(ii)(A)(*1*) through (*4*), (c)(3)(iii)(C), (c)(3)(iii)(D),

■ d. Add paragraphs (c)(1)(i)(D)(*3*), (c)(1)(iii), to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(1) *Washington.* For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is 12 groundfish per day, including rockfish, cabezon and lingcod. Within the groundfish bag limit, there are sub-limits for rockfish, lingcod, and cabezon outlined in paragraph (c)(1)(i)(D) of this section. The recreational groundfish fishery is open year-round except for lingcod, which has season dates outlined in paragraph (c)(1)(iv) of this section. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. The following seasons, closed areas, sub-limits and size limits apply:

* * * * *

(i)* * *

(D) *Recreational rockfish conservation area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA unless otherwise stated. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA unless otherwise stated. A vessel fishing in the recreational RCA may not be in possession of any groundfish unless otherwise stated. [For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.]

(*1*) West of the Bonilla-Tatoosh line Between the U.S. border with Canada and the Queets River (Washington state Marine Area 3 and 4), recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 20 fm (37 m) depth contour from June 1 through September 30, except on days when the Pacific halibut fishery is open in this area. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Coordinates for the boundary line approximating the 20 fm (37 m) depth contour are listed in § 660.71, subpart C.

(*2*) Between the Queets River (47°31.70' N. lat.) and Leadbetter Point (46°38.17' N. lat.) (Washington state Marine Area 2), recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 30 fm (55 m) depth contour from March 15 through June 15 with the following exceptions: Recreational fishing for rockfish is permitted within the RCA from March 15 through June 15; recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15; and on days that the primary halibut fishery is open lingcod may be taken, retained and possessed within the RCA. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Retention of lingcod seaward of the boundary line approximating the 30 fm (55 m) depth contour south of 46°58' N. lat. is prohibited on Fridays and Saturdays from July 1 through August 31. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iv) of this section. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

(*3*) Between Leadbetter Point (46°38.17' N. lat.) and the Washington/Oregon border (Marine Area 1), when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod from May 1 through September 30.

* * * * *

(iii) *Cabezon.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing, there is a 2 cabezon per day bag limit.

(iv) *Lingcod.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open, there is a bag limit of 2 lingcod per day. The recreational fishing seasons and size limits for lingcod are as follows:

(A) Between the U.S./Canada border and 48°10' N. lat. (Cape Alava) (Washington Marine Area 4), recreational fishing for lingcod is open, for 2011, from April 16 through October 15, and for 2012, from April 16 through October 13. Lingcod may be no smaller than 24 inches (61 cm) total length.

(B) Between 48°10' N. lat. (Cape Alava) and 46°16' N. lat. (Washington/Oregon border) (Washington Marine Areas 1–3), recreational fishing for lingcod is open for 2011, from March 19 through October 15, and for 2012, from March 17 through October 13. Lingcod may be no smaller than 22 inches (56 cm) total length.

* * * * *

(2) * * *

(iii) *Bag limits, size limits.* For each person engaged in recreational fishing off the coast of Oregon, the following bag limits apply:

(A) *Marine fish.* The bag limit is 10 marine fish per day, which includes rockfish, kelp greenling, cabezon and other groundfish species. The bag limit of marine fish excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, flatfish, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines). From April 1 through September 30; no more than one fish may be cabezon. The minimum size for cabezon retained in the Oregon recreational fishery is 16 in (41 cm) total length. The minimum size for Kelp greenling retained in the Oregon recreational fishery is 10 in (25 cm).

(B) *Lingcod.* There is a 3 fish limit per day for lingcod From January 1 through December 31. The minimum size for lingcod retained in the Oregon recreational fishery is 22 in (56 cm) total length.

(C) *Flatfish.* There is a 25 fish limit per day for all flatfish, excluding Pacific halibut, but including all soles, flounders and Pacific sanddabs, from January 1 through December 31.

(D) *In the Pacific halibut fisheries.* Retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. Between the Oregon border with Washington and Cape Falcon, when Pacific halibut are onboard the vessel, groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod. Between Cape Falcon and Humbug Mountain, during days open to the Oregon Central Coast "all-depth" sport halibut fishery, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. "All-depth" season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1–800–662–9825.

(E) Taking and retaining canary rockfish and yelloweye rockfish is prohibited at all times and in all areas.

(3)* * *

(i)* * *

(A)* * *

(*1*) Between 42° N. lat. (California/Oregon border) and 40° 10.00′ N. lat. (Northern Management Area), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20 fm (37 m) depth contour along the mainland coast and along islands and offshore seamounts from May 14, 2011 through

October 31, 2011 (shoreward of 20 fm is open); and is closed entirely from January 1 through May 13, 2011 and from November 1 through December 31, 2011. Recreational fishing for groundfish is prohibited seaward of 20 fm (37 m) from May 12, 2012 through October 31, 2012 (shoreward of 20 fm is open), and is closed entirely from January 1 through May 11, 2012 and from November 1, 2012 through December 31, 2012.

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20 fm (37 m) depth contour along the mainland coast and along islands and offshore seamounts from May 14, 2011 through August 15, 2011 (shoreward of 20 fm is open), and is closed entirely from January 1, 2011 through May 13, 2011 and from August 16, 2011 through December 31, 2011; Recreational fishing for groundfish is prohibited seaward of 20 fm (37 m) and from May 12, 2012 through August 15, 2012 (shoreward of 20 fm is open); and is closed entirely from January 1, 2012 through May 11, 2012 and from August 16, 2012 through December 31, 2012.

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. San Francisco Management Area), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the boundary line approximating the 30 fm (55 m) depth contour along the mainland coast and along islands and offshore seamounts from June 1 through December 31; and is closed entirely from January 1 through May 31. Closures around Cordell Banks (see paragraph (c)(3)(i)(C) of this section) also apply in this area. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

(*4*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40 fm (73 m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through December 31; and is closed entirely from January 1 through April 30 (*i.e.* prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are specified in § 660.71.

(*5*) South of 34°27′ N. lat. (Southern Management Area), recreational fishing for all groundfish (except California scorpionfish as specified below in this paragraph and in paragraph (v) of this section and "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 60 fm (110 m) depth contour from March 1 through December 31 along the mainland coast and along islands and offshore seamounts, except in the CCAs where fishing is prohibited seaward of the 20 fm (37 m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section). Recreational fishing for all groundfish (except California scorpionfish and "other flatfish") is closed entirely from January 1 through February 28 (*i.e.,* prohibited seaward of the shoreline). Recreational fishing for California scorpionfish south of 34°27′ N. lat. is prohibited seaward of a boundary line approximating the 60 fm (110 m) depth contour from January 1 through December 31, except in the CCAs where fishing is prohibited seaward of the boundary line approximating the 30 fm (55 m) depth contour when the fishing season is open. Coordinates for the boundary line approximating the 30 fm (55 m) and 60 fm (110 m) depth contours are specified in §§ 660.71 and 660.72.

(B) *Cowcod conservation areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70, subpart C. In general, recreational fishing for all groundfish is prohibited within the CCAs, except that fishing for "other flatfish" is permitted within the CCAs as specified in paragraph (c)(3)(iv) of this section. However, recreational fishing for the following species is permitted shoreward of the 20 fm (37 m) depth contour when the season for those species is open south of 34°27′ N. lat.: Minor nearshore rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, and "other flatfish" (subject to gear requirements at paragraph (c)(3)(iv) of this section during January–February). [NOTE: California state regulations also permit recreational fishing for California sheephead, ocean whitefish, and all greenlings of the genus Hexagrammos shoreward of the 20 fm (37 m) depth contour in the CCAs when the season for the RCG complex is open south of 34°27′ N. lat.] It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this section.

(C) *Cordell banks.* Recreational fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.70, subpart C, except that recreational fishing for "other flatfish" is permitted around Cordell Banks as specified in paragraph (c)(3)(iv) of this section. [Note: California state regulations also prohibit fishing for all greenlings of the genus Hexagrammos, California sheephead and ocean whitefish.]

(D) *Point St. George Yelloweye Rockfish Conservation Area (YRCA).* Recreational fishing for groundfish is prohibited within the Point St. George YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment.

(E) *South reef YRCA.* Recreational fishing for groundfish is prohibited within the South Reef YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment.

(F) *Reading Rock YRCA.* Recreational fishing for groundfish is prohibited within the Reading Rock YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment.

(G) *Point Delgada (North) YRCA.* Recreational fishing for groundfish is prohibited within the Point Delgada (North) YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment.

(H) *Point Delgada (South) YRCA.* Recreational fishing for groundfish is prohibited within the Point Delgada (South) YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment.

* * * * *

(ii) * * *

(A) * * *

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10′ N. lat. (North Management Area), recreational fishing for the RCG complex is open from May 14, 2011 through October 31, 2011 (*i.e.* it's closed from January 1 through May 13 and from November 1 through December 31 in 2011) and from May 12, 2012 through October 31, 2012 (*i.e.* it's closed from January 1 through May 11 and from November 1 through December 31 in 2012).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for the RCG Complex is open from May 14, 2011 through August 15, 2011 (*i.e.* it's closed from January 1 through May 13 and August 16 through December 31 in 2011), and from May 12, 2012 through August 15, 2012 (*i.e.* it's closed from January 1 through May 11 and August 16 through December 31 in 2012). (*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (San Francisco Management Area), recreational fishing for the RCG complex is open from June 1 through December 31 (*i.e.* it's closed from January 1 through May 31).

(*4*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for the RCG complex is open from May 1 through December 31 (*i.e.* it's closed from January 1 through April 30).

(*5*) South of 34°27′ N. lat. (Southern Management Area), recreational fishing for the RCG Complex is open from March 1 through December 31 (*i.e.* it's closed from January 1 through February 28).

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for the RCG complex and lingcod. The bag limit is 10 RCG Complex fish per day coastwide. Retention of canary rockfish, yelloweye rockfish, bronzespotted and cowcod is prohibited. Within the 10 RCG Complex fish per day limit, no more than 2 may be bocaccio, no more than 2 may be greenling (kelp and/or other greenlings) and no more than 3 may be cabezon. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

(iii) * * *

(A) * * *

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10.00′ N. lat. (Northern Management Area), recreational fishing for lingcod is open from May 14, 2011 through October 31, 2011 (*i.e.* it's closed from January 1 through May 13 and from November 1 through December 31 in 2011) and from May 12, 2012 through October 31, 2012 (*i.e.* it's closed from January 1 through May 11 and from November 1 through December 31 in 2012).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for lingcod is open from May 14, 2011 through August 15, 2011 (*i.e.* it's closed from January 1 through May 13 and August 16 through December 31 in 2011) and from May 12, 2012 through August 15, 2012 (*i.e.* it's closed from January 1 through May 11 and August 16 through December 31 in 2012).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (San Francisco Management Area), recreational fishing for lingcod is open from June 1 through December 31 (*i.e.* it's closed from January 1 through May 31).

(*4*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for lingcod is open from May 1 through December 31 (*i.e.* it's closed from January 1 through April 30).

(*5*) South of 34°27′ N. lat. (Southern Management Area), recreational fishing for lingcod is open from March 1 through December 31 (*i.e.* it's closed from January 1 through February 28).

* * * * *

(C) *Size limits.* Lingcod may be no smaller than 22 in (56 cm) total length.

(D) *Dressing/filleting.* Lingcod filets may be no smaller than 14 in (36 cm) in length.

* * * * *

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FEDERAL REGISTER

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Part IV

Department of the Treasury

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Board of Governors of the Federal Reserve System

12 CFR Part 237

Federal Deposit Insurance Corporation

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Farm Credit Administration

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Federal Housing Finance Agency

12 CFR Part 1221

Margin and Capital Requirements for Covered Swap Entities; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC–2011–0008]

RIN 1557–AD43

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1415]

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FEDERAL DEPOSIT INSURANCE CORPORATION

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FARM CREDIT ADMINISTRATION

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AA45

Margin and Capital Requirements for Covered Swap Entities

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (collectively, the Agencies) are requesting comment on a proposal to establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator. This proposed rule implements sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which require the Agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for such entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared.

DATES: Comments should be received on or before June 24, 2011.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title "Margin and Capital Requirements for Covered Swap Entities" to facilitate the organization and distribution of comments among the Agencies. Commenters are also encouraged to identify the number of the specific question for comment to which they are responding.

Office of the Comptroller of the Currency: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Margin and Capital Requirements" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—"Regulations.gov":* Go to *http://www.regulations.gov.* Select "Document Type" of "Proposed Rules," and in the "Enter Keyword or ID Box," enter Docket ID "OCC–2011–0008," and click "Search." On "View By Relevance" tab at the bottom of screen, in the "Agency" column, locate the Proposed Rule for the OCC, in the "Action" column, click on "Submit a Comment" or "Open Docket Folder" to submit or view public comments and to view supporting and related materials for this rulemaking action.
- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2011–0008" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Select "Document Type" of "Public Submissions," and in the "Enter Keyword or ID Box," enter Docket ID "OCC–2011–0008," and click "Search." Comments will be listed under "View By Relevance" tab at the bottom of screen. If comments from more than one agency are listed, the "Agency" column will indicate which comments were received by the OCC.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board of Governors of the Federal Reserve System

You may submit comments, identified by Docket No. R–1415 and RIN 7100 AD74, by any of the following methods:

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

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

Federal Deposit Insurance Corporation: You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- *E-mail: Comments@FDIC.gov.* Include the RIN number on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, 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.

Instructions: All comments received must include the agency name and RIN for this rulemaking and will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

Federal Housing Finance Agency: You may submit your written comments on the proposed rulemaking, identified by regulatory information number (RIN) 2590–AA45, by any of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at *RegComments@fhfa.gov.* Please include "RIN 2590–AA45" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include "RIN 2590–AA45" in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA45, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA45, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. A hand-delivered package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

All comments received by the deadline will be posted for public inspection without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* Copies of all comments timely received will be available for public inspection and copying at the address above on government-business days between the hours of 10 a.m. and 3 p.m. To make an appointment to inspect comments please call the Office of General Counsel at (202) 414–6924.

Farm Credit Administration: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Acting Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael Sullivan, Market RAD (202) 874–3978, Kurt Wilhelm, Director, Financial Markets Group (202) 874–4479, Jamey Basham, Assistant Director, Legislative and Regulatory Activities Division (202) 874–5090, or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Sean D. Campbell, Deputy Associate Director, Division of Research and Statistics, (202) 452–3761, Michael Gibson, Senior Associate Director, Division of Research and Statistics, (202) 452–2495, or Jeremy R. Newell, Senior Attorney, Legal Division, (202) 452–3239, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Bobby R. Bean, Chief, Policy Section, (202) 898–6705, John Feid, Senior Capital Markets Specialist, (202) 898–8649, Division of Risk Management Supervision, Thomas F. Hearn, Counsel, (202) 898–6967, or Ryan K. Clougherty, Senior Attorney, (202) 898–3843, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

FHFA: Robert Collender, Principal Policy Analyst, Office of Policy Analysis and Research, (202) 343–1510, *Robert.Collender@fhfa.gov,* Peggy Balsawer, Assistant General Counsel, Office of General Counsel, (202) 343–1529, *Peggy.Balsawer@fhfa.gov.* or James Carley, Senior Associate Director, Division of FHLBank Regulation, (202) 408–2507, *James.Carley@fhfa.gov,* Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

FCA: William G. Dunn, Acting Associate Director, Finance and Capital Markets Team, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434, Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280, TTY (703) 883–4434, or Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) was enacted on July 21, 2010.[1] Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for derivatives, which the Act generally characterizes as "swaps" (which are defined in section 721 of the Dodd-Frank Act to include interest rate swaps, commodity-based swaps, and broad-based credit swaps) and "security-based swaps" (which are defined in section 761 of the Dodd-Frank Act to include single-name and narrow-based credit swaps and equity-based swaps).[2]

As part of this new regulatory framework, sections 731 and 764 of the Dodd-Frank Act add a new section 4s to the Commodity Exchange Act and a new section 15F to the Securities Exchange Act of 1934, respectively, which require the registration and regulation of swap dealers and major swap participants and security-based swap dealers and major security-based swap participants (collectively, swap entities).[3] For certain types of swap entities that are prudentially regulated by one of the Agencies,[4] sections 731 and 764 of the Dodd-Frank Act require the Agencies to adopt rules jointly for swap entities under their respective jurisdictions imposing (i) capital requirements and (ii) initial and variation margin requirements on all non-cleared swaps and non-cleared security-based swaps.[5] Swap entities that are prudentially regulated by the Agencies and therefore subject to the proposed rule are referred to herein as "covered swap entities."

Sections 731 and 764 of the Dodd-Frank Act require the CFTC and SEC to separately adopt rules imposing capital and margin requirements for swap entities for which there is no prudential regulator.[6] The Dodd-Frank Act requires the CFTC, SEC, and the Agencies to establish and maintain, to the maximum extent practicable, capital and margin requirements that are comparable, and to consult with each other periodically (but no less than annually) regarding these requirements.[7]

The capital and margin standards for swap entities imposed under sections 731 and 764 of the Dodd-Frank Act are intended to offset the greater risk to the swap entity and the financial system arising from the use of swaps and security-based swaps that are not cleared.[8] Sections 731 and 764 of the Dodd-Frank Act require that the capital and margin requirements imposed on swap entities must, to offset such risk, (i) help ensure the safety and soundness of the swap entity and (ii) be appropriate for the greater risk associated with the non-cleared swaps and non-cleared security-based swaps held as a swap entity.[9] In addition, Sections 731 and 764 of the Dodd-Frank Act require the Agencies, in establishing capital rules for covered swap entities, to take into account the risks associated with other types, classes or categories of swaps or security-based swaps engaged in, and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a swap dealer or a major swap participant.[10] Sections 731 and 764 become effective not less than 60 days after publication of the final rule or regulation implementing these sections.[11]

The capital and margin requirements that must be established with respect to

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68). Swaps and security-based swaps are sometimes referred to herein collectively as "derivatives."

[3] *See* 7 U.S.C. 6s; 15 U.S.C. 78*o*–8. Section 731 of the Dodd-Frank Act requires swap dealers and major swap participants to register with the Commodity Futures Trading Commission (the "CFTC"), which is vested with primary responsibility for the oversight of the swaps market under title 7 of the Dodd Frank Act. Section 764 of the Dodd-Frank Act requires security-based swap dealers and major security-based swap participants to register with the Securities and Exchange Commission (the "SEC"), which is vested with primary responsibility for the oversight of the security-based swaps market under title 7 of the Dodd-Frank Act. Section 713(d)(1) of the Dodd-Frank Act requires the CFTC and SEC to issue joint rules further defining the terms swap dealer, major swap participant, security-based swap dealer, and major security-based swap participant. The CFTC and SEC issued a joint notice of proposed rulemaking with respect to these definitions in December, 2010. *See* 75 FR 80,174 (Dec. 21, 2010) (proposed rule).

[4] Section 1a(39) of the Commodities Exchange Act defines the term "prudential regulator" for purposes of the capital and margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. The Board is the prudential regulator for any swap entity that is (i) a State-chartered bank that is a member of the Federal Reserve System, (ii) a State-chartered branch or agency of a foreign bank, (iii) a foreign bank which does not operate an insured branch, (iv) an organization operating under section 25A of the Federal Reserve Act (an Edge corporation) or having an agreement with the Board under section 25 of the Federal Reserve Act (an Agreement corporation), and (v) a bank holding company, a foreign bank that is treated as a bank holding company under section 8(a) of the International Banking Act of 1978, or a savings and loan holding company (on or after the transfer date established under section 311 of the Dodd-Frank Act), or a subsidiary of such a company or foreign bank (other than a subsidiary for which the OCC or FDIC is the prudential regulator or that is required to be registered with the CFTC or SEC as a swap dealer or major swap participant or a security-based swap dealer or major security-based swap participant, respectively). The OCC is the prudential regulator for any swap entity that is a national bank, a Federally chartered branch or agency of a foreign bank, or a Federal savings association. The FDIC is the prudential regulator for any swap entity that is (i) a State-chartered bank that is not a member of the Federal Reserve System or (ii) a State savings association. The FCA is the prudential regulator for any swap entity that is an institution chartered under the Farm Credit Act of 1971, as amended. FHFA is the prudential regulator for any swap entity that is a "regulated entity" under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (*i.e.,* the Federal National Mortgage Association and its affiliates, the Federal Home Loan Mortgage Corporation and its affiliates, and the Federal Home Loan Banks). *See* 7 U.S.C. 1a(39).

[5] *See* 7 U.S.C. 6s(e)(2)(A); 15 U.S.C. 78*o*–8(e)(2)(A). Section 6(s)(e)(1)(A) directs registered swap dealers and major swap participants for which there is a prudential regulator to comply with margin and capital rules issued by the prudential regulators, while section 6(s)(e)(1)(B) directs registered swap dealers and major swap participants for which there is not a prudential regulator to comply with margin and capital rules issued by the CFTC and SEC. Section 78o–8(e)(1) generally parallels section 6s(e)(1), except that section 78o–8(e)(1)(A) refers to registered security-based swap dealers and major security-based swap participants for which "there is not a prudential regulator." The Agencies construe the "not" in section 78o–8(e)(1)(A) to have been included by mistake, in conflict with section 78*o*–8(e)(2)(A), and of no substantive meaning. Otherwise, registered security-based swap dealers and major security-based swap participants for which there is not a prudential regulator could be subject to multiple capital and margin rules, and institutions regulated by the prudential regulators and registered as security-based swap dealers and major security-based swap participants might not be subject to any capital and margin requirements under section 78*o*–8(e).

[6] *See* 7 U.S.C. 6s(e)(2)(B); 15 U.S.C. 78*o*–8(e)(2)(B).

[7] *See* 7 U.S.C. 6s(e)(2)(A); 6s(e)(3)(D); 15 U.S.C. 78*o*–8(e)(2)(A), 78*o*–8(e)(3)(D). Staff of the Agencies have consulted with staff of the CFTC and SEC in developing the proposed rule.

[8] *See* 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78*o*–8(e)(3)(A).

[9] *See* 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78*o*–8(e)(3)(A). In addition, Section 1201 of Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654) requires the Director of FHFA, when promulgating regulations relating to the Federal Home Loan Banks, to consider the following differences between the Federal Home Loan Banks and the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac): cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. *See* section 1201 Public Law 110–289, 122 Stat. 2782–83 (amending 12 U.S.C. 4513). The Director of FHFA also may consider any other differences that are deemed appropriate. For purposes of this proposed rule, FHFA considered the differences as they relate to the above factors. FHFA requests comments from the public about whether differences related to these factors should result in any revisions to the proposal.

[10] *See* 7 U.S.C. 6s(e)(2)(C); 15 U.S.C. 78*o*–8(e)(2)(C). In addition, the margin requirements imposed by the Agencies must permit the use of noncash collateral, as the Agencies determine to be consistent with (i) preserving the financial integrity of the markets trading swaps and security-based swaps and (ii) preserving the stability of the U.S. financial system. *See* 7 U.S.C. 6s(e)(3)(C); 15 U.S.C. 78*o*–8(e)(3)(C).

[11] *See* Dodd Frank Act §§ 754, 774.

non-cleared derivatives under sections 731 and 764 of the Dodd-Frank Act complement changes made elsewhere in the Act that require all sufficiently standardized swaps and security-based swaps be cleared through a derivatives clearing organization or clearing agency.[12] This clearing mandate reflects the consensus of the G–20 leaders: "All standardized over-the-counter derivatives contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end of 2012 at the latest."[13]

In the derivatives clearing process, central counterparties (CCPs) manage the credit risk through a range of controls and methods, including a margining regime that imposes both initial margin and variation margin requirements on parties to cleared transactions.[14] Thus, the mandatory clearing requirement established by the Dodd-Frank Act for swaps and security-based swaps will effectively require any party to any transaction subject to the clearing mandate to post initial and variation margin to the CCP in connection with that transaction.

However, if a particular swap or security-based swap is not cleared because it is not subject to the mandatory clearing requirement (or because one of the parties to a particular swap or security-based swap is eligible for, and uses, an exemption from the mandatory clearing requirement), that swap or security-based swap will be a "non-cleared" swap or security-based swap and will be subject to the capital and margin requirements for such transactions established under sections 731 and 764 of the Dodd-Frank Act.

The comprehensive derivatives-related provisions of title VII of the Dodd-Frank Act, including sections 731 and 764, are intended in general to reduce risk, increase transparency, promote market integrity within the financial system, and, in particular, address a number of weaknesses in the regulation and structure of the derivatives markets that were revealed during the financial crisis experienced in 2008 and 2009. During the financial crisis, the opacity of derivatives transactions among dealer banks and between dealer banks and their counterparties created uncertainty about whether market participants were significantly exposed to the risk of a default by a swap counterparty. By imposing a regulatory margin requirement on non-cleared swaps, the Dodd-Frank Act will reduce the uncertainty around the possible exposures arising from non-cleared swaps.

The recent financial crisis also revealed that some participants in the derivatives markets had used derivatives to take on excessive risks. By imposing a minimum margin requirement on non-cleared derivatives, sections 731 and 764 of the Dodd-Frank Act will reduce the ability of firms to take on excessive risks through swaps without sufficient financial resources to make good on their contracts. Because the Dodd-Frank Act requires that the margin requirements be based on the risks posed by the non-cleared derivatives and derivatives counterparties, firms that take significant risks through derivatives will face more stringent margin requirements with respect to non-cleared derivatives, while firms that take lower risks will face less stringent margin requirements.

II. Overview of Proposed Rule

A. Margin Requirements

The Agencies have generally adopted a risk-based approach in proposing rules to establish initial and variation margin requirements for covered swap entities, consistent with the statutory requirement that these rules help ensure the safety and soundness of the covered swap entity and be appropriate for the risk to the financial system associated with non-cleared swaps and non-cleared security-based swaps held by covered swap entities. As a result, the proposed rule takes into account the relative risk of a covered swap entity's activities in establishing both (i) the minimum amount of initial and variation margin that it must collect from its counterparties and (ii) the frequency with which a covered swap entity must calculate and collect variation margin from its counterparty.

In implementing this risk-based approach, the proposed rule distinguishes among four separate types of derivatives counterparties: (i) Counterparties that are themselves swap entities; (ii) counterparties that are high-risk financial end users of derivatives; (iii) counterparties that are low-risk financial end users of derivatives; and (iv) counterparties that are nonfinancial end users of derivatives.[15] These categories reflect the Agencies' preliminary belief that distinctions can be made between types of derivatives counterparties that are useful in distinguishing the risks posed by each type.

The proposed rule's initial and variation margin requirements generally apply only to the *collection* of minimum margin amounts by a covered swap entity from its counterparties; they do not contain specific requirements as to the amount of initial or variation margin that a covered swap entity must *post* to its counterparties.[16] This approach, which emphasizes the collection rather than the posting of margin, is based primarily on the Agencies' preliminary view that imposing requirements with respect to the minimum amount of margin to be collected (but not posted) is a critical aspect of offsetting the greater risk to the covered swap entity and the financial system arising from the covered swap entity's holdings of swaps and security-based swaps that are not cleared and helps ensure the safety and soundness of the covered swap entity. The proposed rule's approach would also assure that swap entities transacting with one another will effectively be collecting and posting margin with respect to those transactions as a result of the margin collection requirements imposed on each.

With respect to initial margin, the proposed rule permits a covered swap entity to select from two alternatives to calculate its initial margin requirements. A covered swap entity may calculate its initial margin requirements using a standardized "lookup" table that

[12] *See* 7 U.S.C. 2(h); 15 U.S.C. 78c–3. Certain types of counterparties (*e.g.,* counterparties that are not financial entities and are using swaps or security-based swaps to hedge or mitigate commercial risks) are exempt from this mandatory clearing requirement and may elect not to clear a swap or security-based swap that would otherwise be subject to the clearing requirement.

[13] G–20 Leaders, June 2010 Toronto Summit Declaration, ¶ 25. The dealer community has also recognized the importance of clearing—beginning in 2009, in an effort led by the Federal Reserve Bank of New York, the dealer community agreed to increase central clearing for certain credit derivatives and interest rate derivatives. *See* Press Release, Federal Reserve Bank of New York, New York Fed Welcomes Further Industry Commitments on Over-the-Counter Derivatives press release (June 2, 2009), *available at http://www.newyorkfed.org/newsevents/news/markets/2009/ma090602.html.*

[14] CCPs interpose themselves between counterparties to a derivative transaction, becoming the buyer to the seller and the seller to the buyer and, in the process, taking on the credit risk that each party poses to the other. For example, when a derivatives contract between two parties that are members of a CCP is executed and submitted for clearing, it is typically replaced by two new contracts—separate contracts between the CCP and each of the two original counterparties. At that point, the original counterparties are no longer counterparties to each other; instead, each faces the CCP as its counterparty, and the CCP assumes the counterparty credit risk of each of the original counterparties.

[15] See proposed rule §§ __.2(b), (g), (h), (i), (n), (r) and (y) for the various constituent definitions that identify these four types of swap counterparties.

[16] Section __.11 of the proposed rule adopted by FHFA and FCA (but not the other Agencies) requires that their regulated entities collect initial and variation margin from swap entities, as described in section III.K of this notice.

specifies the minimum initial margin that must be collected, expressed as a percentage of the notional amount of the swap or security-based swap. These percentages depend on the broad asset class of the swap or security-based swap.[17] Alternatively, a covered swap entity may calculate its minimum initial margin requirements using an internal margin model that meets certain criteria and that has been approved by the relevant prudential regulator.[18]

A covered swap entity adopting the first alternative generally must collect at least the amount of initial margin required under the standardized look-up table, regardless of the relative risk of its counterparty. A covered swap entity adopting the second alternative generally must collect at least the amount of initial margin required under its initial margin model. Both alternatives permit a covered swap entity to adopt a threshold amount below which it need not collect initial margin from certain types of counterparties.[19] Under the proposed rule, the maximum threshold amount permitted varies based on the relative risk posed by the counterparty, as determined by counterparty type.

With respect to variation margin, the proposed rule generally requires a covered swap entity to collect variation margin periodically in an amount that is at least equal to the increase in the value of the swap to the covered swap entity.[20] As with initial margin, a covered swap entity may adopt a threshold amount below which it need not collect variation margin from certain types of lower-risk counterparties.[21] Consistent with the approach taken to initial margin, the maximum threshold amount permitted for variation margin varies based on the relative risk of the counterparty, as determined by counterparty type. In addition, the frequency with which a covered swap entity must periodically recalculate and collect variation margin under the proposed rule also varies based on the relative risk of the counterparty, as determined by counterparty type, and generally decreases as the relative risk of the counterparty type decreases.[22]

The proposed rule's margin provisions establish only *minimum* requirements with respect to initial margin and variation that must be collected. Nothing in the proposed rule is intended to prevent or discourage a covered swap entity from collecting margin in amounts greater than is required under the proposed rule.

The proposed rule also specifies the types of collateral that are eligible to be collected to satisfy both the initial and variation margin requirements. Eligible collateral is generally limited to (i) immediately available cash funds and (ii) certain high-quality, highly-liquid U.S. government and agency obligations and, in the case of initial margin only, certain government-sponsored enterprise obligations, subject to specified minimum "haircuts" for purposes of determining their value for margin purposes.[23]

Separate from the proposed rule's requirements with respect to the collection of initial and variation margin, the proposed rule also requires a covered swap entity to ensure that its counterparty segregates the initial margin that the covered swap entity *posts* when engaging in swap or security-based swap transactions with another swap entity.[24] The Agencies have proposed a requirement that segregation of initial margin be mandatory, not optional, for swap transactions by a covered swap entity with another swap entity in order to (i) offset the greater risk to the covered swap entity and the financial system arising from the use of swaps and security-based swaps that are not cleared and (ii) protect the safety and soundness of the covered swap entity.

B. Capital Requirements

Sections 731 and 764 of the Dodd-Frank Act also require the Agencies to issue, in addition to margin rules, joint rules on capital for covered swap entities for which they are the prudential regulator.[25] The Board, FDIC, and OCC (collectively, the banking agencies) have had risk-based capital rules in place for banks to address over-the-counter derivatives since 1989 when the banking agencies implemented their risk-based capital adequacy standards (general banking risk-based capital rules)[26] based on the first Basel Accord.[27] The general banking risk-based capital rules have been amended and supplemented over time to take into account developments in the derivatives market. These supplements include the addition of the market risk amendment to the first Basel Accord which requires banks and bank holding companies meeting certain thresholds to calculate their capital requirements for trading positions through models approved by their primary Federal supervisor.[28] In addition, certain large, complex banks and bank holding companies are subject to the banking agencies' advanced risk-based capital standards (advanced approaches rules), based on the advanced approaches of the Basel II Accord.[29]

FHFA's predecessor agencies used a similar methodology to frame the risk-based capital rules applicable to those entities now regulated by FHFA. The FCA's risk-based capital regulations for Farm Credit System institutions, except for the Federal Agricultural Mortgage Corporation (Farmer Mac), have been in place since 1988 and were updated in 2005.[30] The FCA's risk-based capital regulations for Farmer Mac have been in place since 2001 and were updated in 2006.[31]

The Basel Committee on Banking Supervision has recently revised and enhanced its capital framework for internationally active banks,[32] and the banking agencies expect to propose these changes in the United States in the near future through a separate notice of proposed rulemaking.

As described in section III.J below, the proposed rule requires a covered swap entity to comply with regulatory capital

[17] *See* proposed rule, Appendix A.

[18] *See* proposed rule §§ __.2(*l*), __.3(a), __.8.

[19] *See* proposed rule §§ __.2(m), __.3(a)(2).

[20] *See* proposed rule §§ __.2(z), __.4(a).

[21] *See* proposed rule §§ __.2(bb), __.4(a)(2).

[22] *See* proposed rule § __.4(b).

[23] *See* proposed rule § __.6.

[24] *See* proposed rule § __.7. The Agencies note that sections 724 and 763 of Dodd-Frank Act require a swap entity to offer its swap and security-based swap counterparties the option of requiring segregation of initial margin they post to the swap entity.

[25] 7 U.S.C. 6s(e)(2); 15 U.S.C. 78*o*–8(e)(2).

[26] *See* 54 FR 4186 (January 27, 1989). The general banking risk-based capital rules are codified at 12 CFR part 3, Appendix A (OCC); 12 CFR parts 208 and 225, Appendix A (Board); and 12 CFR part 325, Appendix A (FDIC).

[27] The Basel Committee on Banking Supervision (BCBS) developed the first international banking capital framework in 1988, entitled *International Convergence of Capital Measurement and Capital Standards.*

[28] 61 FR 47358 (September 6, 1996). The banking agencies' market risk capital rules are at 12 CFR part 3, Appendix B (OCC); 12 CFR part 208, Appendix E and 12 CFR part 225, Appendix E (Board); and 12 CFR part 325, Appendix C (FDIC). The rules apply to banks and bank holding companies with trading activity (on a worldwide consolidated basis) that equals 10 percent or more of the institution's total assets, or $1 billion or more.

[29] *See* BCBS, *International Convergence of Capital Measurement and Capital Standards: A Revised Framework* (2006). The banking agencies implemented the advanced approaches of the Basel II Accord in 2007. *See* 72 FR 69288 (December 7, 2010). The advanced approaches rules are codified at 12 CFR part 3, Appendix C (OCC); 12 CFR part 208, Appendix F and 12 CFR part 225, Appendix G (Board); and 12 CFR part 325, Appendix D (FDIC).

[30] *See* 53 FR 40.033 (Oct. 13, 1988); 70 FR 35.336 (June 17, 2005); 12 CFR part 615 subpart H.

[31] *See* 66 FR 19,048 (April 12, 2001); 71 FR 77,247 (Dec. 26, 2006); 12 CFR part 652.

[32] *See* BCBS, *Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems* (2010), *available at http://www.bis.org/publ.bcbs189.htm.*

rules already made applicable to that covered swap entity as part of its prudential regulatory regime. As discussed further below, given that these existing regulatory capital rules already specifically take into account and address the unique risks arising from derivatives transactions and activities, the Agencies are proposing to rely on these existing rules, subject to the future notice of proposed rulemaking described above, as appropriate and sufficient to offset the greater risk to the covered swap entity and the financial system arising from the use of swaps and security-based swaps that are not cleared and to protect the safety and soundness of the covered swap entity.[33]

III. Section-by-Section Summary of Proposed Rule

A. Section __.1: Authority, Purpose and Scope

Section __.1 of the proposed rule specifies the scope of swap and security-based swap transactions to which the margin requirements apply. It provides that the margin requirements apply to all non-cleared swaps and security-based swaps into which a covered swap entity enters, regardless of the type of transaction or the nature of the counterparty. It also provides that the margin requirements apply only to swap and security-based swap transactions that are entered into on or after the date on which the proposed rule becomes effective.

1. Treatment of Pre-Effective Date Derivatives

The Agencies note that it is possible that a covered swap entity may enter into swap or security-based swap transactions on or after the proposed rule's effective date pursuant to the same master netting agreement with a counterparty that governs existing swaps or security-based swaps entered into prior to the effective date. As discussed below, the proposed rules permit a covered swap entity to (i) calculate initial margin requirements for swaps and security-based swaps under a qualifying master netting agreement with the counterparty on a portfolio basis in certain circumstances, if it is using an initial margin model to do so, and (ii) calculate variation margin requirements under the proposed rule on an aggregate, net basis under a qualifying master netting agreement with the counterparty. Applying the new margin rules in such a way would, in some cases, have the effect of applying the margin rules retroactively to pre-effective-date swaps under the master agreement. Accordingly, in the case of initial margin, a covered swap entity using an initial margin model would be permitted, at its option, to calculate the initial margin requirements on a portfolio basis but include only post-effective-date derivatives in the relevant portfolio.[34] With respect to variation margin, the Agencies expect that the covered swap entity will comply with the margin requirements with respect to all swaps and security-based swaps governed by a master agreement, regardless of the date on which they were entered into, consistent with current industry practice. The Agencies request comment on (i) what, if any, practical difficulties might be raised by the proposed approach to application of the margin requirements under master agreements governing both pre- and post-effective-date swaps and security-based swaps and (ii) whether there are alternative approaches that might better address the issues raised by such master agreements.

2. Treatment of Derivatives With Commercial End User Counterparties

Following passage of the Dodd-Frank Act, various observers expressed concerns regarding whether sections 731 and 764 of the Dodd-Frank Act authorize or require the CFTC, SEC, and Agencies to establish margin requirements with respect to transactions between a covered swap entity and a "commercial end user" (*i.e.,* a nonfinancial counterparty that engages in derivatives activities to hedge commercial risk),[35] and have argued that swaps and security-based swap transactions with these types of counterparties should be excluded from the scope of margin requirements imposed under sections 731 and 764 because commercial firms engaged in hedging activities pose a reduced risk to their counterparties and the stability of the U.S. financial system. In addition, statements in the legislative history of sections 731 and 764 suggest that Congress did not intend, in enacting these sections, to impose margin requirements on nonfinancial end users engaged in hedging activities, even in cases where they entered into swaps or security-based swaps with swap entities.[36]

In formulating the proposed rule, the Agencies have carefully considered these concerns and statements. The plain language of sections 731 and 764 provides that the Agencies adopt rules for covered swap entities imposing margin requirements on *all non-cleared swaps.* Those sections do not, by their terms, exclude a swap with a counterparty that is a commercial end user.

Importantly, those sections also provide that the Agencies adopt margin requirements that (i) help ensure the safety and soundness of the covered swap entity and (ii) are appropriate for the risk associated with the non-cleared swaps and non-cleared security-based swaps it holds as a swap entity. Thus, the statute requires the Agencies to take a risk-based approach to establishing margin requirements.

The proposed rule follows this statutory framework and proposes a risk-based approach to imposing margin requirements in which nonfinancial end users are categorized as lower-risk counterparties than financial end users. In particular, the proposed rule permits covered swap entities to adopt, where appropriate, initial and variation margin thresholds below which a covered swap entity is not required to collect initial and/or variation margin from counterparties that are end users because of the lesser risk posed by these types of counterparties to covered swap entities and financial stability with respect to exposures below these thresholds. The Agencies note that this threshold-based approach is consistent with current market practices with respect to nonfinancial end users, in which derivatives dealers view the

[33] For the duration of the conservatorships of Fannie Mae and Freddie Mac (together, the Enterprises), FHFA has directed that their existing regulatory capital requirements would not be binding. However, FHFA continues to closely monitor the Enterprises' activities. Such monitoring, coupled with the unique financial support available to the Enterprises from the United States Treasury and the likelihood that FHFA will promulgate new risk-based capital rules in due course to apply to the Enterprises (or their successors) once the conservatorships have ended, lead to FHFA's preliminary view that the reference to existing capital rules is sufficient to address the risks discussed in the text above as to the Enterprises.

[34] *See* proposed rule § __.8(b). The covered swap entity would *not* be permitted to selectively incorporate only certain pre-effective-date derivatives.

[35] Although the term "commercial end user" is not defined in the Dodd-Frank Act, it is generally understood to mean a company that is eligible for the exception to the mandatory clearing requirement for swaps and security-based swaps under section 2(h)(7) of the Commodity Exchange Act and section 3C(g) of the Securities Exchange Act, respectively. This exception is generally available to a person that (i) is not a financial entity, (ii) is using the swap to hedge or mitigate commercial risk, and (iii) has notified the CFTC or SEC how it generally meets its financial obligations with respect to non-cleared swaps or security-based swaps, respectively. *See* 7 U.S.C. 2(h)(7) and 15 U.S.C. 78c–3(g).

[36] *See, e.g.,* 156 Cong. Rec. S5904 (daily ed. July 15, 2010) (statement of Sen. Lincoln).

question of whether and to what extent to require margin from their counterparties as a credit decision.[37]

Under the proposed rule, a covered swap entity would not be required to collect initial or variation margin from a nonfinancial end user counterparty as long as the covered swap entity's exposures to the nonfinancial end user were below the credit exposure limits that the covered swap entity has established under appropriate credit processes and standards. The Agencies preliminarily believe that this approach is consistent with the statutory requirement that the margin requirements be risk-based, and is appropriate in light of the minimal risks that nonfinancial end users pose to the safety and soundness of covered swap entities and U.S. financial stability, particularly in cases of relatively small margin exposures.

To the extent that a covered swap entity has adopted an initial margin threshold amount or a variation margin threshold amount for a nonfinancial end user counterparty but the cumulative required initial margin or variation margin, respectively, for transactions with that end user exceeds the initial margin threshold amount or variation margin threshold amount, respectively, the covered swap entity would be required to collect the excess amount. The Agencies preliminarily believe that this approach is appropriate for the greater risk posed by such counterparties where margin exposures are relatively large.

The Agencies request comment on the appropriateness of the proposed rule's approach to a covered swap entity's transactions with nonfinancial end users and whether there are alternative approaches that would better achieve the objective of sections 731 and 764 of the Dodd-Frank Act. In particular, the Agencies note that under other provisions of the Dodd-Frank Act, nonfinancial end users that engage in derivatives to hedge their commercial risks are exempt from the requirement that all designated swaps and security-based swaps be cleared by a derivatives clearing organization or clearing agency, respectively. A major consequence of clearing a swap or security-based swap is a requirement that each party to the transaction post initial margin and variation margin to the derivatives clearing organization or clearing agency, and the exemption from the clearing requirement permits a nonfinancial end user taking advantage of the exemption to avoid posting margin to such central CCPs. Although the Dodd-Frank Act does not contain an express exemption from the margin requirement of sections 731 and 764 of the Dodd-Frank Act that is similar to the exemption for commercial end users from the mandatory clearing requirements of sections 723 and 763 of the Dodd-Frank Act, the Agencies note that the proposed rule's approach to margin requirements for derivatives with nonfinancial end users could be viewed as lessening the effectiveness of the clearing requirement exemption for these nonfinancial end users as concerns margin.

In particular, the Agencies request comment on the following questions:

Question 1(a). Does the nonfinancial end user exemption from the mandatory clearing requirement suggest or require that swaps and security-based swaps involving a nonfinancial end user should or must be exempt from initial margin and variation margin requirements for non-cleared swaps and security-based swaps? 1(b) If so, upon what statutory basis would such an exemption rely? 1(c) Should that determination vary based on whether a particular non-cleared swap or non-cleared security-based swap is subject to the mandatory clearing regime or not (*i.e.,* whether the nonfinancial end user is actually using the clearing exemption)?

Question 2. Should counterparties that are small financial institutions using derivatives to hedge their risks be treated in the same manner as nonfinancial end users for purposes of the margin requirements?

3. Effective Date

Section __.1 of the proposed rule provides that the proposed rule shall be effective with respect to any swap or security-based swap to which a covered swap entity becomes a party on or after the date that is 180 days following publication of the final rule in the **Federal Register**. The Agencies request comment regarding the appropriateness of this 180-day period.

The Agencies expect that covered swap entities are likely to need to make a number of changes to their current derivatives business operations in order to achieve compliance with the proposed rules, including potential changes to internal risk management and other systems, trading documentation, collateral arrangements, and operational technology and infrastructure. In addition, the Agencies expect that covered swap entities that wish to calculate initial margin using an initial margin model will need sufficient time to develop such models and obtain regulatory approval for their use. The Agencies request comment on the following implementation questions:

Question 3(a). What changes to internal risk management and other systems, trading documentation, collateral arrangements, operational technology and infrastructure or other aspects of a covered swap entity's derivatives operations will likely need to be made as part of the implementation of the proposed rule, and how much time will likely be required to make such changes? 3(b) Is the proposed rule's 180-day period sufficient?

Question 4(a). How much time will covered swap entities that wish to calculate initial margin using an initial margin model need to develop such models? 4(b) Is the proposed rule's 180-day period sufficient?

B. Section __.2: Definitions

Section __.2 of the proposed rule provides definitions of the key terms used in the proposed rule. In particular, § __.2 (i) defines the four types of swap and security-based swap counterparties that form the basis of the proposed rule's risk-based approach to margin requirements and (ii) provides other key operative terms that are needed to calculate the amount of initial and variation margin required under other sections of the proposed rule.

1. Counterparty Definitions

The four types of counterparties defined in the proposed rule are (in order of highest to lowest risk): (i) Swap entities; (ii) high-risk financial end users; (iii) low-risk financial end users; and (iv) nonfinancial end users.

a. "Swap entities"

The proposed rule defines "swap entity" as any entity that is required to register as a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant.[38] Non-cleared swaps transactions with counterparties that are themselves swap entities pose risk to the financial system because swap entities are large players in swap and security-based swap markets and therefore have the potential to generate systemic risk through their swap activities. Because of their interconnectedness and large presence in the market, the failure of a single

[37] In the case of a nonfinancial end user with a strong credit profile, under current market practices a derivatives dealer would not require margin—in essence, it would extend unsecured credit to the end user with respect to the underlying exposure. For counterparties with a weak credit profile, a derivatives dealer would likely make a different credit decision and require the counterparty to post margin.

[38] *See* proposed rule § __.2(y).

swap entity could cause severe stress throughout the financial system.[39] Accordingly, it is the preliminary view of the Agencies that all non-cleared swap transactions with swap entities should require margin.

b. "Financial end users" and "nonfinancial end users"

Non-cleared swap transactions with end users (*i.e.,* those counterparties that are not themselves swap entities) can also pose risks to covered swap entities. Among end users, financial end users are considered more risky than nonfinancial end users because the profitability and viability of financial end users is more tightly linked to the health of the financial system than nonfinancial end users. Because financial counterparties are more likely to default during a period of financial stress, they pose greater systemic risk and risk to the safety and soundness of the covered swap entity. Section __.2 of the proposed rule defines a financial end user as any counterparty, other than a swap entity, that is: (i) A commodity pool (as defined in section 1a(5) of the Commodity Exchange Act (7 U.S.C. 1a(5))); (ii) a private fund (as defined in section 202(a) of the Investment Advisors Act of 1940 (15 U.S.C. 80–b–2(a))); (iii) an employee benefit plan (as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002)); (iv) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company of 1956 (12 U.S.C. 1843(k)); [40] (v) a person that would be a commodity pool or private fund if it were organized under the laws of the United States or any State thereof; and (vi) any other person that one of the Agencies may designate with respect to covered swap entities for which it is the prudential regulator.[41]

The proposed definition of a counterparty that is a financial end user also includes any government of any foreign country or any political subdivision, agency, or instrumentality thereof.[42] The Agencies note that these types of sovereign counterparties do not fit easily into the proposed rule's categories of financial and nonfinancial end users. In comparing the characteristics of sovereign counterparties with those of financial and nonfinancial end users, the Agencies preliminarily believe that the financial condition of a sovereign will tend to be closely linked with the financial condition of its domestic banking system, through common effects of the business cycle on both government finances and bank losses, as well as through the safety net that many sovereigns provide to banks. Such a tight link with the health of its domestic banking system, and by extension with the broader global financial system, makes a sovereign counterparty similar to a financial end user both in the nature of the systemic risk and the risk to the safety and soundness of the covered swap entity. As a result, the Agencies propose to treat sovereign counterparties as financial end users for purposes of the proposed rule's margin requirements.

The proposed rule defines a nonfinancial end user as any counterparty that is an end user but is not a financial end user.

c. "High-risk financial end user" and "low-risk financial end user"

A financial end user counterparty whose derivatives activities are relatively limited and pose little or no risk is classified as a low-risk financial end user; other end user counterparties are classified as high-risk financial end users. The likelihood of a financial end user counterparty's failure with respect to a covered swap entity during stressed market conditions increases with, among other things, the size and riskiness of its derivatives activity, and the potential impact to the covered swap entity's safety and soundness increases with the size of its non-cleared swaps exposure to the end user counterparty. Accordingly, the proposed rule is structured so that a covered swap entity would generally be required to reduce its counterparty exposure through more stringent margin collection requirements with respect to non-cleared derivatives with financial end user counterparties having greater and riskier derivatives activities.

Section __.2 of the proposed rule deems a financial end user counterparty to be a low-risk financial end user only if it meets *all* of the following three criteria:

- Its swaps or security-based swaps fall below a specified "significant swaps exposure" threshold;
- It predominantly uses swaps to hedge or mitigate the risks of its business activities, including balance sheet, interest rate, or other risk arising from the business of the counterparty; and
- It is subject to capital requirements established by a prudential regulator or state insurance regulator.[43]

With respect to the first criterion, the definition of "significant swaps exposure" under the proposed rule is very similar to the definition of "substantial counterparty exposure" proposed by the CFTC and SEC for purposes of establishing what level of swap and security-based swap counterparty exposure would require a person to register as a major swap participant or major security-based swap participant under the Commodity Exchange Act or the Securities Exchange Act, respectively, except that the threshold amounts are established at half the level that would require registration as a major swap participant or major security-based swap participant.[44] The proposed rule's definition is thus intended to capture persons that, while not having derivatives positions rising to the level requiring margin requirements and comprehensive regulation as a major swap participant, nonetheless have substantial activity in the market and are more likely to pose greater risk to covered swap entities with which they transact than persons with only minor activity in the market. The Agencies request comment on whether this definition of significant swaps exposure is appropriate, or whether an alternative threshold amount or definition would be more consistent with the purposes of sections 731 and 764 of the Dodd-Frank Act.

The second criterion of the proposed definition of a low-risk financial end user references the purpose for which the financial end user enters into swaps or security-based swaps. This criterion

[39] This is consistent with the Dodd-Frank Act's requirement that the Agencies set margin and capital requirements appropriate for the risk to the financial system associated with non-cleared swaps held as a swap dealer or major swap participant. 7 U.S.C. 6(e)(3)(A); 15 U.S.C. 78*o*–8(e)(3)(A).

[40] Although the proposed rule does not define a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company of 1956 (12 U.S.C. 1843(k)), the Agencies note that the Board has recently issued a proposed rule for comment defining a similar term for purposes of Title I of the Dodd-Frank Act. See 76 FR 7,731 (Feb. 11, 2011) (proposed rule). The Agencies request comment on whether they should apply the same methodology as is adopted for purposes of Title I of the Dodd-Frank Act for purposes of this clause of the proposed rule's definition of a financial end user, or whether an alternative methodology is appropriate.

[41] *See* proposed rule § __.2(h). This definition of "financial end user" is based upon, and substantially similar to, the definition of a "financial entity" that is ineligible to use the end user exemption from the mandatory clearing requirements of sections 723 and 763 of the Dodd-Frank Act. *See* 7 U.S.C. 2(h)(7); 15 U.S.C. 78c–3(g).

[42] *See* proposed rule § __.2(h)(6).

[43] *See* proposed rule § __.2(n).

[44] *See* 75 FR 80,174 (Dec. 10, 2010).

generally mirrors the description of hedging-related swaps and security-based swaps that are excluded for purposes of determining whether a person maintains a substantial position in swaps or security-based swaps and therefore meets the definition of a major swap participant or major security-based swap participant under the Commodity Exchange Act and Securities Exchange Act, respectively.[45] This distinction reflects the fact that persons using derivatives predominantly to hedge or mitigate risks arising from their business, rather than to speculate for profit, are likely to pose less risk to the covered swap entity (*e.g.,* because losses on a hedging-related swap will usually be accompanied by offsetting gains on the related position that it hedges).

The third criterion of the proposed definition of low-risk financial end user references whether the financial end user is subject to regulatory capital requirements. This criterion also generally mirrors the description of certain financial companies that are excluded from one prong of the definition of a major swap participant or major security-based swap participant under the Commodity Exchange Act and the Securities Exchange Act, respectively.[46] This distinction reflects the fact that financial end users that are subject to regulatory capital requirements are likely to pose less risk as counterparties (*e.g.,* because the requirements ensure that minimum amounts of capital will be available to absorb any losses on their derivatives transactions).

The Agencies request comment on whether the proposed rule's categorization of various types of counterparties by risk, and the key definitions used to implement this risk-based approach, are appropriate, or whether alternative approaches or definitions would better reflect the purposes of sections 731 and 764 of the Dodd-Frank Act.

Question 5. Do the definitions adequately identify financial end user counterparties that are high-risk and low-risk?

Question 6(a). Should nonfinancial end users also be separated into high-risk and low-risk categories for purposes of the margin requirements? 6(b) If so, on what basis (*e.g.,* in a manner similar to the classification of high-risk and low-risk financial end users)? 6(c) If so, how should the margin requirement apply differently to such high-risk and low-risk nonfinancial end users?

Question 7(a). Is the classification of sovereign counterparties as financial end users appropriate in light of the risks posed by these counterparties? 7(b) If not, what other classification would be appropriate, and why?

Question 8(a). Should sovereign counterparties receive their own distinct counterparty classification that is different from those classifications in the proposed rule? 8(b) If so, why? 8(c) How should the permitted uncollateralized exposures to a sovereign counterparty differ from those that are allowed for financial or nonfinancial end users?

Question 9. Is it appropriate to distinguish between financial and non-financial counterparties for the purpose of this risk-based approach?

Question 10. What other factors or tests should be used to determine the relative risk of an end user counterparty?

Question 11(a). Does the proposed rule require greater clarity with respect to the treatment of U.S. Federal, state, or municipal government counterparties? 11(b) If so, how should such counterparties be treated?

Question 12. Should a counterparty that is a bank holding company or nonbank financial firm subject to enhanced prudential standards under Section 165 of the Dodd-Frank Act be treated similarly to swap entity counterparties?

The Agencies also request comment on the other definitions included in the proposed rule, including those discussed in further detail below.

C. Section __.3: Initial Margin

Section __.3 of the proposed rules specifies the manner in which a covered swap entity must calculate the initial margin requirement applicable to its swaps and security-based swaps. These initial margin requirements apply only to the amount of initial margin that a covered swap entity is required to collect from its counterparties; they do not address whether, or in what amounts, a covered swap entity must *post* initial margin to a derivatives counterparty. Except as described below in the summary of § __.6 of the proposed rule, the posting of initial margin by a covered swap entity to a counterparty is generally left to the mutual agreement of the covered swap entity and its counterparty. In the case where a covered swap entity enters into a swap with a counterparty that itself is a swap entity, its counterparty is likely to be subject to a regulatory margin requirement under section 731 or section 764 requiring it to collect margin from its counterparties. Thus, both parties to a non-cleared swap between two swap entities will have to collect and post margin as required by the SEC, CFTC or their prudential regulator, as applicable.[47]

1. Calculation Alternatives

The proposed rule permits a covered swap entity to select from two alternatives for calculating its initial margin requirements. In all cases, the initial margin amount required under the proposed rule is a *minimum* requirement; covered swap entities are not precluded from collecting additional initial margin (whether by contract or subsequent agreement with the counterparty) when they believe it is appropriate or preferable to do so.

Under the first alternative, a covered swap entity may calculate its initial margin requirements using a standardized "lookup" table that specifies the minimum initial margin that must be collected as a percentage of the swap or security-based swap notional amount, which percentage varies depending on the broad asset class of the swap or security-based swap.[48] If the covered swap entity has entered into more than one swap or security-based swap with a counterparty (*i.e.,* a portfolio of swaps), the aggregate minimum initial margin required on those swaps and security-based swaps would be determined by summing the minimum initial margin requirement for each individual swap.

In many cases, however, the use of a standardized table may not accurately reflect the risk of a portfolio of swaps or security-based swaps, because the swaps or security-based swaps themselves vary in ways not reflected by the standardized table or because no reduction in required initial margin to reflect offsetting exposures, diversification, and other hedging benefits is permitted, as discussed below. For this reason, the proposed rule includes a second alternative.

Under the second alternative, a covered swap entity may calculate its minimum initial margin requirements

[45] *See* 7 U.S.C. 1a(33)(A)(i)(I); 15 U.S.C. 78c(a)(67)(a)(ii)(I).

[46] *See* 7 U.S.C. 1a(33)(A)(iii)(I); 15 U.S.C. 78c(a)(67)(a)(ii)(III)(aa).

[47] Separately, in the case of institutions regulated by FHFA and FCA, the effect of § __.11 of the proposed rule, when combined with the margin requirements contained in other parts of the proposed rule, would also be to effectively require both parties to a non-cleared swap or non-cleared security-based swap between a swap entity and an institution regulated by FHFA or FCA to both collect and post initial margin.

[48] *See* proposed rule §§ __.2(k)(1), __.3(a). Although the Agencies intend to specify a particular percentage in the final rule, the proposed rule provides a potential range of percentages for comment.

using an internal margin model that meets certain criteria and has been approved by the relevant prudential regulator.[49] Specifically, the covered swap entity must collect at least the amount of initial margin that is required under its internal model calculations (subject to any applicable initial margin threshold amount, as described below).

The Agencies request comment on whether the use of internal models or Appendix A is appropriate for the calculation of initial margin requirements. In particular, the Agencies request comment on the following questions:

Question 13. As an alternative to Appendix A, should the rule allow an alternative calculation method that would link the margin on a non-cleared swap or non-cleared security-based swap to the margin required by a derivatives clearing organization for a cleared swap or cleared security-based swap whose terms and conditions closely resemble the terms and conditions of the non-cleared swap or non-cleared security-based swap?

Question 14. Would there be enough similarity between cleared and non-cleared swaps or security-based swaps to make this approach workable?

Question 15. With respect to either alternative for calculating initial margin requirements, should swap or security-based swap positions that pose no counterparty risk to the covered swap entity, such as a sold call option with the full premium paid at inception of the trade, be excluded from the initial margin calculation?

The Agencies also request comment on whether offsetting exposures, diversification, and other hedging benefits of multiple derivatives transactions can or should be more accurately represented in Appendix A's standardized table. The Agencies note that although the use of an initial margin model will allow for significant recognition of offsetting exposures, diversification, and other hedging benefits of swap and security-based swap positions that are conducted under a qualifying master netting agreement, Appendix A's standardized table is based upon gross notional amounts and recognizes no offsetting exposures, diversification, or other hedging benefits. In particular, the gross notional amount may not accurately reflect the size or riskiness of the actual position in many circumstances. For example, with respect to a swap portfolio containing (i) a one year pay fixed and receive floating interest rate swap with a notional value of $10 million and (ii) a two year pay floating and receive fixed interest rate swap with a notional value of $10 million, an initial margin model would recognize that much of the risk of the one year swap is offset by the risk of the two year swap—changes in the level of interest rates that increase the value of the one year swap will simultaneously decrease the value of the two year swap. Under Appendix A, however, the gross notional interest rate swap position would be $20 million and the initial margin on the portfolio would be twice the initial margin of either $10 million swap even though the trades are, in fact, risk reducing.

The Agencies are concerned that the use of gross notional amounts alone in determining initial margin may not adequately recognize offsetting exposures, diversification, and other hedging benefits that are well understood as in the above example. This lack of recognition might lead to large disparities between a firm that uses a model to set initial margin and a firm that uses the standardized initial margin requirements. These disparities may give rise to significant competitive inequities between firms that do and do not adopt an approved initial margin model.

The Agencies request comment on possible changes to the standardized method of calculating initial margin requirements to better reflect the effect of offsets and hedging when swaps and security-based swaps are conducted under a qualifying master netting agreement. In particular, the Agencies seek comment on the following questions:

Question 16. Would calculating the standardized initial margin for a particular risk category by separately calculating the initial margin required on the long positions and short positions and then using only the higher of these two amounts adequately account for offsetting exposures, diversification, and other hedging benefits within a standardized initial margin framework?

Question 17. Would the method described above systematically overestimate or underestimate offsetting exposures, diversification, and other hedging benefits? Is this method prone to manipulation or other gaming concerns?

Question 18. Should the Agencies consider some degree of offset across risk categories? If so how should these offsets be determined?

Question 19. Would adjusting the gross notional amount of swap positions in a particular risk category (*e.g.,* commodity, credit, equity, or foreign exchange/interest rate) by a net-to-gross ratio or a netting factor in a manner that is similar to the method used for adjusting potential future exposure calculations for purposes of the Federal banking agencies' risk-based capital rules adequately capture offsetting exposures, diversification, and other hedging benefits?

Question 20. Would adjustment of gross notional amounts with a net-to-gross ratio or a netting factor systematically overestimate or underestimate offsetting exposures, diversification, and other hedging benefits?

Question 21. Are there additional methods that could be used in conjunction with a standardized lookup initial margin table that adequately recognize offsetting exposures, diversification, and other hedging benefits?

Question 22(a). Are such methods transparent and implementable? 22(b) Can they be generalized across multiple risk categories and swap types?

As an alternative, the Agencies request comment on whether Appendix A should be revised to adopt a method that more fully reflects the offsetting of positions at default. For example, such a method might rely on a calculation of an adjusted gross notional amount that would reduce the amount of initial margin required when a counterparty has many offsetting trades under a qualifying master netting agreement. To calculate the adjusted gross notional amount for an asset class, one would first calculate the net notional to gross notional ratio. This netting factor would be the absolute value of the difference between the long notional contracts and the short notional contracts divided by the total gross notional amount of the contracts. This value would then be used as a type of correlation factor among the contracts. The adjusted gross notional amount would then be calculated as follows, where n is the gross notional value of trades in an asset class and "NF" is the netting factor:

[49] *See* proposed rule §§ __.2(k)(2), __.3(a).

$$adjusted\ gross\ notional = n \times \frac{\sqrt{n + n(n-1)NF}}{n}$$

The adjusted gross notional amount, rather than the gross notional amount, would then be used to calculate initial margin using Appendix A.

When the netting factor is zero, initial margin would still be required to be collected, and when the net to gross ratio is one (all positions are one way) the netting factor is also one so that the adjusted gross notional is equal to the gross notional. This method would allow offsetting transactions that reduce risk to reduce initial margin, but would not allow the offset to ever be perfect, so that initial margin would always be required to be collected. The adjusted gross notional method would be applied to the initial margin calculation by using gross notional amounts within an asset class. The Agencies seek comment on these methods, as well as alternative methods for calculating initial margin requirements under Appendix A and potential ways in which Appendix A might better capture the offsetting exposures, diversification, and other hedging benefits.

2. Initial Margin Thresholds

As part of the proposed rule's initial margin requirements, a covered swap entity using either alternative is also permitted to establish, for counterparties that are low-risk financial end users or nonfinancial end users, a credit exposure limit below which it need not collect initial margin.[50] A covered swap entity is not permitted to establish an initial margin threshold amount for a counterparty that is either (i) a covered swap entity itself or (ii) a high-risk financial end user.[51]

This credit exposure limit is defined in the proposed rule as the initial margin threshold amount.[52] The maximum initial margin threshold amount that a covered swap entity may establish varies based on the relative risk of the counterparty, as determined by counterparty type (*e.g.,* financial versus nonfinancial end user). With respect to a counterparty that is a low-risk financial end user, the proposed rule limits the maximum initial margin threshold amount that a covered swap entity may establish for a particular counterparty to the lower of (i) a range of $15 to $45 million or (ii) a range of 0.1 to 0.3 percent of the covered swap entity's tier 1 capital.[53] Although the Agencies have proposed a range of specific maximum initial margin threshold amounts for a counterparty that is a low-risk financial end user, the Agencies' preliminary view is that the midpoint of each range would in each case be an appropriate amount. With respect to counterparties that are nonfinancial end users, the proposed rule does not place a specific limit on the maximum initial margin threshold amount that a covered swap entity may establish.

The proposed rule allows uncollateralized exposures below the initial margin threshold amount for certain counterparties because taking uncollateralized credit exposure to counterparties is a long established business practice at the firms regulated by the Agencies. When well managed, taking on credit exposure does not automatically lead to unacceptable levels of systemic risk. Credit exposure can arise from a number of activities that regulated firms are permitted to engage in with a counterparty—making a loan, opening a committed line of credit, providing payments processing or transaction services, or engaging in swaps transactions. Although the proposal permits such credit exposure in certain circumstances, the proposed rule seeks to ensure that initial margin is collected in amounts that are appropriate to the risks posed by counterparties that are low-risk financial end users or nonfinancial end users.

The proposed rule requires that any credit exposure limit that a covered swap entity establishes as an initial threshold amount for a counterparty (i) appropriately take into account and address the credit risk posed by the counterparty and the risks of such swaps and security-based swaps and (ii) be reviewed, monitored, and approved in accordance with the swap entity's credit processes. Threshold amounts that are established in accordance with these standards are unlikely to generate meaningful risk to the safety and soundness of the covered swap entity and do not pose systemic risk.[54] In addition, in the case of counterparties that are low-risk financial end users, which the Agencies preliminarily believe pose greater risk than nonfinancial end users, the proposed rule imposes additional restrictions by limiting the maximum initial margin threshold amount that a covered swap entity may establish.

The Agencies expect that covered swap entities will establish initial margin threshold amounts only when they have meaningfully evaluated the creditworthiness of the counterparty and have made a credit and risk management decision to expose themselves to the unsecured credit of the counterparty pursuant to their generally applicable credit approval processes. The Agencies also expect that covered swap entities will monitor initial margin threshold amounts and adjust them downward to reflect any deterioration in the credit quality of the counterparty or other increase in the risks the counterparties' swaps and security-based swaps pose. Under the proposed rule, even where an initial margin threshold amount is established, the covered swap entity must still calculate the initial margin amount for the counterparty pursuant to § __.3 of the proposed rule and, to the extent that the initial margin amount exceeds the initial margin threshold amount that has been established, collect initial margin equal to the excess amount.

For those counterparties that pose the greatest threat to systemic stability by virtue of their interconnectedness and the size of their uncollateralized and potential outward exposures—namely, other swap entities and high-risk financial end users—the proposed rule

[50] *See* proposed rule §§ __.2(m), __.3(a). A covered swap entity that has established an initial margin threshold amount for a counterparty need only collect initial margin if the required amount exceeds the initial margin threshold amount, and in such cases is only required to collect the excess amount.

[51] *See* proposed rule § __.2(m)(1).

[52] *See* proposed rule § __.2(m).

[53] Although the Agencies intend to specify particular amounts in the final rule, the proposed rule provides a potential range of numbers for comment. Since tier 1 capital is not a concept that is applicable to covered swap entities for which FHFA or the FCA is the prudential regulator, the thresholds as applied to such entities instead reference (i) in the case of covered swap entities for which FHFA is the prudential regulator, the term "total capital," as separately defined within the proposed regulatory text of FHFA's proposed rule, and (ii) in the case of covered swap entities for which the FCA is the prudential regulator, the term "applicable core surplus or core capital (or successor high quality capital requirement)," as separately defined within the proposed regulatory text of the FCA's proposed rule.

[54] The Agencies also note that the categories of counterparties for which the proposed rule permits a covered swap entity to establish an initial margin threshold amount are roughly aligned with the Dodd-Frank Act exemption of non-financial end users from the Dodd-Frank Act mandatory clearing requirement. *See* 7 U.S.C. 2(h)(7); 15 U.S.C. 78c–3(g).

does not permit any exposure to remain uncollateralized; the threshold amount is effectively zero. It is the preliminary view of the Agencies that the potential systemic risk from other swap entities should lead to an amount of initial margin being actually collected. Margin should also be collected for all non-cleared swaps and non-cleared security-based swaps with high-risk financial end users because, as previously discussed, they are more likely to default during periods of financial stress and thus pose greater systemic risk and risk to the safety and soundness of the covered swap entity.

The Agencies request comment regarding whether it is appropriate to permit covered swap entities to establish initial margin threshold amounts for certain counterparties in the manner proposed. In particular, the Agencies request comment on the following questions:

Question 23(a). Does the maximum initial margin threshold amount proposed for counterparties that are low-risk financial end users strike an appropriate balance between traditional credit extension practices and the potential for systemic risk or risk to the safety and soundness of a covered swap entity? 23(b) Should threshold amounts for nonfinancial end users be subject to a similar limit? 23(c) If so, at what maximum amount or amounts? 23(d) Do the derivatives activities and exposures of nonfinancial end users have the potential to create systemic risk, either individually or in aggregate?

Question 24. Is it appropriate for the threshold amounts to be capped at a fixed dollar amount?

Question 25. Should the rule also place a limit on the threshold amounts that a covered swap entity establishes for all counterparties in the aggregate?

Question 26(a). Is it appropriate for the threshold amounts to be determined by reference to the tier 1 or other measure of capital of a covered swap entity? 26(b) What other measures might be used to determine appropriate threshold amounts?

Question 27(a). Should the various threshold amounts be subject to an automatic adjustment for inflation on a periodic basis? 27(b) If so, what type of adjustment would be appropriate?

3. Minimum Transfer Amount

In addition, the proposed rule provides for a minimum transfer amount for the collection of margin by covered swap entities, under which a covered swap entity need not collect initial margin from any individual counterparty otherwise required under the proposed rule until the required cumulative amount is $100,000 or more.[55]

4. Alternative Approach to Initial Margin Requirements

The Agencies also request comment on several alternative approaches to implementation of the initial margin requirements.

First, the Agencies request comment on whether the proposed rule should be augmented by (i) imposing a separate, additional requirement that a covered swap entity *post* initial margin to any counterparty that is an end user, including both financial and nonfinancial end users and (ii) requiring the covered swap entity to ensure that any such initial margin posted is segregated at a third-party custodian. In particular, the Agencies request comment on the following questions:

Question 28. Would requiring a covered swap entity to post initial margin to end user counterparties reduce systemic risk (*e.g.,* by reducing leverage in the financial system or reducing systemic vulnerability to the failure of a covered swap entity)?

Question 29. Are there alternatives that address those risks more efficiently or with greater transparency?

Question 30. Would requiring a covered swap entity to post initial margin to end user counterparties raise any concerns with respect to the safety and soundness of the covered swap entity, taking into consideration the requirement that initial margin be segregated and held with a third party custodian?

Question 31. Would requiring a covered swap entity to post initial margin to end user counterparties remove one or more incentives for that covered swap entity to choose, where possible, to structure a transaction so that it need not be cleared through a CCP in order to avoid pledging initial margin?

Question 32. Would this approach be consistent with the statutory factors the Agencies are directed to take into account under sections 731 and 764 of the Dodd-Frank Act?

Second, the Agencies request comment on whether the proposed rule should be augmented by (i) imposing a separate, additional requirement that a covered swap entity *post* initial margin to any end user counterparty that is a systemically significant financial institution under Title I of Dodd-Frank Act, and (ii) requiring the covered swap entity to ensure that any such initial margin posted is segregated at a third-party custodian. In particular, the Agencies request comment on the following questions:

Question 33. Would requiring a covered swap entity to post initial margin to systemically-significant end user counterparties reduce systemic risk (*e.g.,* by reducing leverage in the financial system or reducing systemic vulnerability to the failure of a covered swap entity)?

Question 34. Are there alternatives that address those risks more efficiently or with greater transparency?

Question 35. Would requiring a covered swap entity to post initial margin to systemically-significant end user counterparties raise any concerns with respect to the safety and soundness of the covered swap entity, taking into consideration the requirement that initial margin be segregated and held with a third party custodian?

Question 36. Would requiring a covered swap entity to post initial margin to systemically-significant end user counterparties remove one or more incentives for that covered swap entity to choose, where possible, to structure a transaction so that it need not be cleared through a CCP in order to avoid pledging initial margin?

Question 37. Would this approach be consistent with the statutory factors the Agencies are directed to take into account under sections 731 and 764 of the Dodd-Frank Act?

Third, the Agencies request comment on whether the proposed rule should establish a distinct category of covered swap entities that, because of the relatively small size of the derivatives activities and the lesser risk they pose to U.S. financial stability, would be subject to less stringent initial margin requirement. In particular, such an approach would (i) permit such "low-risk" covered swap entities to establish larger initial or additional margin threshold amounts (*e.g.,* for counterparties that are swap entities) and (ii) not require such "low-risk" covered swap entities to comply with the segregation requirements of § __.7 of the proposed rule. Such low-risk covered swap entities could be defined by identifying a particular threshold amount of derivatives activities below which one would be considered a low-risk covered swap entity. For example, under this approach, a low-risk covered swap entity might be defined as a covered swap entity whose total

[55] *See* proposed rule § __.3(c). The minimum transfer amount only affects the timing of margin collection; it does not change the amount of margin that must be collected once the $100,000 threshold is crossed. For example, if the initial margin requirement were to increase from $50,000 to $110,000, the covered swap entity would be required to collect the entire $110,000 (subject to application of any applicable initial margin threshold amount).

positions in swaps and security-based swaps are below the applicable thresholds established by the SEC and CFTC for determining whether a firm is a major swap participant or major security-based swap participant, respectively. In particular, the Agencies request comment on the following questions:

Question 38. Would establishing a category of low-risk covered swap entity and subjecting that category to less stringent initial margin requirements enhance or reduce systemic risk?

Question 39. Would establishing a category of low-risk covered swap entity and subjecting that category to less stringent initial margin requirements raise any concerns with respect to the safety and soundness of such an entity?

Question 40. If the Agencies adopted such an approach, how should a low-risk covered swap entity be defined? Should the definition reference the thresholds established by the SEC and CFTC for determining whether a firm is a major swap participant or major security-based swap participant, or some variant of those thresholds?

Question 41. What less stringent initial margin requirements should apply to such low-risk covered swap entities? What, if any, segregation requirement should apply to such low-risk covered swap entities?

Question 42. Would such an approach encourage covered swap entities to separate their derivatives activities into multiple entities so as to avail themselves of the exemption?

Question 43. Would this approach be consistent with the statutory factors the Agencies are directed to take into account under sections 731 and 764 of the Dodd-Frank Act?

D. Section __.4: Variation Margin

Section __.4 of the proposed rules specifies the manner in which a covered swap entity must calculate the variation margin requirement applicable to swaps and security-based swaps it enters into. As with initial margin requirements, (i) these variation margin requirements apply only to *collection* of variation margin by covered swap entities from their counterparties, and not to the *posting* of variation margin to their counterparties,[56] and (ii) establish only a *minimum* amount of variation margin that must be collected, leaving covered swap entities free to collect larger amounts if they so choose. Consistent with current practice, covered swap entities and their counterparties would remain free to negotiate the extent to which a covered swap entity may be required to post variation margin to a counterparty (other than a swap entity that is itself subject to margin requirements).

The proposed rule generally requires a covered swap entity to collect variation margin from its counterparties on a periodic basis.[57] The amount of variation margin that is required to be periodically collected must be equal to or greater than (i) the cumulative mark-to-market change in value to the covered swap entity of a swap or security-based swap, as measured from the date it is entered into, *less* (ii) the value of all variation margin previously collected but not returned by the covered swap entity with respect to such swap or security-based swap.[58]

1. Variation Margin Thresholds and Minimum Transfer Amounts

Similar to the initial margin requirement under § __.3 of the proposed rule, § __.4 permits a covered swap entity to establish, for certain counterparties that are end users, a credit exposure limit that acts as a variation margin threshold below which it need not collect variation margin.[59] Although the variation margin threshold is separate from, and may be applied independently from, the initial margin threshold with respect to qualifying counterparties, the variation margin threshold amount that a covered swap entity may establish for counterparties that are low-risk financial end users is subject to the same specified maximum amount that governs initial margin threshold amounts for such counterparties. As with initial margin threshold amounts, a covered swap entity may not establish a variation margin threshold amount for counterparties that are swap entities or high-risk financial end users.

In addition, the proposed rule's variation margin requirements contain provisions similar to those governing initial margin with respect to minimum transfer amounts.

2. Aggregate Calculation of Variation Margin Requirements Under a Qualifying Master Netting Agreement

The proposed rule permits a covered swap entity to calculate variation margin requirements on an aggregate basis across all swap or security-based swap transactions with a counterparty that are executed under the same qualifying master netting agreement.[60] The proposed rule defines a qualifying master netting agreement as a legally enforceable agreement to offset positive and negative mark-to-market values of one or more swaps or security-based swaps that meet a number of specific criteria designed to ensure that these offset rights are fully enforceable, documented and monitored by the covered swap entity.[61] The Agencies request comment regarding whether permitting the aggregate calculation of variation margin requirements is appropriate and, if so, whether the proposed rule's definition of qualifying master netting agreement raises practical or implementation difficulties or is inconsistent with current market practices.

3. Frequency of Variation Margin Calculation and Collection

The proposed rule also specifies the minimum frequency with which a covered swap entity must calculate and collect initial margin. Consistent with the approach of the proposed rule generally, the minimum frequency varies based on the systemic and safety and soundness risk of the counterparty type. Covered swap entities must calculate and collect variation margin from counterparties that are themselves swap entities or financial end users at least once per business day, and from counterparties that are nonfinancial end users at least once per week. The Agencies request comment on whether the proposed rule's approach to the frequency with which the variation margin requirements must be met is consistent with current market practices, and whether alternative approaches to imposing variation margin requirements would better reflect the purposes of section 731 and 764 of the Dodd-Frank Act.

[56] As described in section III.K of this notice, FHFA's and the FCA's proposed rules contain an additional provision that will have a different effect with respect to entities regulated by FHFA and the FCA.

[57] *See* proposed rule § __.4(a).

[58] The proposed rule defines this required amount as the "variation margin amount." *See* proposed rule § __.2(bb). In the case of swap or security-based swap that is out-of-the-money or in-the-money to a covered swap entity at the time it enters into the transaction, that amount is also included within the definition of variation margin amount and subject to the variation margin requirements.

[59] *See* proposed rule §§ __.2(bb), __.4(a).

[60] *See* proposed rule § __.4(d).

[61] *See* proposed rule § __.2(t). The proposed rule's definition of qualifying master netting agreement generally mirrors the definition given to that term in the Federal banking agencies' risk-based capital rules applicable to derivatives positions held by insured depository institutions and bank holding companies. *See, e.g.,* 12 CFR part 225, App. G.I.2.

4. Counterparty Refusal to Provide Required Variation Margin

Section __.4(e) of the proposed rule addresses potential circumstances in which a counterparty may refuse to provide required variation margin to a covered swap entity. Specifically, it provides that a covered swap entity shall not be deemed to have violated its regulatory obligation to collect required variation margin from a counterparty if the counterparty has refused or otherwise failed to provide the required variation margin to the covered swap entity and the covered swap entity has either (i) made the necessary efforts to attempt to collect the required variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of the relevant Agency that it has made appropriate efforts to collect the required variation margin, or (ii) commenced termination of the swap or security-based based swap with the counterparty.[62] The Agencies note that, in each such case, the covered swap entity will have been required, under § __.5 of the proposed rule, to obtain the contractual right to collect such variation margin as is necessary to permit it to comply with the requirements of § __.4 of the proposed rule and set out valuation dispute resolution procedures.

5. Alternative Approach to Variation Margin Requirements

The Agencies also request comment on several alternative approaches to implementation of the variation margin requirements.

First, the Agencies request comment on whether the proposed rule should be augmented by imposing a separate, additional requirement that a covered swap entity *post* variation margin to any counterparty that is an end user, including both financial and nonfinancial end users. In particular, the Agencies request comment on the following questions:

Question 44. Would requiring a covered swap entity to post variation margin to end user counterparties reduce systemic risk (*e.g.,* by reducing leverage in the financial system or reducing systemic vulnerability to the failure of a covered swap entity)?

Question 45. Are there alternatives that address those risks more efficiently or with greater regulatory transparency?

Question 46. Would requiring a covered swap entity to post variation margin to end user counterparties raise any concerns with respect to the safety and soundness of the covered swap entity?

Question 47. Would requiring a covered swap entity to post variation margin to end user counterparties remove one or more incentives for that covered swap entity to choose, where possible, to structure a transaction so that it need not be cleared through a CCP in order to avoid pledging variation margin?

Question 48. Would this approach be consistent with the statutory factors the Agencies are directed to take into account under sections 731 and 764 of the Dodd-Frank Act?

Second, the Agencies request comment on whether the proposed rule should be augmented by imposing a separate, additional requirement that a covered swap entity *post* variation margin to any end user counterparty that is a systemically significant financial institution under Title I of Dodd-Frank Act. In particular, the Agencies request comment on the following questions:

Question 49. Would requiring a covered swap entity to post variation margin to systemically-significant end user counterparties reduce systemic risk (*e.g.,* by reducing leverage in the financial system or reducing systemic vulnerability to the failure of a covered swap entity)?

Question 50. Are there alternatives that address those risks more efficiently or with greater regulatory transparency?

Question 51. Would requiring a covered swap entity to post variation margin to systemically-significant end user counterparties raise any concerns with respect to the safety and soundness of the covered swap entity?

Question 52. Would requiring a covered swap entity to post variation margin to systemically-significant end user counterparties remove one or more incentives for that covered swap entity to choose, where possible, to structure a transaction so that it need not be cleared through a CCP in order to avoid pledging variation margin?

Question 53. Would this approach be consistent with the statutory factors the Agencies are directed to take into account under sections 731 and 764 of the Dodd-Frank Act?

Third, the Agencies request comment on whether the proposed rule should establish a distinct category of swap entities that, because of the relatively small size of the derivatives activities and the lesser risk they pose to U.S. financial stability, would be subject to less stringent variation margin requirement. In particular, such an approach would permit such "low- risk" covered swap entities to establish larger variation margin threshold amounts. Such low-risk covered swap entities could be defined as described in section III.C.4 of this notice. In particular, the Agencies request comment on the following questions:

Question 54. Would establishing a category of low-risk covered swap entity and subjecting such an entity to less stringent variation margin requirements enhance or reduce systemic risk?

Question 55. Would establishing a category of low-risk covered swap entity and subjecting such an entity to less stringent variation margin requirements raise any concerns with respect to the safety and soundness of such an entity?

Question 56. If the Agencies adopted such an approach, how should a low-risk covered swap entity be defined? What less stringent variation margin requirements should apply to such low risk covered swap entities?

Question 57. Would such an approach encourage covered swap entities to separate their derivatives activities into multiple entities so as to avail themselves of the exemption?

Question 58. Would this approach be consistent with the statutory factors the Agencies are directed to take into account under sections 731 and 764 of the Dodd-Frank Act?

E. Section __.5: Documentation of Margin Matters

The proposed rule requires a covered swap entity to execute trading documentation with each counterparty that includes credit support arrangements that grant the covered swap entity the contractual right to collect initial margin and variation margin in such amounts, in such form, and such circumstances as are required by the initial margin and variation margin requirements set forth in the proposed rule.[63] The trading documentation must also specify (i) the methods, procedures, rules, and inputs for determining the value of each swap or security-based swap for purposes of calculating variation margin requirements and (ii) the procedures by which any disputes concerning the valuation of swaps or security-based swaps, or the valuation of assets

[62] *See* proposed rule § __.4(e). The Agencies note that there is no similar reference to appropriate efforts in the proposed rule initial margin requirements; since initial margin is collected at the time a swap or security-based swap is entered into, a covered swap entity can and must collect any required initial margin as prerequisite to executing the transaction.

[63] *See* proposed rule § __.5.

collected or posted as initial margin or variation margin, may be resolved.[64]

F. Section __.6: Eligible Collateral

The proposed rule specifies the types of collateral that are eligible to be collected to satisfy either the initial margin or variation margin requirements. Under the proposed rule, eligible collateral is limited to: (i) Immediately available cash funds (denominated in either U.S. dollars or in the currency in which payment obligations under the swap are required to be settled); (ii) any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, the United States; (iii) with respect to initial margin only, any senior debt obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks and Farmer Mac; and (iv) with respect to initial margin only, any obligation that is an "insured obligation," as that term is defined in 12 U.S.C. 2277a(3), of the Farm Credit System banks.[65] Other than immediately-available cash funds, all types of eligible collateral are subject to discounts or minimum "haircuts" for purposes of determining their value for margin purposes, which haircuts are identified in Appendix B of the proposed rule.[66] Because the value of noncash collateral may vary, the proposed rule requires covered swap entities to monitor the value of noncash collateral previously collected to satisfy initial or variation margin requirements and, to the extent the value of such noncash collateral has decreased, to collect additional collateral with a sufficient value to ensure that all applicable initial and variation margin requirements remain satisfied.[67] The proposed rule also prohibits a covered swap entity from collecting, as required initial margin or variation margin, collateral that is an obligation of the counterparty pledging such collateral.[68]

The proposed rule does *not* allow for the use of non-cash collateral, other than the limited types of highly-liquid, high-quality debt securities described above, to satisfy the margin requirements. The appropriateness of using non-cash collateral to fulfill margin requirements is complicated by procyclical considerations. During a period of financial stress, the value of non-cash collateral pledged as margin may also come under stress just as counterparties default and the non-cash collateral is required to offset the cost of replacing defaulted swap positions. In addition, given the infinite variety of potential types of noncash collateral, it is extremely difficult to establish accurate haircuts by regulation. Also, for nonfinancial end users, who are the most likely type of counterparty to wish to post noncash collateral, the proposed rules provide credit exposure thresholds, under which a covered swap entity may determine the extent to which available noncash collateral appropriately reduces the covered swap entity's credit risk, consistent with its credit underwriting expertise. Similarly, counterparties that wish to rely on other non-cash assets to meet margin requirements could pledge those assets with a bank or group of banks in a separate arrangement, such as a secured financing facility, and could draw cash from that arrangement to meet margin requirements.

The Agencies request comment on whether the proposed rule's list of eligible noncash collateral for initial margin and variation margin is appropriate in scope. In particular, the Agencies request comment on the following questions:

Question 59(a). Should the types of eligible collateral listed be broadened to include other types of assets (*e.g.* securities backed by high-quality mortgages or issued with a third-party guarantee)? 59(b) If so, how might the systemic risk issue described above be effectively mitigated?

Question 60(a). Should the types of eligible collateral listed be broadened to include immediately-available cash funds denominated in foreign currency, even where such currency is not the currency in which payment obligations under the swap are required to be settled? 60(b) If so, which currencies (*e.g.,* those accepted by a derivatives clearing organization as initial margin for a cleared swap)? 60(c) If so, what haircut, if any, should apply to such foreign currency?

Question 61. What criteria and factors could be used to determine the set of acceptable non-cash collateral?

Question 62. How could appropriate haircuts be determined for valuing these assets for margin purposes?

Question 63(a). Should the types of eligible collateral listed be broadened to include foreign sovereign debt securities? 63(b) If so, which foreign sovereign debt securities (*e.g.,* those accepted by a derivatives clearing organization as initial margin for a cleared swap)? 63(c) If so, what haircut, if any, should apply?

Question 64(a). Should fixed income securities issued by a well-known seasoned issuer that has a high credit standing, are unsubordinated, historically display low volatility, are traded in highly liquid markets, and have valuations that are readily calculated be added to the list of eligible collateral for initial margin? 64(b) If so, how should the concept of a "high credit standing" be defined in a way that does not reference credit ratings?

G. Section __.7: Segregation of Collateral

The proposed rule provides that each covered swap entity must require each derivative's counterparty that it faces that is a swap entity to segregate any funds or collateral that the covered swap entity has posted as initial margin for a non-cleared swap or non-cleared security-based swap transaction at an independent, third-party custodian.[69] This independent, third-party custodian must be prohibited by contract from (i) rehypothecating or otherwise transferring any initial margin it holds for the covered swap entity and (ii) reinvesting any initial margin held by the custodian in any asset that would not qualify as eligible collateral for initial margin under the proposed rule.[70] The custodian must also be located in a jurisdiction that applies the same insolvency regime to the custodian as would apply to the covered swap entity.[71] This segregation requirement applies only to initial margin, not variation margin, and does not apply to transactions with a counterparty that is an end user of any type.[72]

[64] *See id.*

[65] *See* proposed rule § _6(a). An obligation will be considered to be fully guaranteed as to principal and interest by the United States if the guarantee commits the full faith and credit of the United States for the repayment of principal and interest on the obligation. "Insured obligations" of Farm Credit System banks are consolidated and System-wide obligations issued by Farm Credit System banks. These obligations are insured by the Farm Credit System Insurance Corporation out of funds in the Farm Credit Insurance Fund. Should the Farm Credit Insurance Fund ever be exhausted, Farm Credit System banks are jointly and severally liable for payment on insured obligations.

[66] *See* proposed rule § _6(b). With respect to these haircuts, although the Agencies intend to specify particular haircut amounts in the final rule, the proposed rule provides a potential range of haircuts for comment.

[67] *See* proposed rule § _6(d).

[68] *See* proposed rule § _6(c).

[69] *See* proposed rule § _7(a).

[70] *See* proposed rule §§ _7(b), (c).

[71] *See* proposed rule § _7(d).

[72] The proposed rule does not apply the segregation requirement to variation margin because variation margin is generally used to offset the current exposure arising from *actual* changes in the market value of the derivative position, rather than to secure potential exposure arising from *future* changes in the market value of the derivative position. Under section __.11 of FHFA's and the FCA's proposed rules, entities regulated by FHFA and the FCA that are end users would have to require that any initial margin and variation margin they post to swap entities be segregated.

The Agencies' preliminary view is that requiring covered swap entities to ensure segregation of initial margin is necessary to (i) offset the greater risk to the covered swap entity and the financial system arising from the use of swaps and security-based swaps that are not cleared and (ii) protect the safety and soundness of the covered swap entity. In developing this proposal, the Agencies have taken into account the fact that the failure of a covered swap entity could pose significant systemic risks to the financial system and losses borne by the financial system in such a failure could have significant consequences. The consequences could be magnified if the initial margin posted to the failing swap entity cannot be quickly recovered by the nondefaulting party during a period of financial stress when the liquidity value of the funds is high. Moreover, swap entities typically have roughly offsetting exposures with one another. As a result, it is to be expected that the amount of initial margin required to be posted by two swap entities will be similar. If swap entities exchange similar amounts of initial margin and these funds are available for general use and rehypothecation by the swap entities, then the net effect is as if little initial margin was exchanged. To the extent that initial margin requirements are intended to constrain risk-taking, a lack of segregation will weaken their effect.[73]

Swap entities that engage in cleared swap transactions will be required to post initial margin to the CCP. Consequently, the initial margin that is posted on cleared transactions will not be available for rehypothecation by swap entities. Allowing for rehypothecation of initial margin by swap entities would create an incentive for swap entities to engage in non-cleared transactions even though other provisions of Dodd-Frank Act are intended to promote central clearing of swaps. However, the segregation of initial margin is likely to significantly reduce the availability of liquid assets to covered swap entities to meet payment obligations, as liquid assets held or pledged as the initial margin would be unavailable to the swap entity for other purposes. The requirement to segregate initial margin could result in covered swap entities having to seek alternative methods of funding. The loss in liquidity could be severe, and could require covered swap entities to raise liquidity through other sources.

The Agencies are concerned that not requiring segregation at the outset may cause covered swap entities that incur a severe loss due to credit or market events to face liquidity challenges because their counterparties may require segregation immediately after the loss, depleting the covered swap entity's liquid assets before it can raise additional funds through other means.[74] Requiring swap entities to segregate at the outset addresses this concern at the time a swap entity suffers a loss, but depletes the liquid assets at the inception of the swap transaction—a time when the swap entity is more likely to be able to raise additional liquid funds. The Agencies request comment on whether the proposed segregation requirement is appropriate, or whether an alternative approach would better reflect the purposes of sections 731 and 764 of the Dodd-Frank Act. In particular, the Agencies request comment on the following questions:

Question 65(a). Is it necessary to require segregation of initial margin in order to address the systemic risk issues discussed above? 65(b) What alternatives to segregation would effectively address these systemic risk issues? 65(c) As an alternative to requiring segregation at the outset, should the Agencies impose rules that provide additional time for a swap dealer to raise funds without requiring segregation?

Question 66(a). What are the potential operational, liquidity and credit costs of requiring segregation of initial margin by swap entities? 66(b) What would be the expected liquidity impact and cost of the proposed segregation requirement on market participants? How can the impact of the proposed rule on the liquidity and costs of swaps market participants be mitigated?

Question 67. Is segregation of initial margin and not variation margin sufficient to achieve the purposes of sections 731 and 764 of the Dodd-Frank Act? If not, how might such purposes be achieved?

Question 68(a). Are the limitations placed on rehypothecation and reinvestment under the proposed rule appropriate or necessary? 68(b) What additional or alternative limitations may be appropriate? 68(c) Should certain forms of rehypothecation (*e.g.,* the lending of securities pledged as collateral) or additional types of reinvestment be permitted?

Question 69(a). Is the proposed rule's requirement that the custodian must be located in a jurisdiction that applies the same insolvency regime to the custodian as would apply to the covered swap entity necessary or appropriate? 69(b) What additional or alternative requirements regarding the location of the custodian may be appropriate?

H. Section __.8: Approved Initial Margin Models

Section __.8 of the proposed rule contains modeling standards that an initial margin model must meet in order for a covered swap entity to calculate initial margin under such a model. Generally, the modeling standards are consistent with current regulatory rules and best practices for such models in the context of risk-based capital rules applicable to insured depository institutions and bank holding companies, and are no less conservative than those generally used by derivatives clearing organizations and clearing agencies.[75] As a result, the Agencies preliminarily believe that these modeling standards should ensure that a non-cleared swap does not pose a greater systemic risk than a cleared swap. In particular, because non-cleared swaps are expected to be less liquid than cleared swaps, the proposed rule specifies a minimum time horizon for the initial margin model of 10 business days, compared with a typical requirement of 3 to 5 business days used by derivatives CCPs.[76]

The proposed rule permits a covered swap entity to use an internal initial margin model that reflects offsetting exposures, diversification, and other hedging benefits within four broad risk categories (commodity, credit, equity,

[73] For example, if dealer A and dealer B entered into a swap with each other under which each was required to collect $100 from the other in initial margin without segregation, each would collect $100 in initial margin from the other and no net initial margin would be exchanged. In the case of a bankruptcy of dealer B, dealer A would be permitted to set off the $100 loss that may be incurred in replacing the swap against the $100 in initial margin it "collected" from dealer B, but then would face the potential loss of the $100 in initial margin it provided to dealer B, for which it would only have a claim in bankruptcy. If instead the initial margin for such a swap had been segregated, dealer A would be permitted to set off the $100 loss that may be incurred in replacing the swap against the $100 in initial margin that dealer B pledged to dealer A at a third-party custodian, and dealer A could also recover the $100 in initial margin that it pledged to dealer B at a third-party custodian, with the result that dealer A would incur no loss upon dealer B's bankruptcy.

[74] Although the agreements between the counterparties might not allow for requests for segregation after a swap transaction has been confirmed, as a practical matter counterparties might refuse to enter into any additional transactions with a financially-stressed swaps entity absent an accommodation to segregate some amount of initial margin for the existing portfolio of swaps between the two parties.

[75] This conservative approach also incorporates the practices associated with model validation, independent review and other qualitative requirements associated with the use of internal models for regulatory capital purposes.

[76] *See* proposed rule § __.8(d)(1).

foreign exchange/interest rates) when calculating initial margin for a particular counterparty if the relevant swaps or security-based swaps are executed under the same qualifying master netting agreement.[77] The proposed rule does *not* permit an initial margin model to reflect offsetting exposures, diversification, or other hedging benefits *across* broad risk categories.[78] It is the preliminary view of the Agencies that the correlations of exposures across broad risk categories are not stable enough to be incorporated into a regulatory margin requirement.

The Agencies request comment on whether the standards for initial margin models specified in the proposed rule are sufficient to ensure the integrity of initial margin calculations using such a model. In particular, the Agencies request comment on the following questions:

Question 70(a). Should such models be limited to models based on value-at-risk concepts, or are other models appropriate to measure initial margin? 70(b) If so, how should those models apply and be incorporated into the various aspects of the proposed rule?

Question 71(a). Should offsetting exposures, diversification, and other hedging benefits be recognized more broadly across substantially dissimilar asset classes? 71(b) If so, what limits, if any, would be placed on the recognition of offsetting exposures, diversification, and other hedging benefits, and how could these be measured, monitored and validated on an ongoing and consistent basis across substantially dissimilar asset classes?

Question 72(a). Should the minimum time horizon vary across swaps? 72(b) For example, should it vary based on the broad asset classes: commodity, credit, equity, and foreign exchange/interest rate? 72(c) If so, how should the horizons differ and what would be the basis for the different horizons?

1. Stress Calibration

In addition to a time horizon of 10 trading days, the proposed rule requires the initial margin model to be calibrated to a period of financial stress.[79] Calibration to a stress period ensures that the resulting initial margin requirement is robust to a period of financial stress during which swap entities and financial counterparties are more likely to default. Such calibration also reduces the systemic risk associated with any increase in margin requirements that might occur in response to a large increase in volatility during a period of financial stress.

The Agencies request comment on whether the proposed requirement that an initial margin model take into account financial stress is appropriate given the purpose the initial margin model is intended to serve. In particular, the Agencies request comment on the following questions:

Question 73. Can initial margin models be robustly calibrated to a stress period in a transparent and consistent manner?

Question 74. Are there any other systemic risk implications of requiring that initial margin be calibrated to a period of financial stress rather than to a recent or normal historical period?

Question 75. Is the proposed prudential standard for initial margin of a 99th percentile price move over a 10-day horizon, calibrated using historical data incorporating a period of significant financial stress, appropriate?

Question 76. Is a 10-day horizon sufficient to cover the likely liquidation period on non-cleared swaps?

Question 76. Will the requirement to calibrate to a period of significant financial stress reduce the potential procyclicality of the margin requirement sufficiently? For example, would a minimum margin requirement as a backstop to the modeled initial margin amounts be a prudent approach to addressing procyclicality concerns?

Question 77. Is "period of significant financial stress" a well-understood concept? How might it be clarified?

Question 78. What would be the benefits and costs of replacing the requirement to calibrate the initial margin model using a period of significant financial stress with a requirement to calibrate the initial margin model using a longer historical data sample (such as 10 years), as an alternative way to reduce the potential procyclicality of the margin requirement?

Question 79. Should market participants be able to comply with the requirement to calibrate the initial margin requirement to a historical period of significant financial stress for newer products with little, if any, market history? If so, how?

2. Benchmarking

The proposed rule requires that an initial margin model used for calculating initial margin requirements be benchmarked periodically against observable margin standards to ensure that the initial margin required is not less than what a derivatives clearing organization or a clearing agency would require for similar transactions.[80] This benchmarking requirement is intended to insure that any initial margin amount produced by an initial margin model is subject to a readily observable minimum. It will also have the effect of limiting the extent to which the use of initial margin models might disadvantage the movement of certain types of derivatives to CCPs by setting lower initial margin amounts for non-cleared transactions than for similar cleared transactions.

The Agencies request comment on the proposed requirement for covered swap entities to benchmark any initial margin model to a model used by a derivatives clearing organization or clearing agency model for calculating initial margin, as well as the following questions:

Question 80. What are the operational costs associated with the benchmarking exercise?

Question 81. Can portfolio effects be captured during the benchmarking exercise?

Question 82. How would a banking organization fulfill the requirement in the event that a derivatives clearing organization or clearing agency does not clear a similar derivative transaction?

I. Section __.9: Application of Margin Requirements to Certain Foreign Covered Swap Entities

Section __.9 of the proposed rule addresses the manner in which the proposed rule's margin requirements apply to certain foreign covered swap entities. In the absence of § __.9, the proposed rule's margin requirements would apply to all of a covered swap entity's non-cleared swap and non-cleared security-based swap transactions, without regard to whether (i) the covered swap entity is organized under U.S. or foreign law or (ii) the covered swap entity's counterparty is located inside or outside of the United States. However, the potential application of the margin rules to foreign covered swap entities, or to transactions by U.S. covered swap entities with foreign counterparties, raises several important questions. First, the potential application of the proposed rule to activities conducted by a foreign covered swap entity wholly outside of the United States raises questions regarding the permissible territorial scope of the proposed rule.[81]

[77] *See* proposed rule § __.8(b).

[78] *Id.*

[79] *See* proposed rule § __.8(d)(11).

[80] *See* proposed rule § __.8(d)(14).

[81] Section 2(i) of the Commodity Exchange Act, as amended by section 722 of the Dodd-Frank Act, provides that the provisions of the Commodity Exchange Act relating to swaps "shall not apply to activities outside of the United States unless those activities * * * have a direct and significant connection with activities in, or effect on, commerce of the United States."

Second, to the extent that the proposed margin requirements apply to transactions involving foreign covered swap entities or foreign counterparties, such application could subject these transactions to multiple, and potentially conflicting, margin requirements established by U.S. and foreign regulators. Third, the potentially different treatment of U.S. covered swap entities and foreign covered swap entities raises questions of competitive equality among the two types of firms.

With respect to U.S. covered swap entities, the Agencies propose to apply the margin requirements to U.S. covered swap entities' swap and security-based swap transactions without regard to whether the counterparty is located inside or outside the United States. This approach acknowledges that the foreign swap and security-based swap transactions of a U.S. covered swap entity pose no lesser risk to the covered swap entity's safety and soundness and to financial stability based on the location of the counterparty. The proposed rule applies that same approach to covered swap entities that are foreign subsidiaries and offices of U.S. firms.

With respect to foreign covered swap entities, the Agencies propose to exclude certain qualifying foreign derivative transactions of such entities from application of the proposed rule's margin requirements. Specifically, § __.9 of the proposed rule provides that the proposed rule's margin requirements would not apply to any "foreign non-cleared swap or foreign non-cleared security-based swap" of a "foreign covered swap entity," as those terms are defined in § __.9 of the proposed rule.[82] This proposed approach limits the extra-territorial application of the margin requirements while preserving, to the extent possible, competitive equality among U.S. and foreign firms in the United States.

For these purposes, the proposed rule defines a "foreign non-cleared swap or foreign non-cleared security-based swap" as a non-cleared swap or non-cleared security-based swap with respect to which: (i) The counterparty to the foreign covered swap entity is not a company organized under the laws of the United States or any State, not a branch or office of a company organized under the laws of the United States or any State, and not a person resident in the United States; and (ii) performance of the counterparty's obligations to the foreign covered swap entity under the swap or security-based swap has not been guaranteed by an affiliate of the counterparty that is a company organized under the laws of the United States or any State, a branch of a company organized under the laws of the United States or any State, or a person resident in the United States.[83] As a result, foreign swaps and security-based swaps would generally only include transactions where the counterparty is not organized under U.S. law or otherwise located in the United States, and no U.S. affiliate of the counterparty has guaranteed the counterparty's obligations under the transaction.[84]

The additional requirement that no U.S. affiliate guarantee the counterparty's obligation is intended to exclude instances where such an affiliate has, through a guarantee, effectively assumed ultimate responsibility for the performance of the counterparty's obligations under the transaction. In particular, the Agencies are concerned that without such a requirement, swaps and security-based swaps with a U.S. counterparty could be structured, through the use of an overseas affiliate, in a manner that would evade application of the proposed margin requirements to U.S. transactions. Transactions guaranteed by a U.S. affiliate would also have direct and significant connection with activities in, and effect on, commerce of the United States.

The proposed rule defines a "foreign covered swap entity" as a covered swap entity that: (i) Is not a company organized under the laws of the United States or any State; (ii) is not a branch or office of a company organized under the laws of the United States or any State; (iii) is not a U.S. branch, agency or subsidiary of a foreign bank; and (iv) is not controlled, directly or indirectly, by a company that is organized under the laws of the United States or any State.[85] Accordingly, only a covered swap entity that is organized under foreign law and not controlled, directly or indirectly, by a U.S. company would be eligible for treatment as a foreign covered swap entity for these purposes; neither a foreign branch of a U.S. insured depository institution nor a foreign subsidiary of a U.S. company would be considered a foreign covered swap entity under the proposed rule. In cases where a U.S. company has a foreign subsidiary that is a covered swap entity, the proposed rule would treat that foreign subsidiary in the same manner as a U.S. covered swap entity for purposes of the margin requirements because the U.S. parent company's ownership of the subsidiary is likely to expose the U.S parent company, as a result of legal, contractual or reputational factors, to the risks of the foreign subsidiary's derivatives activities. Transactions of a foreign subsidiary of a U.S. company would also have direct and significant connection with activities in, and effect on, commerce of the United States. Similarly, neither a U.S. branch of a foreign bank nor a U.S. subsidiary of a foreign company would be a foreign covered swap entity under the proposed rule.

The Agencies request comment on the proposed rule's application to the U.S. and foreign swap and security-based swap activities of U.S. covered swap entities and foreign swap entities, respectively. In particular, the Agencies request comment on the following questions:

Question 83. Does the proposed rule's treatment of the swap and security-based swap transactions of foreign covered swap entities appropriately limit application of the margin requirements in a manner consistent with the territorial scope of sections 731 and 764 of the Dodd-Frank Act?

Question 84(a). Is the proposed rule's treatment of the foreign swap and security-based swap transactions of U.S. covered swap entities appropriate? 84(b) Should such transactions be subject to the same exclusion that has been proposed for the foreign swap and security-based swap transactions of foreign covered swap entities? 84(c) If so, why?

Question 85(a). Should the proposed rule expand the definition of foreign covered swap entity to include (i) the foreign subsidiaries of U.S. companies or (ii) the foreign branches of U.S. insured depository institutions? 85(b) If so, why? 85(c) How could the potential risks to the U.S. parent company or insured depository institution related to its subsidiary or branch's activity be limited or eliminated? 85(d) Is this operationally feasible?

Question 86. What impact is the proposed rule's treatment of the foreign swap and security-based swap transactions of U.S. covered swap entities likely to have on the structure, management, and/or competitiveness of U.S. covered swap entities?

Question 87(a). Is the proposed rule's definition of a foreign swap or security-based swap transaction appropriate? 87(b) In particular, is the requirement that no U.S. affiliate guarantee the

[82] *See* proposed rule § __.9(a).

[83] *See* proposed rule § __.9(b).

[84] Under the proposed rule, swap and security-based swaps with *U.S. counterparties* are subject to the proposed rule's margin requirements regardless of whether the covered swap entity is U.S. or foreign.

[85] *See* proposed rule § __.9(c).

foreign counterparty's obligations under the swap or security-based swap transaction appropriate? 87(c) Would an alternative definition more appropriately differentiate between U.S. and foreign counterparties for these purposes? 87(d) If so, what should that definition be?

Question 88(a). Is the proposed rule's definition of a foreign covered swap entity appropriate? 88(b) Would an alternative definition more appropriately differentiate between U.S. and foreign counterparties for these purposes? 88(c) If so, what should that definition be?

Question 89(a). Is the proposed rule's application of the margin requirements to all U.S. swaps and security-based swaps of a covered swap entity, regardless of whether that covered swap entity is U.S. or foreign, appropriate? 89(b) Should the proposed rule treat such transactions differently? 89(c) If so, how?

Question 90. What impact is the proposed rule's treatment of the swap and security-based swap transactions of foreign covered swap entities likely to have on the structure, management, and/or competitiveness of foreign covered swap entities?

J. Section __.10: Capital

The proposed rule generally requires a covered swap entity to comply with regulatory capital rules already made applicable to that covered swap entity as part of its prudential regulatory regime, as follows:

- In the case of insured depository institutions, the capital adequacy guidelines that are applicable to the covered entity and have been adopted by the appropriate Federal banking agency under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o);
- In the case of a bank holding company or savings and loan holding company (on or after the transfer established under Section 311 of the Dodd-Frank Act), the capital adequacy guidelines applicable to bank holding companies under the Board's Regulation Y (12 CFR part 225);
- In the case of a foreign bank or the U.S. branch or agency of a foreign bank, the capital rules that are made applicable to such covered entity pursuant to § 225.2(r)(3) of the Board's Regulation Y (12 CFR 225.2(r)(3);
- In the case of an Edge corporation or an Agreement corporation, the capital adequacy guidelines that are made applicable to an Edge corporation engaged in banking pursuant to § 211.12(c)(2) of the Board's Regulation K (12 CFR 211.12(c)(2);
- In the case of any "regulated entity" under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (*i.e.,* Fannie Mae and its affiliates, Freddie Mac and its affiliates, and the Federal Home Loan Banks), the risk-based capital level or such other amount applicable to the covered swap entity as required by the Director of FHFA pursuant to 12 U.S.C. 4611;
- In the case of Farmer Mac, the capital adequacy regulations set forth in 12 CFR part 652; and
- In the case of any Farm Credit System institution (other than Farmer Mac), the capital regulations set forth in 12 CFR part 615.[86]

The Agencies have preliminarily determined that compliance with these regulatory capital requirements is sufficient to offset the greater risk to the swap entity and the financial system arising from the use of non-cleared swaps, helps ensure the safety and soundness of the covered swap entity, and is appropriate for the greater risk associated with the non-cleared swaps and non-cleared security-based swaps held as a covered swap entity. In particular, the Agencies note that the capital rules incorporated by reference into the proposed rule already address, in a risk-sensitive and comprehensive manner, the safety and soundness risks posed by a covered swap entity's derivatives positions.[87] In addition, the Agencies preliminarily believe that these capital rules sufficiently take into account and address the risks associated with the derivatives positions that a covered swap entity holds and the other activities conducted by a covered swap entity.[88]

The Agencies request comment regarding whether application of these capital regimes is appropriate.

Question 91. Is an alternative or additional capital requirement appropriate for some or all of the covered swap entities subject to the proposed rule?

Question 92. Are there particular issues or concerns raised in the context of foreign banks or their U.S. branches and agencies that would be better addressed through a different approach to the capital requirement for such entities?

K. Section __.11: Special Requirements for Transactions Between Swap Entities and Regulated Entities

FHFA and FCA (but not the other Agencies) are proposing an additional provision, § __.11 of FHFA's and FCA's proposed rules. Proposed § __.11 would require that any entity that is regulated by FHFA or FCA, but is not itself a covered swap entity, collect initial margin and variation margin from its counterparty when entering into a non-cleared swap or non-cleared security-based swap with a swap entity.[89] Regulated entities subject to this provision include the Federal Home Loan Banks, Fannie Mae and its affiliates, Freddie Mac and its affiliates, and all Farm Credit System institutions including Farmer Mac (collectively, regulated entities, and each a regulated entity). Regulated entities that are swap entities would be subject to §§ 1 through 9 of the proposed rule by virtue of being covered swap entities. This section also does not apply to swaps entered into between regulated entities and end users.

Proposed § __.11 is consistent with the risk-based approach to margin

[86] *See* proposed rule § __.10.

[87] For example, under the banking agencies' capital adequacy standards for banks and bank holding companies based on the first Basel Accord, interest-rate, exchange-rate, commodity, and equity-linked derivative contracts that are not traded on an exchange are subject to a capital charge based on type of contract, remaining maturity, and the risk category of the counterparty to the contract. *See* 12 CFR part 3, Appendix A § 3(b)(7) (OCC); 12 CFR parts 208 and 225, Appendix A § III.E (Board); 12 CFR part 325, Appendix A § II.E (FDIC). As another example, under the bank agencies' advanced risk-based capital adequacy standards based on the advanced approaches of the Basel II Accord ("advanced approaches"), banks and bank holding companies that use the advanced approaches determine capital requirements for over-the-counter derivatives based on a formula that takes into account collateral in mitigating counterparty credit risk. *See* 12 CFR part 3, Appendix C, part IV (OCC); 12 CFR part 208, Appendix F, part IV and 12 CFR part 225, Appendix G, part IV (Board); and 12 CFR part 325, Appendix D, part IV (FDIC). The FCA's capital requirements for FCS institutions other than Farmer Mac expressly address derivatives transactions. *See* 12 CFR 615.5201 and 615.5212. The FCA's capital requirements for Farmer Mac indirectly address derivatives transactions in the operational risk component of the statutorily mandated risk-based capital stress test model. *See* 12 CFR part 652 Subpart B Appendix A. The FCA, through the Office of Secondary Market Oversight, closely monitors and supervises all aspects of Farmer Mac's derivatives activities, and the FCA believes existing requirements and supervision are sufficient to ensure safe and sound operations in this area. However, the FCA is considering enhancements to the model and in the future may revise the model to more specifically address derivatives transactions.

[88] See footnote 33, *supra,* for a discussion of the basis for FHFA's preliminary view that the reference to existing statutory authority is sufficient to address the risks discussed in the text above as to the Enterprises notwithstanding their current conservatorship status.

[89] *See* FCA and FHFA proposed rule § __.11. FCA and FHFA note that in sections III.C and III.D of this notice of proposed rulemaking, the Agencies have requested comment on alternative approaches to margin requirements, including whether covered swap entities should be required to post margin to end users. In the event such an alternative approach is adopted as part of a final rule, as to both initial and variation margin requirements, FCA and FHFA note that this proposed § __.11 may not need to be adopted as part of that final rule.

proposed by the Agencies and parallels the requirements that swap entities collect initial and variation margin from their counterparties. Moreover, this approach recognizes that a default by a swap counterparty to a regulated entity could adversely affect the safe and sound operations of the regulated entity. The requirement reflects current practice in that the regulated entities generally obtain collateral to secure their swaps exposure to swap dealer counterparties, although current practice generally does not include posting of initial margin by or to any counterparty.

FHFA and FCA are proposing these provisions pursuant to each agency's role as safety and soundness regulator for its respective regulated entities, and each agency's authority to ensure that the regulated entities operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national finance markets for housing, agriculture, and rural markets, and that they carry out their public policy missions through authorized activities.[90]

Section __.11(a)(1) of the proposed rule requires a regulated entity to collect initial margin when it enters into a swap transaction with a swap entity. The proposal provides that the amount of initial margin the regulated entity must collect shall be in accordance with § __.3 of the proposed rule, which permits the use of either an initial margin model or the use of a standardized "look up" table specifying the minimum initial margin that must be collected as a percentage of the notional amount of the transaction. The minimum initial margin levels set out in Appendix A apply only in the absence of an initial margin model. FHFA and FCA, however, seek comment on whether a minimum initial margin requirement should apply as a backstop even to modeled initial margin amounts, as a prudent approach to address concerns about procyclicality and competitive pressures to reduce margin requirements. If not, how should such concerns be addressed?

Section __.11(a)(1) of the proposed rule permits a regulated entity to use its initial margin model to determine initial margin and provides that if the regulated entity does not have an initial margin model, it may engage a third party to calculate initial margin on its behalf, provided that the third party is itself independent of the swap entity that is the counterparty to the transaction. Any initial margin model used to determine margin posted to a regulated entity must meet all of the requirements of § __.8 of the proposed rule. FHFA and FCA preliminarily believe that permitting a swap entity to use its own model to calculate the amount of initial margin it would be required to post to a regulated entity may introduce a conflict of interest to the transaction. That concern could be addressed by establishing a process through which the regulated entity could verify the reasonableness of the counterparty's model calculation. FHFA and FCA each seeks comment on whether it should allow its regulated entities to use the counterparty's model to calculate initial margin, and if so, what provisions should be included to mitigate conflicts of interest.

Section __.11(a)(2) of the proposed rule requires that a regulated entity collect variation margin daily from the swap entity in accordance with the requirements of § __.4 of the proposed rule, which permits the amounts of variation margin posted to be adjusted to account for qualifying master netting agreements and applies a minimum transfer amount of $100,000.

Section __.11(b) of the proposed rule requires that any regulated entity entering into a non-cleared swap or a non-cleared security-based swap with a swap entity must execute trading documentation with such counterparty in accordance with § __.5 of the proposed rule. Section __.11(c) of the proposed rule provides that any collateral that a regulated entity is required to collect as initial or variation margin must meet the eligible collateral requirements of § __.6 of the proposed rule. That section applies the same eligibility requirements to the regulated entities that are required of the swap entities.

Section __.11(d) of the proposed rule provides that a regulated entity must require that any initial margin it posts to a counterparty be held by an independent custodian. That provision is consistent with the requirement in § __.7 of the proposed rule that a covered swap entity require segregation with an independent custodian of any initial margin that it posts to another swap entity. Section __.11(d) of the proposed rule applies this segregation requirement to variation margin as well as initial margin and thereby reflects current practice of at least some of the regulated entities. FHFA and FCA seek comments on whether such a requirement should be applied to variation margin and if it is not applied, how the regulated entities would be protected in the event variation margin is posted to a swap entity that subsequently fails.

IV. Quantitative Impact of Margin Requirements

The proposed rule would apply the initial margin and variation margin requirements to non-cleared swaps and security-based swaps that are entered into by a covered swap entity after the effective date, which is proposed to be 180 days after publication of a final rule in the **Federal Register**. The proposed rule would not require an immediate or retroactive application of initial margin or variation margin for any derivative transaction entered into prior to the effective date of the final rule.

Because the requirements would not be applied retroactively, no new initial margin or variation margin requirements would be imposed on derivatives transactions entered into prior to the effective date until such time as those transactions are rolled-over or renewed. The only requirements that would apply to a pre-effective date covered derivative would be the initial margin and variation margin requirements to which the parties to the transaction had previously agreed to by contract.

The new requirements will have an impact on the costs of engaging in new swap transactions. In particular, the proposed rule sets out requirements for initial and variation margin that represent a significant change from current industry practice in many circumstances. Assessing the quantitative impact of the proposed requirements is particularly difficult in light of the wide ranging and as yet undetermined changes that are occurring to the derivatives market as a result of regulatory reform. Specifically there is significant uncertainty with respect to (i) which entities would be classified as swap entities; (ii) the extent to which existing derivatives would be rolled-over or renewed; and (iii) the extent to which derivatives currently traded on an over-the-counter basis will move to central clearing by a CCP. In addition, there are a number of specific and technical aspects of the proposed rule, such as number and composition of counterparties that would be classified as high-risk financial end users, low-risk financial end users, and nonfinancial end users, respectively, that are difficult to assess without a large amount of highly detailed data on the size of derivative positions as well as the underlying rationale for maintaining those positions. These and other complicating factors make it difficult to make precise statements about the quantitative impact of the

[90] *See* 12 U.S.C. 2154, 2248, 2252, 4513, 4526.

margin rule specified under the proposed rule.

Accordingly, the Agencies request commenters to provide their own detailed quantitative impact analyses. The Agencies encourage commenters to include the following elements in their analyses categorized between swaps entities, high-risk financial end users, low-risk financial end users, and nonfinancial end users: (i) Required initial margin if internal models were applied; (ii) required initial margin if the standardized chart in Appendix A were applied; (iii) required variation margin; (iv) the expected costs of, or additional liquidity required by, the initial margin and variation margin requirements; and (v) the potential benefits of the initial margin and variation margin requirements to covered swap entities, their counterparties, and financial stability. The analyses should also (i) address operational and other business related costs associated with implementing the proposed rule and (ii) take into consideration and disclose the expected effect of the likely clearing of certain derivative transactions through CCPs in the future.

In order to better understand the effect that broader clearing requirements will have on the impact of the proposed rules, the Agencies also request comment on the levels of covered derivatives, including the roll-over or renewal of prior derivatives that would become covered under the proposed rule, that can be expected over the following time horizons after the effective date: (i) 1 year, (ii) 3 years, and (iii) 5 years. To maximize the usefulness of such comments, the Agencies request that commenters break down such projections by covered derivatives that are likely to be cleared and uncleared, as well as by product class.

V. Request for Comments

The Agencies are interested in receiving comments on all aspects of the proposed rule.

VI. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, section 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the OCC, Board and FDIC to use plain language in all proposed and final rules published after January 1, 2000. The OCC, Board and FDIC 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 regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation 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 regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

VII. Administrative Law Matters

A. Paperwork Reduction Act Analysis

Request for Comment on Proposed Information Collection

Certain provisions of the proposed rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501–3521. In accordance with the requirements of the 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 FDIC, OCC, and FHFA to OMB for approval under section 3506 of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

(a) Whether the collections of information are 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 collections, 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 collections 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. Commenters may submit comments on aspects of this notice that may affect disclosure requirements and burden estimates at the addresses listed in the **ADDRESSES** section of this Supplementary Information. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503 or by facsimile (202–395–5806).

Title of Information Collection: Margin and Capital Requirements for Certain Swap Entities.

Frequency of Response: Event-generated and annual.

Affected Public: The affected public of the FDIC, OCC, and Board is assigned generally in accordance with the entities covered by the scope and authority section of their respective proposed rule. The affected public of FHFA generally would be those third parties not regulated by a prudential regulator that request prior written approval of an initial margin model for use by a regulated entity.

FDIC: Any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

OCC: Any national bank, Federal savings association, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Board: Any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1842), savings and loan holding company (as defined in 12 U.S.C. 1467a, (on or after the transfer established under Section 311 of the Dodd-Frank Act)12 U.S.C. 5411), foreign banking organization (as defined in 12 CFR 211.21(o)), state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

FHFA: With respect to any regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)), the proposed rule would not contain any collection of information pursuant to the PRA. However, the provisions in proposed § __.11(e) allowing a third party that is not subject to regulation by a prudential

regulator to request prior written approval of an initial margin model for use by a regulated entity, would be a collection of information under the PRA.

Abstract: The notice sets forth proposed margin and capital requirements with respect to non-cleared swaps and non-cleared security-based swaps for covered swap entities. The information requirements in joint regulations proposed by the Agencies are found in §§ __.2(t)(3), _.2(t)(4), _.4(e)(2)(i), __5, __.6(d)(2)(i), __.8(c)(1), __.8(c)(2), __8(c)(3), __8(d)(3), __8(d)(8), __.8(d)(9), __.8(d)(10), __.8(d)(12), __.8(e)(1), __.8(f)(2), __.8(f)(3), __.8(f)(4), and __.8(g). Compliance with the information collections found in sections __.2(t)(3) and _.2(t)(4) would be mandatory for any covered swap entity wishing to take a qualifying master netting agreement into account for purposes of calculating initial margin or variation margin. Compliance with the information collections found in §§ __.4(e)(2)(i), __.5, and _.6(d)(2)(i) would be mandatory for all covered swap entities. Compliance with the information collections found in §§ __.8(c)(1), __.8(c)(2), __.8(c)(3), __.8(d)(3), __.8(d)(8), __.8(d)(9), __.8(d)(10), __.8(d)(12), __.8(e)(1), __.8(f)(2), __.8(f)(3), __.8(f)(4), and __.8(g) would be mandatory for all covered swap entities wishing to use an initial margin model to calculate initial margin requirements.

In addition, § __.11(e) of FHFA's proposed rule contains an information collection that would be for all third parties that are not subject to regulation by a prudential regulator and that request prior written approval of an initial margin model for use by an FHFA-regulated entity.

Section-by-Section Analysis

Section _.2 defines terms used in the proposed rule, including the definition of "qualifying master netting agreement" contained in § __2(t). Sections __.2(t)(3) and __.2(t)(4) provide that, with respect to a qualifying master netting agreement, a covered swap entity must (i) conduct sufficient legal review of the agreement to conclude with a well-founded basis that the agreement meets specified criteria and (ii) establish and maintain procedures for monitoring relevant changes in law. The term "qualifying master netting agreement" is used elsewhere in the proposed rule to specify instances in which a covered swap entity may (i) calculate variation margin on an aggregate basis across multiple swaps and security-based swaps and (ii) calculate initial margin requirements under an initial margin model on a portfolio basis.

Section _.4 requires that on and after the date on which a covered swap entity enters into a non-cleared swap or non-cleared security-based swap, the covered swap entity shall collect variation margin from the counterparty to such swap or security-based swap in specified amounts. Section __.4(e)(2)(i) requires that, in cases where a counterparty refuses to provide required variation margin, a covered swap entity demonstrated upon request to the satisfaction of the relevant Agency that it has made appropriate efforts to collect the required variation margin unless it has otherwise made the necessary efforts to attempt to collect the required variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms.

Section __.5 requires a covered swap entity to execute trading documentation with each counterparty that (i) includes credit support arrangements that grant the covered swap entity the contractual right to collect initial margin and variation margin in such amounts, in such form, and such circumstances as are required by the initial margin and variation margin requirements set forth in the proposed rule and (ii) meets other specified criteria.

Section __.6 establishes certain forms of eligible collateral that a covered swap entity shall collect for initial margin and variation margin required pursuant to this part and requires a covered swap entity to monitor the market value of any eligible collateral it has collected to satisfy initial margin or variation margin required by this part and, to the extent that the market value of such collateral has declined, collect such additional eligible collateral as is necessary to bring itself into compliance with the margin requirements of this part. Section __.6(d)(2)(i) requires that, in cases where a counterparty refuses to provide required additional margin, a covered swap entity demonstrated upon request to the satisfaction of the relevant Agency that it has made appropriate efforts to collect the required additional margin unless it has otherwise made the necessary efforts to attempt to collect the required additional margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms.

Section __.8 establishes standards for initial margin models. These standards include:

- A requirement that the covered swap entity receive prior approval from the relevant Agency based on demonstration that the initial margin model meets specific requirements (§§ __.8(c)(1) and __.8(c)(2));
- A requirement that a covered swap entity notify the relevant Agency in writing before extending use of the model to additional product types, making certain changes to the initial margin model, or making material changes to modeling assumptions (§ __.8(c)(3));
- A variety of quantitative requirements, including requirements that the covered swap entity validate and demonstrate the reasonableness of its process for modeling and measuring hedging benefits, demonstrate to the satisfaction of the relevant Agency that the omission of any risk factor from the calculation of its initial margin is appropriate, demonstrate to the satisfaction of the relevant Agency that any conversion of initial margin calculated using a different holding period is appropriate, periodically review and, as necessary, revise the data used to calibrate the initial margin model to ensure that the data incorporate an appropriate period of significant financial stress (§§ __.8(d)(3), __.8(d)(8), __.8(d)(9), __.8(d)10), __.8(d)(12));
- A requirement that a covered swap entity review its initial margin model annually (§ __.8(e));
- A requirement that the covered swap entity validate its initial margin model initially and on an ongoing basis, describe to the relevant Agency any remedial actions being taken, and report internal audit findings regarding the effectiveness of the initial margin model to the covered swap entity's board of directors or a committee thereof (§§ __.8(f)(2), __.8(f)(3), and __.8(f)(4)); and
- A requirement that the covered swap entity adequately document all material aspects of its initial margin model (§ __.8(g)).

Section __.11(e) of FHFA's proposed rule applies § __.8 of the proposed rule, the information collection of which is described above, to any third party that is not subject to regulation by a prudential regulator and requests prior written approval of an initial margin model for use by an FHFA-regulated entity.

Estimated Paperwork Burden

Estimated Burden Per Response:

§ __.2—Definitions, § __.5—Documentation of margin matters, and § __.8(g)—Documentation: recordkeeping—5 hours.

§ __.4(e)(2)(i)—Variation margin and § __.6(d)(2)(i)—Eligible collateral: recordkeeping—4 hours.

§ __.8(c) and (d)—Initial margin model: reporting—240 hours.

§ __.8(e)—Periodic review and § __.8 (f)—Control, oversight and validation mechanisms: recordkeeping—40 hours.

§ __.11(e)—Special requirements for transactions between swap entities and regulated entities: Initial margin models: recordkeeping—220 hours.

FDIC

Number of Respondents: 3.

Total Estimated Annual Burden: 867 hours.

OCC

Number of Respondents: 20.

Total Estimated Annual Burden: 5,780 hours.

Board

Number of Respondents: 30.

Total Estimated Annual Burden: 8,670 hours.

FHFA

Number of Respondents: 2.

Total Estimated Annual Burden: 440 hours.

FCA: The FCA collects information from Farm Credit System institutions, which are Federal instrumentalities, in the FCA's capacity as their safety and soundness regulator, and, therefore, OMB approval is not required for this collection.

B. Initial Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), the Agencies are publishing an initial regulatory flexibility analysis for the proposed rule. The RFA requires an agency to provide an initial regulatory flexibility analysis with the proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Agencies welcome comment on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. Statement of the objectives of the proposal. As required by section 4s of the Commodity Exchange Act (7 U.S.C. 6(s)) and section 15F of the Securities Exchange Act (15 U.S.C. 78*o*–8), the Agencies are proposing new regulations to establish rules imposing (i) capital requirements and (ii) initial and variation margin requirements on all non-cleared swaps into which the covered swap entities enter.

2. Small entities affected by the proposal. This proposal may have an effect predominantly on two types of small entities: (i) Financial institutions that are swap entities that are subject to the proposed rule's capital and margin requirements; and (ii) counterparties that engage in derivatives transactions with swap entities that are subject to the proposed rule's margin requirements.

With respect to financial institutions that are swap entities that are subject to the proposed rule's margin requirement, a financial institution generally is considered small if it has assets of $175 million or less.[91] Based on 2010 Call Report data, approximately 4,200 depository institutions had total domestic assets of $175 million or less. Of this number, however, the Agencies do not expect that any is likely to be a swap entity that is subject to the proposed rule's capital and margin requirements. With respect to counterparties that engage in derivatives transactions with swap entities that are subject to the proposed rule's margin requirements, the number of such counterparties and the extent to which certain types of companies are likely to be counterparties are unknown. However, of the 4,200 depository institutions described above, fewer than 250 are party to non-cleared derivative contracts.

3. Compliance requirements. With respect to the initial margin and variation margin requirements, the Agencies' proposed rule does not apply directly to counterparties that engage in derivatives transactions with swap entities. However, because the proposed rule requires a covered swap entity to collect a minimum amount of margin (subject to a threshold in some cases) from all counterparties, including small entities, the margin requirements may affect the amount of margin that counterparties that are small entities are required to post to dealer counterparties when transacting in the derivatives markets. Accordingly, the Agencies expect any economic impact on counterparties that are small entities to be negative to the extent that swap entities currently do not collect initial margin or variation margin from those counterparties but would be required to do so under the proposed rule.

4. Other Federal rules. The Agencies believe that no Federal rules duplicate, overlap, or conflict with the proposed rule.

5. Significant alternatives to the proposed rule. As discussed above, the Agencies have requested comment on the impact of the margin requirements on end users from which swap entities may be required to collect initial margin and/or variation margin and have solicited comment on any approaches that would reduce the burden on all counterparties, including small entities. In addition, the Agencies have proposed to reduce the effect of the proposed rule on counterparties to covered swap entities, including small entities, through the implementation of initial margin threshold amounts and variation margin threshold amounts. The Agencies have also requested comment on a variety of alternative approaches to implementing margin requirements with respect to swaps and security-based swaps with counterparties that are end users. The Agencies welcome comment on any significant alternatives that would minimize the impact of the proposal on small entities.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities; nor does the Federal Agricultural Mortgage Corporation meet the definition of "small entity." Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

FHFA: FHFA believes that the proposed rule, if promulgated as a final rule, would not have a significant economic impact on a substantial number of small entities, since none of FHFA's regulated entities come within the meaning of small entities as defined in the Regulatory Flexibility Act (see 5 U.S.C. 601(6)), and would not substantially affect any business that its regulated entities might do with small entities.

C. OCC Unfunded Mandates Reform Act of 1995 Determination

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 (adjusted for inflation) or more in any one year. The current inflation-adjusted expenditure threshold is $126.4 million. If a budgetary impact statement is

[91] 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/sites/default/files/Size_Standards_Table.pdf.*

required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of $126.4 million or more. Therefore, the OCC has prepared a budgetary impact analysis and identified and considered alternative approaches. The full text of the OCC's analyses under the Unfunded Mandates Act is available at: *http://www.regulations.gov*, Docket ID OCC–2011–0008.

Text of the Proposed Common Rules (All Agencies)

The text of the proposed common rules appears below:

PART [ ]—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

__.1 Authority, purpose, and scope.
____.2 Definitions.
____.3 Initial margin.
____.4 Variation margin.
____.5 Documentation of margin matters.
____.6 Eligible collateral.
____.7 Segregation of collateral.
____.8 Initial margin models.
____.9 Application of margin requirements to certain foreign covered swap entities.
____.10 Capital.

Appendix A to Part [ ]—Standardized Minimum Initial Margin Requirements for Non-cleared Swaps and Non-cleared Security-based Swaps

Appendix B to Part [ ]—Margin Values for Noncash Collateral

§ ____.1 Authority, purpose, and scope. [Reserved]

§ ____.2 Definitions.

(a) *Clearing agency* has the meaning specified in section 3(a)(23) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)).

(b) *Counterparty* means, with respect to any swap or security-based swap to which a covered swap entity is a party, the counterparty to such swap or security-based swap, other than a counterparty that is a derivatives clearing organization or clearing agency.

(c) [Reserved]

(d) *Derivatives clearing organization* has the meaning specified in section 1a(15) of the Commodity Exchange Act (7 U.S.C. 1a(15)).

(e) *Eligible collateral* means collateral described in § ____.6.

(f) *Effective date* means [DATE THAT IS 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(g) *End user* means a counterparty that is not a swap entity.

(h) *Financial end user* means any counterparty that is an end user that is—

(1) A commodity pool as defined in section 1a(5) of the Commodity Exchange Act (7 U.S.C. 1a(5));

(2) A private fund as defined in section 202(a) of the Investment Advisors Act of 1940 (15 U.S.C. 80–b–2(a));

(3) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(4) A person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company of 1956 (12 U.S.C. 1843(k));

(5) A person that would be a financial end user described in paragraph (h)(1) or (h)(2) of this section, if it were organized under the laws of the United States or any State thereof;

(6) A government of any foreign country or a political subdivision, agency, or instrumentality thereof; or

(7) Any other person that [Agency] may designate.

(i) *High-risk financial end user* means a counterparty that is a financial end user but is not a low-risk financial end user.

(j) *Initial margin* means eligible collateral that is pledged in connection with entering into a swap or security-based swap by a party thereto to secure the performance of its obligations to its counterparty under one or more swaps or security-based swaps.

(k) *Initial margin collection amount* means—

(1) In the case of a covered swap entity that does not have an initial margin model, the amount of initial margin with respect to a swap or security-based swap that is required under Appendix A of this part; and

(2) In the case of a covered swap entity that does have an initial margin model, the amount of initial margin with respect to a swap or security-based swap that is required under the initial margin model.

(l) *Initial margin model* means an internal risk management model that—

(1) Has been developed and designed to identify an appropriate, risk-based amount of initial margin that the covered swap entity must collect with respect to one or more swaps or security-based swaps to which the covered swap entity is a party; and

(2) Has been approved by [Agency] pursuant to § ____.8 of this part.

(m) *Initial margin threshold amount* means a credit exposure limit that has been established by a covered swap entity with respect to its swaps and security-based swaps with a counterparty, that appropriately takes into account and addresses the credit risk posed by the counterparty and the risks of such swaps and security-based swaps, and that has been reviewed, monitored and approved in accordance with the covered swap entity's credit processes, except that in no case shall the threshold amount be greater than—

(1) Zero, if the counterparty is either a swap entity or a high-risk financial end user; or

(2) The lesser of **[**$15 to $45**]** million and **[**0.1 to 0.3**]** percent of the covered swap entity's [capital metric], if the counterparty is a low-risk financial end user.

(n) *Low-risk financial end user* means a counterparty that is a financial end user and makes the following representations to a covered swap entity in connection with entering into a swap or security-based swap with the covered swap entity—

(1) The counterparty does not have a significant swaps exposure;

(2) The counterparty predominantly uses swaps or security-based swaps to hedge or mitigate the risks of its business activities, including balance sheet, interest rate, or other risk arising from the business of the counterparty; and

(3) The counterparty is subject to capital requirements established by a prudential regulator or state insurance regulator.

(o) *Margin* means initial margin and variation margin.

(p) *Non-cleared swap* means a swap that is not a cleared swap, as that term is defined in section 1a(7) of the Commodity Exchange Act (7 U.S.C. 1a(7)).

(q) *Non-cleared security-based swap* means a security-based swap that is not, directly or indirectly, submitted to and cleared by a clearing agency registered with the SEC.

(r) *Nonfinancial end user* means any counterparty that is an end user but is not a financial end user.

(s) *Prudential regulator* has the meaning specified in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

(t) *Qualifying master netting agreement* means an agreement governing one or more swaps or security-based swaps to which a covered swap entity is a party that satisfies the following criteria—

(1) The agreement creates a single legal obligation for all individual

transactions covered by the agreement upon an event of default, including bankruptcy, insolvency, or similar proceeding, of the counterparty;

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of bankruptcy, insolvency, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;

(3) The covered swap entity has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that—

(i) The agreement meets the requirements of paragraph (t)(2) of this definition; and

(ii) In the event of a legal challenge (including one resulting from default or from bankruptcy, insolvency, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions;

(4) The covered swap entity establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition; and

(5) The agreement does not contain a provision that permits a non-defaulting counterparty to make a lower payment than it would make otherwise under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement.

(u) *Security-based swap* has the meaning specified in section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)).

(v) *Significant swaps exposure* means—

(1) Swap positions that equal or exceed any of the following thresholds—

(i) $2.5 billion in daily average aggregate uncollateralized outward exposure; or

(ii) $4 billion in daily average aggregate uncollateralized outward exposure plus daily average aggregate potential outward exposure; or

(2) Security-based swap positions that equal or exceed any of the following thresholds—

(i) $1 billion in daily average aggregate uncollateralized outward exposure; or

(ii) $2 billion in daily average aggregate uncollateralized outward exposure plus daily average aggregate potential outward exposure.

(3) For purposes of this definition—

(i) The terms *daily average aggregate uncollateralized outward exposure* and *daily average aggregate potential outward exposure,* when used with respect to swaps, each has the meaning specified for that term in **[**17 CFR 1.3(uuu)**]** for purposes of calculating substantial counterparty exposure under that regulation.

(ii) The terms *daily average aggregate uncollateralized outward exposure* and *daily average aggregate potential outward exposure,* when used with respect to security-based swaps, each has the meaning specified for that term in **[**15 CFR 240.3a67–5**]** for purposes of calculating substantial counterparty exposure under that regulation.

(w) *State insurance regulator* means an insurance authority of a State that is engaged in the supervision of insurance companies under State insurance law.

(x) *Swap* has the meaning specified in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)).

(y) *Swap entity* means a security-based swap dealer as defined in section 3(a)(71) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(71)), a major security-based swap participant as defined in section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(67)), a swap dealer as defined in section 1a(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)), or a major swap participant as defined in section 1a(33) of the Commodity Exchange Act (7 U.S.C. 1a(33)).

(z) *Variation margin* means eligible collateral pledged or paid on an intraday, daily or other periodic basis by one party to a swap or security-based swap to its counterparty to offset a change in the value of one or more swaps or security-based swaps between the parties, as calculated in accordance with the contractual terms of such swaps or security-based swaps.

(aa) *Variation margin amount* means the cumulative mark-to-market change in value to a covered swap entity of a swap or security-based swap, as measured from the date it is entered into (or, in the case of swap or security-based swap that has a current positive or negative value to a covered swap entity on the date it is entered into, such positive or negative value plus any cumulative mark-to-market change in value to the covered swap entity of a swap or security-based swap after such date), less the value of all variation margin previously collected but not returned by the covered swap entity (expressed as a positive amount) with respect to such swap or security-based swap.

(bb) *Variation margin threshold amount* means a credit exposure limit that has been established by a covered swap entity with respect to its swaps and security-based swaps with a counterparty, that appropriately takes into account and addresses the credit risk posed by the counterparty and the risks of such swaps and security-based swaps, and that has been reviewed, monitored and approved in accordance with the covered swap entity's credit processes, except that in no case shall the threshold amount be greater than—

(1) Zero, if the counterparty is a either a swap entity or a high-risk financial end user; or

(2) The lesser of **[**$15 to 45**]** million and **[**0.1 to 0.3**]**% of the covered swap entity's [capital metric], if the counterparty is a low-risk financial end user.

§ __.3 Initial margin.

(a) *General.* A covered swap entity shall collect initial margin with respect to any non-cleared swap or non-cleared security-based swap from the counterparty to such swap or security-based swap in an amount that is no less than the greater of—

(1) Zero; or

(2) The initial margin collection amount for such swap or security-based swap *less* the initial margin threshold amount for the counterparty (not including any portion of the initial margin threshold amount being applied to other swaps or security-based swaps with the counterparty), as applicable.

(b) *Timing.* A covered swap entity shall, with respect to any non-cleared swap or non-cleared security-based swap to which it is a party, comply with the initial margin requirements described in paragraph (a) for a period beginning on or before the date it enters into such swap or security-based swap and ending on the date the non-cleared swap or non-cleared security-based swap is terminated or expires.

(c) *Minimum Transfer Amount.* Notwithstanding anything else in this section, a covered swap entity is not required to collect initial margin pursuant to this section with respect to a particular counterparty unless and until the total amount of initial margin that is required pursuant to this section to be collected, but has not yet been collected, with respect to the counterparty is greater than $100,000.

§ __.4 Variation margin.

(a) *General.* On and after the date on which a covered swap entity enters into a non-cleared swap or non-cleared security-based swap, the covered swap entity shall, to the extent the variation margin amount for such swap or security-based swap is positive, collect variation margin from the counterparty to such swap or security-based swap in an amount that is no less than the greater of—

(1) Zero; or

(2) The variation margin amount for such swap or security-based swap *less* the variation margin threshold amount for the counterparty (not including any portion of the variation margin threshold amount being applied to other swaps or security-based swaps with the counterparty), as applicable.

(b) *Frequency.* A covered swap entity shall comply with the variation margin requirements described in paragraph (a) of this section—

(1) No less than once per business day with respect to a counterparty that is a swap entity or a financial end user; and

(2) No less than once per week with respect to a counterparty that is a nonfinancial end user.

(c) *Minimum transfer amount.* Notwithstanding anything else in this section, a covered swap entity is not required to collect variation margin pursuant to this section unless and until the total amount of variation margin that is required pursuant to this section to be collected, but has not yet been collected, with respect to the counterparty is greater than $100,000.

(d) *Netting arrangements.* To the extent that one or more non-cleared swaps or non-cleared security-based swaps are executed pursuant to a qualifying master netting agreement between a covered swap entity and its counterparty, a covered swap entity may calculate and comply with the variation margin requirements of this paragraph on an aggregate basis with respect to all swaps and security-based swaps governed by such agreement, so long as the covered swap entity complies with these variation margin requirements with respect to all swaps and security-based swaps governed by such agreement regardless of whether the swaps and security-based swaps were entered into on or after the effective date.

(e) A covered swap entity shall not be deemed to have violated its obligation under paragraph (a) of this section to collect variation margin from a counterparty if—

(1) The counterparty has refused or otherwise failed to provide the required variation margin to the covered swap entity; and

(2) The covered swap entity has—

(i) Made the necessary efforts to attempt to collect the required variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of [Agency] that it has made appropriate efforts to collect the required variation margin; or

(ii) Commenced termination of the swap or security-based swap with the counterparty.

§ __.5 Documentation of margin matters.

A covered swap entity shall execute trading documentation with each counterparty regarding credit support arrangements that—

(a) Provides the covered swap entity with the contractual right to collect initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this part; and

(b) Specifies—

(1) The methods, procedures, rules, and inputs for determining the value of each swap or security-based swap for purposes of calculating variation margin requirements; and

(2) The procedures by which any disputes concerning the valuation of swaps or security-based swaps, or the valuation of assets collected or posted as initial margin or variation margin, may be resolved.

§ __.6 Eligible collateral.

(a) A covered swap entity shall collect initial margin and variation margin required pursuant to this part solely in the form of one or more of the following types of eligible collateral—

(1) Immediately available cash funds that are denominated in—

(i) U.S. dollars; or

(ii) The currency in which payment obligations under the swap are required to be settled;

(2) Any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, the United States; and

(3) With respect to initial margin only—

(i) Any senior debt obligation of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks and the Federal Agricultural Mortgage Corporation; and

(ii) Any obligation that is an "insured obligation," as that term is defined in 12 U.S.C. 2277a(3), of a Farm Credit System bank.

(b) The value of any eligible collateral described in paragraphs (a)(2) or (a)(3) of this section, for purposes of satisfying the initial margin or variation margin requirements of this part shall be subject to, and limited by, the discounts described in Appendix B of this part.

(c) A covered swap entity may not collect, as initial margin or variation margin required by this part, any collateral that is an obligation of the counterparty pledging such collateral.

(d) A covered swap entity shall monitor the market value of any eligible collateral it has collected to satisfy initial margin or variation margin required by this part and, to the extent that the market value of such collateral has declined, shall collect such additional eligible collateral as is necessary to bring itself into compliance with the margin requirements of this part. A covered swap entity shall not be deemed to have violated its obligation under this paragraph (d) to collect additional eligible collateral from a counterparty if—

(1) The counterparty has refused or otherwise failed to provide the required additional eligible collateral to the covered swap entity; and

(2) The covered swap entity—

(i) Has made the necessary efforts to attempt to collect the required additional eligible collateral, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of [Agency] that it has made appropriate efforts to collect the required additional eligible collateral; or

(ii) Has commenced termination of the swap or security-based swap with the counterparty.

(e) A covered swap entity may collect initial margin and variation margin that is not required pursuant to this part in any form of collateral.

§ __.7 Segregation of collateral.

A covered swap entity that enters into a non-cleared swap or non-cleared security-based swap with a swap entity and posts initial margin to the swap entity with respect to that swap or security-based swap shall require that—

(a) All funds or other property the covered swap entity provides as initial margin are held by a third-party custodian that is independent of the covered swap entity and the counterparty;

(b) The independent custodian is prohibited by contract from rehypothecating or otherwise transferring any initial margin held by the custodian;

(c) The independent custodian is prohibited by contract from reinvesting any initial margin held by the custodian

in any asset that would not qualify as eligible collateral under § __.6 for purposes of satisfying the initial margin requirements of this part; and

(d) The independent custodian is located in a jurisdiction that applies the same insolvency regime to the independent custodian as would apply to the covered swap entity.

§ __.8 Initial margin models.

(a) *General adequacy of initial margin model.* Unless a covered swap entity's initial margin model conforms to the requirements of this section, the covered swap entity shall calculate all initial margin collection amounts pursuant to Appendix A of this part.

(b) *Applicability to swaps and security-based swaps.* Any initial margin model that a covered swap entity wishes to use to calculate the amount of initial margin required to be collected for a single swap or security-based swap transaction or a portfolio of swap and/or security-based swap transactions with a given counterparty pursuant to § __.3 must meet each requirement of this section. An initial margin model may be designed to calculate initial margin for a portfolio of swaps and/or security-based swaps only if all such swaps and/or security-based swaps are governed by the same qualifying master netting agreement. To the extent that a qualifying master netting agreement between a covered swap entity and its counterparty governs swaps or security-based swaps that were entered into before, on, and after the effective date, the covered swap entity may use its initial margin model to calculate the amount of initial margin required to be collected pursuant to § __.3 either—

(1) With respect to only those swaps and/or security-based swaps transactions entered into on and after the effective date; or

(2) With respect to all swaps and/or security-based swaps transactions governed by such qualifying master netting agreement, regardless of whether they were entered into before, on, or after the effective date.

(c) *Requirements for initial margin model.*

(1) A covered swap entity must obtain the prior written approval of [Agency] before using any initial margin model to calculate the initial margin required in this part.

(2) A covered swap entity must demonstrate that the initial margin model satisfies all of the requirements of this section on an ongoing basis.

(3) A covered swap entity must promptly notify [Agency] in writing prior to:

(i) Extending the use of an initial margin model that [Agency] has approved under this section to an additional product type;

(ii) Making any change to any initial margin model approved by [Agency] under this section that would result in a material change in the covered swap entity's assessment of initial margin requirements; or

(iii) Making any material change to modeling assumptions used by the initial margin model.

(4) [The Agency] may rescind its approval of the use of any initial margin model, in whole or in part, or may impose additional conditions or requirements if [Agency] determines that the initial margin model no longer complies with this section.

(d) *Quantitative requirements.*

(1) The covered entity's initial margin model must calculate an amount of initial margin that is equal to the potential future exposure of the swap, security-based swap or portfolio of swaps and/or security-based swaps. Potential future exposure is an estimate of the one-tailed 99 percent confidence interval for an increase in the value of the swap, security-based swap or portfolio of swaps and/or security-based swaps due to an instantaneous price shock that is equivalent to a movement in all material underlying risk factors, including prices, rates, and spreads, over a holding period equal to the shorter of ten business days or the maturity of the swap or security-based swap. If a covered swap entity elects to calculate initial margin using an initial margin model on a portfolio of swaps and/or security-based swaps under the same qualifying master netting agreement, the covered entity must calculate an amount of initial margin for that portfolio each time a new swap or security-based swap is added to that portfolio and collect any incremental initial margin collection amount that is required.

(2) The covered swap entity's initial margin model must use risk factors sufficient to measure all material price risks inherent in the swap transactions for which initial margin is being calculated. The risk categories must include, but should not be limited to, foreign exchange/interest rate risk, credit risk, equity risk, and commodity risk, as appropriate. For material exposures in the major currencies and markets, modeling techniques must capture spread and basis risk and must incorporate a sufficient number of segments of the yield curve to capture differences in volatility and imperfect correlation of rates along the yield curve.

(3) The initial margin model may calculate initial margin for a portfolio of swaps and/or security-based swaps and reflect offsetting exposures, diversification, and other hedging benefits for swaps and security-based swaps that are governed by the same qualifying master netting agreement by incorporating empirical correlations within the following four broad risk categories, provided the covered swap entity validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits: Commodity, credit, equity, and foreign exchange/interest rate. Offsetting exposures, diversification, and other hedging benefits under a qualifying master netting agreement may be recognized by the initial margin model within each broad risk category, but not across broad risk categories.

(4) If the initial margin model does not explicitly reflect offsetting exposures, diversification, and hedging benefits within a broad risk category, the covered swap entity must calculate an amount of initial margin separately for each subset of swaps and security-based swaps for which offsetting exposures, diversification, and other hedging benefits are explicitly recognized by the initial margin model. The sum of the initial margin amounts calculated for each subset of swaps and security-based swaps within a broad risk category will be used to determine the aggregate initial margin due from the counterparty for the portfolio of swaps and security-based swaps within the broad risk category.

(5) The sum of the initial margins calculated for each broad risk category will be used to determine the aggregate initial margin due from the counterparty.

(6) The initial margin model may not permit the calculation of any initial margin collection amount to be subject to offset by, or otherwise take into account, any initial margin that may be owed or otherwise payable by the covered swap entity to the counterparty.

(7) The initial margin model must include all material risks arising from the nonlinear price characteristics of options positions or positions with embedded optionality and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors. As an example, a covered swap entity with a large or complex options portfolio must measure the volatility of options positions or positions with embedded optionality by different maturities and/or strike prices, where material.

(8) The covered swap entity may not omit any risk factor from the calculation of its initial margin that the covered swap entity uses in its initial margin model unless it has previously demonstrated to the satisfaction of [Agency] that such omission is appropriate.

(9) The covered swap entity may not incorporate any proxy or approximation used to capture the risks of the covered swap entity's actual swap or security-based swap transactions unless it has previously demonstrated to the satisfaction of [Agency] that such proxy or approximation is appropriate.

(10) The covered swap entity may calculate initial margin over the holding period directly or it may convert an initial margin calculated using a different holding period. A covered swap entity may not convert its initial margin calculation in such a manner unless it has previously demonstrated to the satisfaction of [Agency] that such conversion is appropriate.

(11) All data used to calibrate the initial margin model must be based on a historical observation period of at least one year and must incorporate a period of significant financial stress appropriate to the swap and/or security-based swap transactions to which the initial margin model is applied.

(12) The covered swap entity must review and, as necessary, revise the data used to calibrate the initial margin model at least monthly, and more frequently as market conditions warrant, to ensure that the data incorporate a period of significant financial stress appropriate to the swap and/or security-based swap transactions to which the initial margin model is applied.

(13) The level of sophistication of the initial margin model must be commensurate with the complexity of the swap and/or security-based swap transactions to which they are applied. In calculating an initial margin collection amount, the initial margin model may make use of any of the generally accepted approaches for modeling the risk of a single instrument or portfolio of instruments.

(14) The covered swap entity must periodically benchmark the initial margin model against observable margin standards to ensure that the initial margin required is not less than what a derivatives clearing organization or a clearing agency would require for similar transactions.

(15) [The Agency] may require a covered swap entity using an initial margin model to collect a greater amount of initial margin than that determined by the covered swap entity's initial margin model.

(e) *Periodic review.* A covered swap entity must periodically, but no less frequently than annually, review its initial margin model in light of developments in financial markets and modeling technologies, and enhance the initial margin model as appropriate to ensure that the initial margin model continues to meet the requirements for approval in this section.

(f) *Control, oversight, and validation mechanisms.*

(1) The covered swap entity must have a risk control unit that reports directly to senior management and is independent from the business trading units.

(2) The covered swap entity must validate its initial margin model initially and on an ongoing basis. The covered swap entity's validation process must be independent of the development, implementation, and operation of the initial margin model, or the validation process must be subjected to an independent review of its adequacy and effectiveness. The validation process must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the initial margin model;

(i) An ongoing monitoring process that includes verification of processes and benchmarking by comparing the covered swap entity's initial margin model outputs (estimation of initial margin) with relevant alternative internal and external data sources or estimation techniques; and

(ii) An outcomes analysis process that includes backtesting of the initial margin model.

(3) If the validation process reveals any significant problems with the initial margin model, the covered swap entity must notify [Agency] of the problems, describe to [Agency] any remedial actions being taken, and adjust the initial margin model to insure an appropriately conservative amount of required initial margin is being calculated.

(4) The covered swap entity must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the covered swap entity's initial margin model measurement systems, including the activities of the business trading units and independent risk control unit, compliance with policies and procedures, and calculation of the covered swap entity's initial margin requirements under this part. At least annually, the internal audit function must report its findings to the covered swap entity's board of directors or a committee thereof.

(g) *Documentation.* The covered swap entity must adequately document all material aspects of its initial margin model, including management and valuation of swap and/or security-based swap transactions to which they apply, the control, oversight, and validation of the initial margin model, any review processes and the results of such processes.

§ __.9 Application of margin requirements to certain foreign covered swap entities.

(a) The requirements of §§ __.3 through __.8 shall not apply to any foreign non-cleared swap or foreign non-cleared security-based swap of a foreign covered swap entity.

(b) For purposes of this section, a *foreign non-cleared swap or foreign non-cleared security-based swap* is any non-cleared swap or non-cleared security-based swap transaction with respect to which—

(1) The counterparty to the foreign covered swap entity is—

(i) Not an entity organized under the laws of the United States or any State;

(ii) Not a branch or office of an entity organized under the laws of the United States or any State; and

(iii) Not a person resident in the United States; and

(2) Performance of the counterparty's obligations to the foreign covered swap entity under the swap or security-based swap has not been guaranteed by an affiliate of the counterparty that is—

(i) An entity organized under the laws of the United States or any State;

(ii) A branch or office of an entity organized under the laws of the United States or any State; or

(iii) A person resident in the United States.

(c) For purposes of this section, a *foreign covered swap entity* is any covered swap entity that is—

(1) Not a company organized under the laws of the United States or any State;

(2) Not a branch or office of a company organized under the laws of the United States or any State;

(3) Not a U.S. branch, agency or subsidiary of a foreign bank; and

(4) Not controlled, directly or indirectly, by a company that is organized under the laws of the United States or any State.

§ __.10 Capital.

[Reserved]

Appendix A to Part [ ]—Standardized Minimum Initial Margin Requirements for Non-cleared Swaps and Non-cleared Security-based Swaps.

STANDARDIZED MINIMUM INITIAL MARGIN REQUIREMENTS FOR NON-CLEARED SWAPS AND NON-CLEARED SECURITY-BASED SWAPS

Asset Class	Initial margin requirement (% of notional exposure)
Credit: 0–2 year duration	[1–3]
Credit: 2–5 year duration	[2–8]
Credit: 5+ year duration	[5–15]
Commodity	[10–20]
Equity	[10–20]
Foreign Exchange/Currency	[3–9]
Interest Rate: 0–2 year duration.	[0–2]
Interest Rate: 2–5 year duration.	[1–3]
Interest rate: 5+ year duration	[2–6]
Other	[10–20]

Appendix B to Part [ ]—Margin Values for Noncash Collateral.

MARGIN VALUES FOR NONCASH COLLATERAL

	Margin value (% of market value) duration (years)		
	0–5	5–10	>10
U.S. Treasuries and Fully Guaranteed Agencies:			
Bills/Notes/Bonds/Inflation Indexed	[98–100]	[95–99]	[94–98]
Zero Coupon, STRIPs	[97–99]	[94–98]	[90–94]
Senior Debt Obligations of FHFA Regulated Entities and the Federal Agricultural Mortgage Corporation, and Insured Obligations of Farm Credit System Banks:			
Bills/Notes/Bonds	[96–100]	[94–98]	[93–97]
Zero Coupon	[95–99]	[93–97]	[89–93]

[END OF COMMON TEXT]

Adoption of the Common Rule Text

The proposed adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

List of Subjects in 12 CFR Part 45

12 CFR Chapter I

Administrative practice and procedure, Capital, Margin requirements, National banks, Reporting and recordkeeping requirements, Risk.

Authority and Issuance

For the reasons stated in the Common Preamble, the Office of the Comptroller of the Currency proposes to amend chapter I of Title 12, Code of Federal Regulations as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

1. The authority citation for part 45 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 93a, 161, 1818, 3907, 3090, and 15 U.S.C. 78o–10(e).

2. Part 45 is added as set forth at the end of the Common Preamble.

3. Part 45 is amended by:

a. Removing "[Agency]" wherever it appears and adding in its place "the OCC";

b. Removing "[The Agency]" wherever it appears and adding in its place "The OCC"; and

c. Removing "[capital metric]" wherever it appears and adding in its place "Tier 1 capital".

4. Section 45.1 is added to read as follows:

§ 45.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the authority of 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 93a, 161, 1818, 3907, 3090, and 15 U.S.C. 78o–10(e).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–8) require the OCC to establish capital and margin requirements for any national bank, Federal savings association, or Federal branch or agency of a foreign banks that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after [INSERT DATE THAT IS 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

5. Paragraph (c) of § 45.2 is added to read as follows:

§ 45.2 Definitions.

* * * * *

(c) *Covered swap entity* means any national bank, Federal savings association, or Federal branch and agency of a foreign bank that is a swap

entity, or any other entity that the OCC determines.

* * * * *

6. Section 45.10 is added to read as follows:

§ 45.10 Capital.

A covered swap entity shall comply with:

(a) In the case of a covered swap entity that is a national bank, the minimum capital requirements in 12 CFR part 3;

(b) In the case of a covered swap entity that is a Federal savings association, the minimum capital requirements in 12 CFR part 567; and

(c) In the case of a covered swap entity that is a Federal branch or agency of a foreign bank, the capital adequacy guidelines that are applicable as generally provided under 12 CFR 28.14.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

List of Subjects in 12 CFR Part 237

12 CFR Chapter II

Administrative practice and procedure, Banks and banking, Capital, Foreign banking, Holding companies, Margin requirements, Reporting and recordkeeping requirements, Risk.

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Board of Governors of the Federal Reserve System proposes to add the text of the common rule as set forth at the end of the Supplementary Information as part 237 to 12 CFR chapter II as follows:

PART 237—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES (REGULATION KK)

7. The authority citation for part 237 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 221 *et seq.,* 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* and 12 U.S.C. 3103 *et seq.*

8. Part 237 is added as set forth at the end of the Common Preamble.

9. Part 237 is amended by:

a. Removing "[Agency]" wherever it appears and adding in its place "the Board";

b. Removing "[The Agency]" wherever it appears and adding in its place "The Board"; and

c. Removing "[capital metric]" wherever it appears and adding in its place "tier 1 capital".

10. Section 237.1 is added to read as follows:

§ 237.1 Authority, purpose, and scope.

(a) *Authority.* This part (Regulation KK) is issued by the Board of Governors of the Federal Reserve System (Board) under section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)) and section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), as well as under the Federal Reserve Act, as amended (12 U.S.C. 221 *et seq.*); section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818); the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–8) require the Board to establish capital and margin requirements for any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1842), savings and loan holding company (as defined in 12 U.S.C. 1467a (on or after the transfer established under Section 311 of the Dodd-Frank Act) 12 U.S.C. 5411)), foreign banking organization (as defined in 12 CFR 211.21(o)), state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after [INSERT DATE THAT IS 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

11. Paragraph (c) of § 237.2 is added to read as follows:

§ 237.2 Definitions.

* * * * *

(c) *Covered swap entity* means any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1842), savings and loan holding company (as defined in 12 U.S.C. 1467a (on or after the transfer established under Section 311 of the Dodd-Frank Act) 12 U.S.C. 5411)), foreign banking organization (as defined in 12 CFR 211.21(o)), any state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is a swap entity, or any other entity that the Board determines.

* * * * *

12. Section 237.10 is added to read as follows:

§ 237.10 Capital.

A covered swap entity shall comply with:

(a) In the case of a covered swap entity that is a state member bank (as defined in 12 CFR 208.2(g)), the capital adequacy guidelines that are applicable to the covered swap entity and have been adopted by the Board under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o);

(b) In the case of a covered swap entity that is a bank holding company (as defined in 12 U.S.C. 1842) or a savings and loan holding company (as defined in 12 U.S.C. 1467a), the capital adequacy guidelines applicable to bank holding companies under the Board's Regulation Y (12 CFR part 225);

(c) In the case of a covered swap entity that is foreign banking organization (as defined in 12 CFR 211.21(o)) or any state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), the capital rules that are made applicable to such covered swap entity pursuant to § 225.2(r)(3) of the Board's Regulation Y (12 CFR 225.2(r)(3)); and

(d) In the case of a covered swap entity that is an Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)), the capital adequacy guidelines that are made applicable to an Edge corporation engaged in banking pursuant to § 211.12(c)(2) of the Board's Regulation K (12 CFR 211.12(c)(2)).

FEDERAL DEPOSIT INSURANCE CORPORATION

List of Subjects in 12 CFR Part 324

12 CFR Chapter III

Banks, Reporting and recordkeeping requirements, Holding companies, Savings associations.

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Federal Deposit Insurance Corporation proposes to add the text of the common rule as set forth at the end of the Supplementary Information as part 324 to chapter III of Title 12, Code of Federal Regulations, modified as follows:

PART 324—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

13. The authority citation for part 324 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and 12 U.S.C. 1818 and 12 U.S.C. 1819(a)(Tenth).

14. Part 324 is added as set forth at the end of the Common Preamble.

15. Part 324 is amended by:

a. Removing "[Agency]" wherever it appears and adding in its place "the FDIC";

b. Removing "[The Agency]" wherever it appears and adding in its place "The FDIC"; and

c. Removing "[capital metric]" wherever it appears and adding in its place "tier 1 capital".

16. Section 324.1 is added to read as follows:

§ ____.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Federal Deposit Insurance Corporation (FDIC) under section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)), section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), and section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–8) require the FDIC to establish capital and margin requirements for any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This part implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statutes and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after [INSERT DATE THAT IS 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

17. Paragraph (c) of § 324.2 is added to read as follows:

* * * * *

(c) *Covered swap entity* means any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is a swap entity, or any other entity that the FDIC determines.

* * * * *

18. Section 324.10 is added to read as follows:

§ ____.10 Capital requirement.

A covered swap entity shall comply with the capital adequacy guidelines that are applicable to the covered swap entity and have been adopted by the FDIC under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

FARM CREDIT ADMINISTRATION

List of Subjects in 12 CFR Part 624

Agriculture, Banks, Banking, Credit, Rural areas.

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Farm Credit Administration proposes to add the text of the common rule as set forth at the end of the Supplementary Information as part 624 to chapter VI of Title 12, Code of Federal Regulations, modified as follows:

PART 624—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

19. The authority citation for part 624 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and secs. 4.3, 5.9, 5.17, and 8.32 of the Farm Credit Act (12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, and 12 U.S.C. 2279bb–1).

20. Part 624 is added as set forth at the end of the Common Preamble.

21. Part 624 is amended by:

a. Removing "[Agency]" wherever it appears and adding in its place "the FCA";

a. Removing "[The Agency]" wherever it appears and adding in its place "The FCA"; and

c. Removing "[capital metric]" wherever it appears and adding in its place "core surplus or core capital, as applicable".

22. Section 624.1 is added to read as follows:

§ 624.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Farm Credit Administration (FCA) under section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)), section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), and sections 4.3, 5.9, 5.17, and 8.32 of the Farm Credit Act (12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, and 12 U.S.C. 2279bb–1).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–8) require the FCA to establish capital and margin requirements for any System institution, including the Federal Agricultural Mortgage Corporation, chartered under the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statute's requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after [INSERT DATE THAT IS 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

23. Paragraph (c) of § 624.2 is added to read as follows:

§ 624.2 Definitions.

* * * * *

(c) *Covered swap entity* means any institution chartered under the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*) that is a swap entity,

or any other entity that the FCA determines.

* * * * *

24. Section 624.10 is added to read as follows:

§ 624.10 Capital requirement.

A covered swap entity shall comply with:

(a) In the case of the Federal Agricultural Mortgage Corporation, the capital adequacy regulations set forth in 12 CFR part 652; and

(b) In the case of any Farm Credit System institution other than the Federal Agricultural Mortgage Corporation, the capital regulations set forth in 12 CFR part 615.

25. Section 624.11 is added to read as follows:

§ 624.11 Special requirements for transactions between swap entities and System institutions.

(a) *Margin requirements.* To the extent that a System institution, including the Federal Agricultural Mortgage Corporation, that is not a covered swap entity enters into a non-cleared swap or a non-cleared security-based swap with a swap entity, the System institution shall:

(1) Collect initial margin from the swap entity in an amount and at such times as would be in accordance with the requirements of § 624.3, provided that for purposes of this § 624.10 any reference to "initial margin model" in the definition of "initial margin collection amount" shall mean:

(i) The System institution's initial margin model, if any, or

(ii)(A) If the System institution does not have an initial margin model, an initial margin model used by a third party to calculate initial margin on behalf of the System institution in accordance with § 624.3, provided that the third party is itself independent of the swap entity that is the counterparty in the transaction at issue.

(B) The amounts of initial margin collected under this paragraph (a) may be adjusted for minimum transfer amounts as allowed under § 624.3(c).

(2) Collect variation margin daily from the swap entity in an amount that would be in accordance with the requirements in §§ 624.4(a) and 624.4(e). The amounts of variation margin collected under this paragraph may be adjusted as allowed for minimum transfer amounts under § 624.4(c) and for qualifying master netting agreements under § 624.4(d).

(b) *Documentation.* To the extent that a System institution enters into a non-cleared swap or a non-cleared security-based swap with a swap entity, the System institution shall execute trading documentation with such swap entity in accordance with the requirements of § 624.5.

(c) *Collateral.* Any initial or variation margin that a System institution is required to collect from a swap entity under paragraph (a) of this section shall meet the eligible collateral requirements of § 624.6.

(d) *Segregation.* A System institution shall require that any funds or other property that it posts to a swap entity as initial or variation margin be held by a third-party custodian that is independent of the swap entity and the System institution, is located in a jurisdiction that applies the same insolvency regime to the third-party custodian as would apply to the System institution, and is subject to the rehypothecation, reinvestment, and other transfer restrictions of § 624.7

(e) *Initial margin models.* To the extent the initial margin collection amount that the System institution is required to collect from a swap entity under paragraph (a)(1) of this section is calculated by the System institution using an initial margin model, such model must meet all the requirements of § 624.8, provided that the appropriate prudential regulator responsible for making or rescinding any approvals to the extent required or allowed under § 624.8 shall be:

(1) In the case where the initial margin model is that of a third party that is subject to regulation by a prudential regulator, the prudential regulator having such jurisdiction; or

(2) In the case where the initial margin model is that of either the System institution or a third party that is not subject to regulation by a prudential regulator, the FCA.

FEDERAL HOUSING FINANCE AGENCY

List of Subjects in 12 CFR Part 1221

Government-sponsored enterprises, Mortgages, Securities.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION,** and under the authority of 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and 12 U.S.C. 4526, the Federal Housing Finance Agency proposes to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** as part 1221 of subchapter B of chapter XII of title 12 of the Code of Federal Regulations, modified as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER B—ENTITY REGULATIONS

PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

26. The authority citation for part 1221 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513 and 12 U.S.C. 4526(a).

27. Part 1221 is added as set forth at the end of the Common Preamble.

28. Part 1221 is amended by:

a. Removing "[Agency]" wherever it appears and adding in its place "FHFA";

b. Removing "[The Agency]" wherever it appears and adding in its place "FHFA"; and

c. Removing "[capital metric]" wherever it appears and adding in its place "total capital".

29. Section 1221.1 is added to read as follows:

§ 1221.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Federal Housing Finance Authority (FHFA) under section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)), section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), 12 U.S.C. 4513 and 12 U.S.C. 4526(a).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–8) require FHFA to establish capital and margin requirements for any regulated entity that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statute's requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after [INSERT DATE THAT IS 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]. Nothing in this part is intended to prevent a covered swap entity from

collecting margin in amounts greater than is required under this part.

30. Section 1221.2 is amended as follows:

a. Add paragraph (c);

b. Redesignate paragraphs (z), (aa) and (bb) as paragraphs (bb), (cc), and (dd), respectively;

c. Redesignate paragraphs (u) through (y) as (v) through (z); and

d. Add new paragraphs (u) and (aa).

§ 1221.2 Definitions.

* * * * *

(c) *Covered swap entity* means any regulated entity that is a swap entity, or any other entity that FHFA determines.

* * * * *

(u) *Regulated entity* means any regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)).

* * * * *

(aa) *Total capital* means:

(1) In the case of any Federal Home Loan Bank, "total capital" as such term is defined in 12 CFR 1229.1; and

(2) In the case of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any of their respective affiliates, "total capital" as such term is defined in 12 CFR 1750.11.

* * * * *

31. Section 1221.10 is added to read as follows:

§ 1221.10 Capital.

A covered swap entity shall comply with the risk-based capital level or such other amount applicable to the covered swap entity as required by the Director of FHFA pursuant to 12 U.S.C. 4611.

32. Section 1221.11 is added to read as follows:

§ 1221.11 Special requirements for transactions between swap entities and regulated entities.

(a) *Margin requirements.* To the extent that a regulated entity that is not a covered swap entity enters into a non-cleared swap or a non-cleared security-based swap with a swap entity, the regulated entity shall:

(1) Collect initial margin from the swap entity in an amount and at such times as would be in accordance with the requirements of § 1221.3, provided that for purposes of this section any reference to "initial margin model" in the definition of "initial margin collection amount" shall mean:

(i) The regulated entity's initial margin model, if any, or

(ii) (A) If the regulated entity does not have an initial margin model, an initial margin model used by a third party to calculate initial margin on behalf of the regulated entity in accordance with § 1121.3, provided that the third party is itself independent of the swap entity that is the counterparty in the transaction at issue.

(B) The amounts of initial margin collected under this paragraph may be adjusted for minimum transfer amounts as allowed under § 1221.3(c).

(2) Collect variation margin daily from the swap entity in an amount that would be in accordance with the requirements in § 1221.4(a) and § 1221.4(e). The amounts of variation margin collected under this paragraph may be adjusted as allowed for minimum transfer amounts under § 1221.4(c) and for qualifying master netting agreements under § 1221.4(d).

(b) *Documentation.* To the extent that a regulated entity enters into a non-cleared swap or a non-cleared security-based swap with a swap entity, the regulated entity shall execute trading documentation with such swap entity in accordance with the requirements of § 1221.5.

(c) *Collateral.* Any initial or variation margin that a regulated entity is required to collect from a swap entity under paragraph (a) of this section shall meet the eligible collateral requirements of § 1221.6.

(d) *Segregation.* A regulated entity shall require that any funds or other property that it posts to a swap entity as initial or variation margin be held by a third-party custodian that is independent of the swap entity and the regulated entity, is located in a jurisdiction that applies the same insolvency regime to the third-party custodian as would apply to the regulated entity, and is subject to the rehypothecation, reinvestment, and other transfer restrictions of § 1221.7.

(e) *Initial margin models.* To the extent the initial margin collection amount that the regulated entity is required to collect from a swap entity under paragraph (a)(1) of this section is calculated by the regulated entity using an initial margin model, such model must meet all the requirements of § 1221.8, provided that the appropriate prudential regulator responsible for making or rescinding any approvals or taking other action to the extent required or allowed under § 1221.8 shall be:

(1) In the case where the initial margin model is that of a third party that is subject to regulation by a prudential regulator, the prudential regulator having such jurisdiction; or

(2) In the case where the initial margin model is that of either the regulated entity or a third party that is not subject to regulation by a prudential regulator, FHFA.

Dated: April 11, 2011.

John Walsh,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, April 12, 2011.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 12th of April 2011.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: April 11, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

Dated: April 11, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–10432 Filed 5–10–11; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6705–01–P; 8070–01–P

FEDERAL REGISTER

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Part V

The President

Proclamation 8670—National Women's Health Week, 2011
Proclamation 8671—Mother's Day, 2011

Federal Register
Vol. 76, No. 91
Wednesday, May 11, 2011

Presidential Documents

Title 3—

The President

Proclamation 8670 of May 6, 2011

National Women's Health Week, 2011

By the President of the United States of America

A Proclamation

Women are a foundation of our families, and their health affects the well-being of our communities and our country. They often make health care decisions for their families as well as themselves. However, American women have not always had access to the health care they need, or the freedom to make the best health choices for their loved ones. As a Nation, we must ensure our mothers, daughters, friends, and colleagues receive fair treatment and access to resources they need to live healthy, happy lives. During National Women's Health Week, we reaffirm our commitment to making women's health a priority.

In the past, insurance companies have effectively considered being a woman a "pre-existing condition," and the specific medical needs of women meant higher fees and less coverage. Before the Affordable Care Act became law last year, insurance companies could deny coverage to women due to previous events such as having had cancer or having been pregnant. In 2014, it will be illegal for insurance companies to discriminate against anyone with a pre-existing condition, or charge women higher premiums than they charge men.

The Affordable Care Act gives women greater freedom and control over their health care. Thanks to this landmark legislation, women joining new health plans have the ability to choose their own doctor from any primary care provider, OB–GYN, or pediatrician in their health plan's network without a referral. The new insurance exchanges created by this law ensure coverage of preventive care and basic health services, including maternity care, which is often not provided in health plans in the individual insurance market.

National Women's Health Week is also an opportunity for women of all ages, ethnicities, and economic circumstances to take simple, everyday steps to embrace healthier lifestyles. This week, we encourage women to schedule their annual checkups and talk to their health care provider about important health screenings, many of which will be free of charge because of the Affordable Care Act. All American women and their loved ones can visit www.WomensHealth.gov and www.GirlsHealth.gov for more information and resources on living longer and healthier lives. During National Women's Health Week, I encourage women, and all Americans, to make their own health a priority and support each other in these efforts.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 8 through May 14, 2011, as National Women's Health Week. I encourage all Americans to celebrate the progress we have made in protecting women's health and to promote awareness, prevention, and educational activities that improve the health of all women.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–11748
Filed 5–10–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8671 of May 6, 2011

Mother's Day, 2011

By the President of the United States of America

A Proclamation

As our society has changed, so have the challenges facing women raising families. Many American women are raising children at home while caring for an elderly parent, holding down two jobs, serving as the sole parent in a family, or defending our country overseas as a service member. Our Nation's mothers not only look after our needs and teach us to be compassionate and responsible, but also manage households, build careers, and improve our neighborhoods and communities. While the roles and responsibilities of mothers have evolved, their guidance and care remains as strong and constant as ever.

On Mother's Day, we celebrate the extraordinary importance of mothers in our lives. The bond of love and dedication a mother shares with her children and family is without bounds or conditions. Whether an adoptive mom or grandmother, mother or partner, the women who raise us show us that no hurdle is too high, and no dream is beyond our reach. As sons and daughters, we show our gratitude for the women in our lives who care for us, shape our values, and set us on the path to a limitless future.

Throughout our history, mothers have made remarkable sacrifices for the well-being of their loved ones. Nearly a century ago, Anna Jarvis, who had suffered the loss of her beloved mother, campaigned with many other Americans to make Mother's Day a recognized holiday and pay respect to all women raising children. Today, we continue to celebrate the influence, love, and nurturing our mothers provide in our lives and in our national life.

To support the parents who are raising tomorrow's leaders, my Administration is committed to doing all we can to create jobs and economic opportunities for families across America. We are striving to help mothers in the workplace by enforcing equal pay laws and addressing workplace flexibility as families balance the demands of work, child and elder care, and education. My budget strengthens the Child and Dependent Care Tax Credit to help families afford the cost of quality childcare. The tax-cut package we passed last December extended expansions of the Child Tax Credit and Earned Income Tax Credit, providing a tax cut for 15.7 million families with about 29.1 million children. The Affordable Care Act gives women more access to health care and better resources to protect the health of their families by requiring new insurance plans to cover wellness benefits for children, ending the exclusion of pre-existing conditions by insurance companies, and extending parents' health coverage for young adults up to age 26. First Lady Michelle Obama's "*Let's Move!*" initiative is also providing mothers with helpful tools to support their children's healthy growth.

Mothers are the rocks of our families and a foundation in our communities. In gratitude for their generous love, patient counsel, and lifelong support, let us pay respect to the women who carry out the hard work of motherhood with skill and grace, and let us remember those mothers who, though no longer with us, inspire us still.

The Congress, by a joint resolution approved May 8, 1914, (38 Stat. 770), has designated the second Sunday in May each year as "Mother's Day" and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 8, 2011, as Mother's Day. I urge all Americans to express their love, respect, and gratitude to mothers everywhere, and I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–11749
Filed 5–10–11; 11:15 am]
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S. 307/P.L. 112–11
To designate the Federal building and United States courthouse located at 217 West King Street, Martinsburg, West Virginia, as the "W. Craig Broadwater Federal Building and United States Courthouse". (Apr. 25, 2011; 125 Stat. 213)

S.J. Res. 8/P.L. 112–12
Providing for the appointment of Stephen M. Case as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 25, 2011; 125 Stat. 214)

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